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INTERNATIONAL LEGAL STANDARDS AND POLICY FRAMEWORKS: ESSENTIAL PARAMETERS FOR REGULATING LABOUR MIGRATION

IN CENTRAL ASIA

An ILO Contribution

OSCE/ICMPD WORKSHOP

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A. MAJOR TRENDS AND CHALLENGES

At the beginning of the 21st Century, 175 million people, two and a half percent of the world's population, are living outside their countries of citizenship. This population would constitute the world's fifth largest country if put in one territory. Half of this population, some 86.5 million, is economically active, that is to say employed, self-employed or otherwise active in remunerative activity. We can say that most adult migrants of working age are involved in the world of work, given that children and aged people are included in that total. Decent work issues in the context of globalization are thus fundamental to migration today.

Nine major trends and challenges characterize international migration at the dawn of the 21st Century:

Major Trends and Challenges

1. Certain features of globalization are leading to deterioration of human security –and **increased human displacement**.
2. Global economic, technological and demographic developments have resulted in an **increased demand for both high- and low-skilled migrant labour** in a growing number of countries.
3. The “**feminisation of migration**” reflects the fact that, globally, women now comprise nearly 50% of migrant workers.
4. Increased competition and informalization of economic activity continues to result in both **high levels of exploitation and lack of respect for basic human rights and dignity** of migrants, particularly those in irregular situations.
5. **Manifestations of discrimination, violence and xenophobic hostility** towards migrants have dramatically increased in many parts of the world.
6. The lack of regulated, legal channels for international labour migration, despite increased demand for migrant labour, has contributed to a dramatic increase in **trafficking** of human beings.
7. Despite positive impact of migrants' remittances, the loss of talent and skills through “**brain drain**” seriously undermines development potential.
8. Roles of **migration in development and regional integration** remain little understood and un-addressed in policy and practice.

9. Most countries **lack comprehensive policies** to ensure regular inflow of migrant workers, ensure protection of migrants, and uphold decent work conditions, especially for foreign workers.

B. THE IMPACT OF GLOBALISATION

Growing economic interdependence of states has been a widely acknowledged component of globalisation. However, the effect on international population movements is less easy to generalize. As a recent ILO study put it, “**The evidence points to a likely worsening of migration pressures in many parts of the world**.... Processes integral to globalization have intensified the disruptive effects of modernization and capitalist development... Many developing countries face serious social and economic dislocation associated with persistent poverty, growing unemployment, loss of traditional trading patterns, and what has been termed a ‘growing crisis of economic security’.”

As our ILO Director General put it, *if you look at globalization from the point of view of peoples’ concerns, its single biggest failure is its inability to create jobs where people live*. In sum, migration pressures on the “supply side” are increasing as possibilities for employment and economic survival at home disappear.

On the other side, **demand for migrant labour is also increasing**. Demographic trends and ageing work forces in many industrialized countries mean that immigration is becoming an increasingly important option to address changing labour force composition and needs and future economic and social security performance. The native workforce of the Russian Federation will decline by an estimated five million workers by 2010; it will already lose some 750,000 this year to aging and retirement not replaced by young nationals entering the work force.

ILO conducted last year a future simulation for Western Europe using its methodology to predict performance of social security systems, a method proven accurate over the last ten years. The findings: If current trends remain the same regarding population aging and decline, female participation in the work force, retirement age, low immigration, and modest advances in productivity, the standard of living in Western Europe measured by per capita income of gross domestic product will be 78% of what it is today, 22% lower.

Already, growing competition for highly educated specialists in expanding service sectors has resulted in a significant **rise in skilled labour migration**. Simultaneously, the global effort to fill shunned “3-D jobs” and acquire economic competitiveness through high productivity produces a **continuous demand for cheap and low-skilled migrant labour** in many sectors of the world economy.

It is often said that, **migrant labour fills the “three-D” jobs: dirty, dangerous and degrading**. Migrant labour has long been utilized in developed and under-developed economies as a low cost means to sustain economic enterprises and sometimes, entire sectors that are only marginally viable or competitive. Today, migrant labour ensures low cost agricultural produce, domestic service, to cheap construction labour, and services in the “sex industry” in many countries.

The persistence of dual labour markets under globalization is expanding the number of precarious jobs which national workers are reluctant to take. Small and medium size companies and labour-intensive economic sectors do not have the option of relocating operations abroad. Responses include downgrading of manufacturing processes, deregulation, and flexibilization of employment, with increased emphasis on cost-cutting measures and subcontracting.

As resulting demand for foreign labour reflects the long term trend of informalization of low skilled and poorly paid jobs, where irregular migrants are preferred as they are willing to work for inferior salaries, for short periods in production peaks, or to take physically demanding and dirty jobs. This is as true today in the CIS as anywhere else around the globe.

ILO research in Southern Europe found that “the migrants take jobs that the locals refuse. It’s simply a matter of substitution... We can conclude that migrants are in competition only with marginal sections of the national labour force ...when they are not sufficiently sustained by welfare provisions, in specific sectors, and/or in the less-developed areas inside these countries.”

The exploitability of migrant labour, particularly when it is legally unprotected, renders it an attractive instrument for maintaining competitiveness. This is, however, at the expense of formal protections of workplace safety, health, minimum wage and other standards. As the International Confederation of Free Trade Unions (ICFTU) highlights, organizing migrants into unions or organizations to defend their interests and rights is often extremely difficult. When it is not considered illegal under national laws, organizing – especially of those without legal authorization for employment – is easily intimidated and disrupted by the threat or actual practice of deportation.

The policy dilemmas in the economic realm are echoed in the political discourse and ideological frameworks advanced in host States regarding migrants. The utility of their presence –in irregular and exploited situations— represents a challenge to normative and ideological values of most modern States inasmuch as these persons are denied legal and social protection.

C. UNDER THE RULE OF LAW

So how do we regulate international migration here in Central Asia –and elsewhere-- in the face of these immense challenges?

First, two fundamental affirmations:

1) Migration policy and practice can only be viable and effective when they are based on a firm foundation of legal norms, and thus operate under the rule of law.

2) The necessary framework for national law on migration is amply laid out in the two ILO conventions on migration, the ILO Migration for Employment Convention of 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) together with the 1990 International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. These three instruments comprise an ***international charter on migration*** providing a broad normative framework covering treatment of migrants and inter-State cooperation on regulating migration.

Three fundamental notions characterize the protections in existing international law for migrant workers and members of their families.

1. Equality of treatment between regular migrant/immigrant workers and nationals in the realm of employment and work.
2. Core universal human rights apply to all migrants, regardless of status. This was established implicitly and unrestrictedly in ILO Convention 143 of 1975 and later delineated explicitly in the 1990 Convention.
3. The broad array of international standards providing protection in treatment and conditions at work –safety, health, maximum hours, minimum remuneration, non-discrimination, freedom of association, maternity, etc.—apply to all workers. This notion was most recently upheld in a recent Opinion issued by the Inter-American Court.

The content of ILO Conventions 97 and 143 formed the basis for drafting the UN Convention, which expanded and extended recognition of economic, social, cultural and civil rights of migrant workers rights. This Convention has been characterized as one of the seven fundamental human rights instruments that define basic, universal human rights and ensure their explicit extension to vulnerable groups world-wide.¹

¹ Noted in the Report of the (UN) Secretary General on the Status of the UN Convention on migrants rights for the 55th Session of the UN General Assembly. Doc. A/55/205. July 2000. The other six are the

Eight points describe the importance of these three Conventions:

1 They establish comprehensive “values-based” definitions and legal bases for national policy and practice regarding non-national migrant workers and their family members. They thus serve as tools to encourage States to establish or improve national legislation in harmony with international standards.

2 They lay out a comprehensive agenda for national policy and for consultation and cooperation among States on labour migration policy formulation, exchange of information, providing information to migrants, orderly return and reintegration, etc.

3 The 1990 International Convention further establishes that migrant workers are more than labourers or economic entities; they are social entities with families and accordingly have rights. It reinforces the principles in ILO migrant worker Conventions on equality of treatment with nationals of states of employment in a number of legal, political, economic, social and cultural areas.

4 ILO Convention 143 and the 1990 Convention include provisions intended to prevent and eliminate exploitation of migrants, thus reinforcing the ‘decent work’ agenda defined by International Labour Standards, nearly all of which apply explicitly or implicitly to all migrant workers.

5 ILO Convention 143 and the 1990 Convention explicitly address unauthorized or clandestine movements of migrant workers, and call for resolving irregular or undocumented situations, in particular through international cooperation.

6. These Convention also resolve the lacuna of protection for non-national migrant workers and members of their families in irregular status and in informal work by providing norms for national legislation of receiving states and their own states of origin, including minimum protections for undocumented or unauthorized migrant workers.

7 While the three Conventions address migrant workers, implementation of their provisions would provide a significant measure of protection for other migrants in vulnerable situations, such as victims of trafficking.

8 The extensive, detailed and complementary text contained in these instruments provides specific normative language that can be incorporated directly into national legislation, reducing ambiguities in interpretation and implementation across diverse political, legal and cultural contexts.

E. ELEMENTS FOR A POLICY AGENDA

International dialogue and consultation on migration has increasingly focused in recent years in identifying common approaches and means for cooperation among States in regulating what is by definition a phenomena requiring international cooperation. A decade ago, delegates of some 160 countries agreed upon a comprehensive common agenda in the chapter on migration of the Plan of Action adopted by the 1994 International Conference on Population and Development in Cairo. More recently, regional migration dialogues and the Berne Initiative’s International Agenda for Migration Management have continued discussions elaborated common approaches.

A vital recent contribution was adoption of Conclusions and a **Plan of Action on migrant workers** at the 2004 International Labour Conference in Geneva. Those Conclusions outline a comprehensive approach to regulating labour migration from a rights based approach in the context of labour market

International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention for the Elimination of Racism and Racial Discrimination (CERD), Convention Against Torture (CAT), Convention for the Elimination of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child (CRC). Texts and status of these conventions available on the website of the Office of the UN High Commissioner for Human Rights: www.unhchr.ch

and employment considerations. Especially significant was their adoption unanimously by ministerial level government representatives and leadership of trade union and employer federations from the 177 ILO member countries. Equally important is that there are a normative system, institutional structure, organizational competence and constituent engagement behind this Plan of Action to see to its effective implementation. Following this Plan of Action, ILO has subsequently drafted a comprehensive Multilateral policy Framework for Labour Migration from a rights' based approach that takes into account labour market concerns and sovereignty of States.

Summarizing this framework and provisions of the complementary outcomes of the Berne Initiative and the Global Commission on International Migration, I highlight eight main components of the migration policy agenda required to ensure that migration benefits host and home countries and the migrants themselves:

1) A standards-based foundation for comprehensive national migration policies and practices.

As noted above, the three instruments comprising an *international charter on migration* provide the normative framework and specific model legislative language required to establish a basis for national policy. **74 different States have now ratified** one or more of these three complementary standards.² A major point of establishing legal rights and legislative policy standards is to ensure social legitimacy and accountability, only guaranteed by a policy foundation in the rule of law.

2) An informed and transparent migration policy and administration

Immigration practice must respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must rely on regular **labour market assessments** to identify and respond to current and emerging needs for workers, high and low skilled. Policy and practice will need to address such areas as awareness raising, supervision of recruitment, administration of admissions, training of public service and law enforcement officials, recognition of educational equivalencies, provision of social and health services, labour inspection, rights restoration and recovery for victims of trafficking, and other areas.

3) Institutional mechanisms for dialogue, consultation and cooperation

Migration policy can only be credible, viable and sustainable to the extent it takes into account the interests, concerns and experience of the most-directly affected stakeholders. Key stakeholders are the social partners: the employers and businesses that provide employment and the trade unions –worker organizations—representing the interests of workers, both migrants and nationals. Labour ministries need to have a key role. Of course, consultation and policy-making must also take into account the multiple concerned ministries and agencies within government as well as concerned civil society bodies and certainly migrants themselves.

4) Enforcement of minimum national employment conditions norms in all sectors of activity

Preventing exploitation of migrants, criminalizing abuse of persons that facilitates trafficking, and discouraging irregular employment requires enforcement of clear national minimum standards for protection of workers, national and migrant, in employment. ILO Conventions on occupational safety and health, against forced labour, and on discrimination provide minimum international norms for national legislation. A necessary complement is **monitoring and inspection** in such areas as agriculture, construction, domestic work, the sex industry and other sectors of 'irregular' employment, to prevent exploitation, to detect forced labour, and to ensure minimal *decent work* conditions for all.

² The ILO Migration for Employment Convention No. 97 of 1949 is ratified by 44 countries, the ILO Migrant Workers (Supplementary Provisions) Convention No. 143 of 1975 is ratified by 18 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ratified by 34 countries and signed by 16 others. A number of States have ratified both of the ILO Conventions, several have ratified one or both ILO Conventions plus the 1990 International Convention.

5) Gender sensitive migration measures

The feminization of migration and the predominance of abuse of women migrants require recognizing gender equality as integral to the process of policy-making, planning and programme delivery at all levels.

6) A Plan of Action against discrimination and xenophobia

Discrimination and xenophobic hostility against migrants are serious challenges to governance and social cohesion in every region of the world. ILO research has found discrimination rates of 35% against regular immigrant workers- unlawful discrimination- across Western Europe. The 2001 World Conference in Durban advanced the ICPD agenda on migration by defining a comprehensive and viable plan of action specifically to combat discrimination and xenophobia against migrants at national, regional and global levels, based on common experience from different regions.

7) Linking Migration and Development in Policy and Practice

Migration has long been and continues to generate significant contributions to both development and social progress and welfare in home and host countries alike. However, such contributions will certainly be enhanced by a broad array of policy measures ranging from reducing costs and constraints on transfer of migrant remittances to providing accessible mechanisms for regular migration and recognition of employment contributions of all labour migrants.

8) International Consultation and Cooperation

Formalized mechanisms of regular dialogue and cooperation among States-- including participation of concerned stakeholders-- are essential in all regions. Of particular note are expanding legal and operational regimes for freer circulation of labour/persons across regional economic integration initiatives in several world regions, including the Andean Community, Mercosur, and the East Africa Community as well as the European Union.

F. A CALL FOR ACTION

The Conclusions of the 2004 International Labour Conference highlight that ILO, its constituent labour ministries, parliamentarians, social partner organizations and civil society organizations have fundamental roles to play in providing moral, political, and practical leadership in assuring a rights-based approach to international migration.

I congratulate the Kirghiz Republic and Tajikistan for their leadership in ratifying the 1990 Convention as a basis for their legislation and policy. ILO urges the other countries present to follow suit to utilize the complementary package of model standards in the ILO and 1990 Conventions on migrant workers as the basis to put in place the modern, effective and credible legal basis for governing migration in this region and beyond.

Conclusion

Accommodating migration in the context of inevitably greater diversity and social change requires implementing a policy framework that assures respect for migrants' rights, dignity and equality of treatment in the practice of States and societies.

This requires adhering to basic international human rights standards, addressing labour market needs and composition, ensuring *decent work* opportunities for all, enacting legislation and measures to combat discrimination and promote integration, and implementing accompanying practical measures.

Promotion of the rule of law and of respect for diversity as guarantors of democracy and social peace are shared responsibilities among government, social partners, and migrants themselves.

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