



International Labour Office

***International Migration, Globalization and the Bill of Rights:  
Ensuring Protection under the Rule of Law***

**A presentation for the  
9<sup>th</sup> ANNUAL HUMAN RIGHTS AND EQUALITY CONFERENCE  
“Minority Rights and Protection: international standards and the Bill of Rights for  
Northern Ireland”**

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It is an honour to be invited to share my experience regarding the protection of migrants. I draw on my 30 years of professional experience in the field of migration, as well as the vast institutional knowledge of the ILO where I have worked over the last six years.

I focus on three main points:

- 1) Migration and immigration are now integral features of European economic and social dynamics, and will be more so in the future.
- 2) As with other complex social phenomena, migration requires regulation by government to ensure benefits for stakeholders and to avoid abuse of individuals as well as ensure social cohesion.
- 3) Existing legal norms need to be implemented to ensure protection of migrants; in the current climate, considerable advocacy is required to bring this about, including in this country.

Migration key to Europe's future

In general, it is understood that labour mobility –its freedom to move—is required to ensure that labour is available where needed and to ensure its most productive use.

In globalized capital markets and liberalized trade regimes, migration plays an important role in redistribution of both costs and earnings; migration remittances provide some compensation –albeit small- - for widening inequalities between countries and regions.

Migration in Europe and elsewhere has become a key feature in meeting economic, labour market and productivity challenges in a globalized economy. What I say about Europe certainly applies to the UK and Northern Ireland.

To give some idea how important migration may be, let me cite a projection. The International Labour Office conducted a simulation a couple of years ago with the methodology its actuarial section has used over the last ten years to predict –reasonably accurately-- future performance of social security systems. This simulation carried forward economic performance calculations to the year 2050 based on a presumed continuity of current trends. The trends considered were the basic indicators of population growth or

decline, retirement age, female workforce participation rates, immigration numbers, and evolution of economic growth and productivity rates. Carried forward to 2050, the simulation estimated that the continuation of current trends would result in a standard of living for Western Europe, as measured by per capita income of gross national product, of some 78% of what it is today. That is to say, 22% lower.<sup>1</sup>

Immigration is clearly one of the components –one among a number of measures—that need to be adjusted to ensure a reasonably stable future assuring general welfare for Europe and its peoples.

Migration today serves as an instrument to adjust the skills, age and sectoral composition of national labour markets, and of regional labour markets. Migration provides responses to fast-changing needs for skills and personnel resulting from technological advances, changes in market conditions and industrial transformations. In countries of aging populations, migration offers a potential role in replenishing declining work forces, as well as in injecting younger workers, potentially increasing dynamism, innovation and mobility in work forces.

By contrast, restrictions on labour mobility serve to enhance inefficiencies and widen inequalities. When combined with measures or lack of measures that effectively inhibit protection of migrant workers rights, the consequence is rampant exploitation and abuse of individuals, and sooner or later, breakdowns in social cohesion.

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 protection of workplace safety, health, minimum wage and other standards. While no official estimates exist, it can be asserted that migrants would figure prominently among the 6,500 workers who die every day from work-related accidents or diseases (ILO, 2005a/ 1). The high proportion of migrants in dangerous sectors such as construction and agriculture, often in irregular and unprotected situation, would support that claim.

As the International Confederation of Free Trade Unions (ICFTU) highlights, organizing migrants and immigrants into unions or organizations to defend their interests and rights is often extremely difficult (Linard, 1998). When it is not considered illegal under national laws, organizing - especially of those without legal authorization for employment – is difficult because migrants are easily intimidated into joining unions, or the organizing work is disrupted by the threat or actual practice of deportation.

In some countries, migration appears to be simultaneously encouraged and combated. The gap between policy pronouncements and de facto arrangements reflects a major contemporary contradiction in States' practice. Despite all the political rhetoric about unauthorized migration, some governments seem to informally tolerate the presence of irregular migrants, particularly those working in sectors where native labour is absent or unwilling to work. Simultaneously, controls against unauthorized entry and detection against “illegal” migrants are officially reinforced. The effects are, on the one hand, a continued supply of cheap labour, while on the other hand, a significant number of workers unable to organize in the workplace to defend their dignity and decent work conditions, and also stigmatised and isolated from allies and support.

### Regulatory Foundation

The long experience of the ILO in this and other fields has clearly demonstrated that a basic foundation of regulation is required to manage capital-labour relations in general and specific features such as labour

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<sup>1</sup> ILO. *Towards a Fair Deal for Migrant Workers in the Global Economy*. International Labour Conference 92<sup>nd</sup> Session June 2004. Report VI. P. 37-38. Available on line at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>

migration. Governance of phenomena that affect economic performance, industrial relations and social cohesion require a foundation in the rule of law to ensure credibility, accountability and enforceability.

The current experience with migration in Europe—and evidence of widespread abuses of migrant workers-- reinforces the notions that firstly, this arena of economic and social relations can neither be left solely to market forces to regulate, and secondly, existing legal regulation is inadequate to the task in a number of countries.

A broad and extensive body of international law already exists applying to international migration. The existing normative basis for governance of migration and protection of non-nationals is more than adequate. The challenge is one of implementation, not elaboration.

Three fundamental notions characterize the protections in 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. 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.
3. 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.

#### An international charter on migration

Three complementary and sequential international standards provide core definitions of rights of non-nationals, as well as establishing basic principles for coherent migration policies. These are the ILO Migration for Employment Convention, 1949 (No. 97), the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>2</sup>

ILO Convention 97 –which the UK ratified on 22 January 1951-- provides the foundations for equal treatment between nationals and regular migrants in areas such as recruitment procedures, living and working conditions, access to justice, tax and social security regulations. The two main objectives of ILO Convention 143 are to regulate migration flows including by preventing clandestine migration; and to facilitate integration of migrants in host societies. This instrument provides specific guidance regarding treatment of irregular migration.

The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families extended the legal framework for migration, treatment of migrants, and prevention of exploitation and irregular migration. 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.<sup>3</sup>

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<sup>2</sup> Texts and related information available respectively on the ILO website, at [www.ilo.org/ilolex](http://www.ilo.org/ilolex) and on that of the Office of the UN High Commissioner for Human Rights, [www.unhchr.ch](http://www.unhchr.ch).

<sup>3</sup> The other six are the 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](http://www.unhchr.ch)

These three instruments are complementary. Together, they comprise an international charter on migration. Six points summarize the importance of this normative framework:

- 1 The three Conventions establish a comprehensive “values-based” legal foundation for national policy and practice regarding non-national migrant workers and their family members. They serve as tools to encourage States to establish or improve national legislation in harmony with international standards.
- 2 They lay out a comprehensive agenda not only for national policy, but also a framework for consultation and cooperation among States on labour migration policy formulation, exchange of information, providing information to migrants, orderly return and reintegration, etc.
- 3 They establish that migrant workers are more than labourers or economic entities; they are social entities with families and accordingly have rights. These norms reinforce equality of treatment with nationals in states of employment in a number of legal, political, economic, social and cultural areas.
4. The Conventions resolve the lacuna of protection for non-national migrant workers and members of their families in irregular status and in informal work by providing minimum protection norms for national legislation.
- 5 The extensive and detailed text in these conventions provides specific normative language that can be directly incorporated into national legislation, reducing ambiguities in interpretation and implementation across diverse political, legal and cultural contexts.

Certainly the basic principles elaborated in these instruments provide a framework for relevant sections of the emerging Bill of Rights for Northern Ireland. As this legislative proposal moves forward, a highly useful exercise will be to review the draft Bill alongside these instruments to determine where the legislation can be strengthened and to ensure that Northern Ireland’s legislation is in conformity with agreed minimum international standards.

For reference, a total of 76 different States have now ratified one or more of these three instruments. ILO Convention 97 is ratified by 45 countries, ILO Convention 143 is ratified by 21 countries, and the 1990 International Convention is ratified by 34 countries and signed by 16 others. Some countries have ratified at least one ILO Convention and the UN instrument.

I emphasize two aspects of this record. Eleven member States of the EU have ratified one or both of these ILO instruments. That is to say that in a considerable number of EU countries, national law and practice on migration are based at least in part on relevant international standards.

Furthermore, recent studies in several EU countries --Belgium, Italy and Spain for example-- ascertained that current national legislation is already in conformity with the broader standards contained in the 1990 UN Convention, based in part upon earlier ratification of ILO standards.

In this context, it is certainly appropriate to call on those EU member States that have not done so to ratify ILO Conventions. Here I think particularly of the Republic of Ireland, where I have discussed this with the Equality Authority, trade union organizations and civil society partners.

It would also be appropriate to pursue renewed consideration of Convention 143 by the UK.

And certainly, slowly advancing advocacy for ratification of the 1990 International Convention on protection of migrant workers is to be encouraged.

I emphasize, the standards for a “rights-based approach” to protecting migrants exist, the unmet challenge is to ensure their full implementation and national law and practice. The elaboration of a Bill of Rights for Northern Ireland provides a unique opportunity to put internationally defined principles into practice.

#### Assertive action needed

But experience shows it will not happen as a matter of course. This is especially so regarding protection and decent treatment of non-nationals, non-citizens whose legal protections are usually far inferior to those of citizens.

Furthermore, there are strong economic interests in maintaining foreign workers in a relatively vulnerable situation. Small- and medium-sized companies and labor-intensive economic sectors do not have the option of relocating operations abroad. Responses include downgrading of manufacturing processes, deregulation, and flexibilisation of employment, with increased emphasis on cost-cutting measures and subcontracting. Demand for foreign labour reflects a long term trend of informalisation of low skilled and poorly paid jobs, where migrants with relatively limited protection –particularly those in irregular situations-- are preferred because they are obliged to work for inferior salaries, for short periods in production peaks, or to take physically demanding and dirty jobs.

Trade unions together with other civil society organisations have a fundamental role to play in providing moral, political, and practical leadership in assuring a rights-based approach to national law and governance. This is as true for assuring protection and equality of treatment for non-nationals as it is for other minorities. This role is necessarily expressed through a profile of solidarity and advocacy built on work with minorities in explicit reference to international standards. This role requires active promotion of legal and practical mechanisms to implement a rights-based approach.

Indeed, elsewhere, local, national and regional non-governmental civil society organizations (CSOs) have long been involved in providing concrete assistance to migrants including irregular migrants and in promoting the defence of migrants’ rights. Civil society activity around a rights-based approach to migration has grown exponentially since the early 1990s. Most NGOs providing services to migrants avoid distinguishing between regular and irregular categories, except where they offer legal assistance and other support specifically in response to the needs of irregular migrants denied recognition and basic services.

Work in local communities is undeniably the necessary operational focus for constituent-based organizations. However, generally, efforts and organizations defending human rights of migrants and combating xenophobia remain scattered, fragmented and relatively limited in impact. The lack of coordination and concerted actions denies these efforts the visibility and effectiveness required to wrest the political initiative from government and other interests for whom protection of migrants represents economic costs and political constraints they are reluctant to assume.

#### Key starting points

Experience suggests several lines of action are key. These include:

- 1) Advocacy for adherence to basic international human rights standards, for elaboration of anti-discrimination legislation and for appropriate practices. Elaboration of the Bill of Rights for Northern Ireland provides an ideal opportunity to do so here and now.
- 2) The establishment of national committees or coalitions – where they don’t already exist – are essential mechanisms for effective advocacy, obtaining public visibility and achieving political impact.

3) Concerted action to get politicians and political parties, parliamentarians, trade union leaders, as well as and other personalities to speak out publicly, take leadership and promote initiatives to put in place a Bill of Rights and other legislation which provides adequate protections in line with international standards.

4) Elaboration of a national strategy and action program to explicitly prevent racism, discrimination and xenophobia can set a key symbolic as well as practical commitment for national action. The 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance provides a detailed model. And the Republic of Ireland is one of the first countries in the world to have defined, adopted and implemented a comprehensive national plan of action.

5) Provision of direct services, attention to and support for migrants by trade unions and CSOs remain an essential manifestation and component of solidarity

### Conclusion

Protection of all workers in an age of international labour mobility imposes attention to protection of migrant workers –non-nationals—as an urgent priority in the broader agenda of ensuring protection for all minorities and vulnerable groups. Principles and legal norms in international Conventions provide the relevant framework for elaboration of national legislation, and particularly so for elaboration of a national Bill of Rights.

Achieving an inclusive content to the Bill of Rights will require concerted advocacy, based on committed alliances among civil society organizations, and particularly across the common interests of those defending particular minority groups, as well as trade unions, human rights advocates, religious communities and others.

Promotion of human rights, labour standards, humanitarian principles and respect for diversity are the guarantors of democracy and social peace in increasingly diverse societies. These are shared responsibilities among government, legislative bodies, social partners, civil society and migrants themselves. Trade unions and civil society organizations have key leadership roles to play in generating common approaches, strategies, coordination, and in mobilizing societies to ensure implementation of such a framework.

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