

Committee on the Application of Standards

Draft outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning the migrant workers instruments

Introduction

1. The Committee on the Application of Standards welcomed the opportunity, in the context of its examination of the General Survey on the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Migration for Employment Recommendation (Revised), 1949 (No. 86) and Migrant Workers Recommendation, 1975 (No. 151), to discuss the critical and extremely topical issue of effective labour migration governance and the protection of migrant workers in a globalized world.
2. The Committee's discussion of this year's General Survey, together with the outcome of this discussion and the General Survey itself, will impact the ILO's work on labour migration within Outcome 9 on promoting fair and effective labour migration policies, as set out in the Programme and Budget 2016-17, as well as informing the Tripartite Technical Meeting on the Access of Refugees and other Forcibly Displaced Persons to the Labour Market (July 2016), the Tripartite Meeting of Experts on Fair Recruitment (September 2016), and the general discussion on labour migration to be held at the 106th session (June 2017) of the International Labour Conference.
3. The Committee highlighted the fact that effective governance of international labour migration and the rights of migrant workers was closely linked to other issues currently addressed by the ILO, including fair recruitment, equality and non-discrimination, economic development, poverty reduction, decent work for the transition to peace, and fundamental principles and rights at work.
4. The Committee recalled that the labour migration instruments call, in essence, for international cooperation to promote a rights-based approach to labour migration that is responsive to national circumstances. Convention No. 97 and Recommendation No. 86 aimed to regulate the conditions for regular migration, provide for general protection measures, and prohibit inequality of treatment between migrant workers in a regular situation with nationals in relation to living and working conditions, social security, employment taxes, and access to justice. The Committee further recalled that Convention No. 143 and Recommendation No. 151 were supplementary to

Convention No. 97, affirming the basic human rights of migrant workers, including those in irregular situations, and addressing and guaranteeing equal opportunity and treatment of migrant workers in a regular situation through national policies.

5. The Committee reaffirmed its commitment to ensuring the application in law and in practice of the fundamental rights of migrant workers and to improving the global governance of labour migration. The enormity of the challenges created by the current experience of migration was considered to have repercussions that were felt throughout the world of work. The Committee recalled that the main driver for migration was employment related, and referred also to other drivers including environmental and climatic pressures, conflict and crisis situations, poverty and inequalities within and between countries, and business needs.
6. The Committee noted that effective regulation and monitoring was necessary to prevent migrant workers from experiencing fraudulent and abusive conditions including trafficking in persons and forced labour, and highlights the importance of the Protocol of 2014 to the Forced Labour Convention, 1930 in this regard.

Realities and needs of member States

7. The Committee emphasized the crucial importance of the issue of labour migration and the protection of the rights of migrant workers in all regions of the world. It recognised in particular the human dimension to the issue. This was stressed in terms of the opportunities migration offered to many migrant workers, to businesses, and to societies. Labour migration was considered to enhance innovation and skills development, and also respond to labour market needs. At the same time, the Committee was aware of the human tragedies that were sometimes the result of migration, and that certain groups of migrant workers were especially vulnerable to inequalities and abuse throughout the migration process. It noted that the Committee of Experts regarded women migrants among these groups, and in general, as experiencing particular obstacles in relation to the implementation in practice of the instruments. It further noted increased mixed migration flows of refugees and migrants in an irregular situation.
8. In this context, the Committee considered that it was essential that labour migration benefitted workers, employers and the wider community. It stressed that it was necessary to balance the rights, responsibilities and needs of all stakeholders. Effective management of international labour migration required good global governance and international cooperation, to which the ILO could particularly contribute. The Committee further recalled the opportunity provided by the 2030 Agenda for Sustainable Development and in particular, Sustainable Development Goals 8 (target 8.8) and 10 (target 10.7), in relation to promoting labour rights for all, including migrant workers. Equally, the Committee recognised the significance of good governance and cooperation at the national level, and the increasing use of bilateral, regional and multilateral arrangements, for regulation of labour migration issues. The Committee considered as well that the Office should provide technical assistance, upon request, to Members using these agreements.
9. The Committee stressed that partnerships were needed to tackle particularly important issues. It acknowledged the on-going and timely work associated with the ILO's Fair

Recruitment Initiative as a means to improve the protection of migrant workers' rights, including to equality of opportunity and treatment. Further, the Committee considered that such partnerships were necessary to address irregular labour migration, which negatively impacted upon both workers and the wider society. In addition, the Committee stressed that migrant workers should be able to access justice and effective remedies in practice and, in this regard, highlighted the particular role of a well-functioning labour inspectorate.

10. The Committee strongly emphasized the intrinsic value of social dialogue to effective governance of labour migration. It firmly believed that genuine and well-functioning social dialogue could transform policy-making and policy implementation on the topic at both the national and international levels. The comprehensive participation of the social partners in dialogues concerning international labour migration should extend beyond mere consultation, allowing for their active involvement in the design and implementation of initiatives. The Committee further believed that the key role of the ILO in this regard could not be over-stated and noted that the Committee of Experts had referred to the potential of the instruments to contribute to effective governance of the considerable migration challenges faced by the tripartite constituents.

ILO means of action

11. Recognising, as was set out in the General Survey, that the potential and requirements of the instruments were not always fully understood, the Committee considered that the Office should undertake an awareness-raising and implementation campaign on Conventions Nos 97 and 143 and Recommendations Nos 86 and 151. The Committee considered that such an awareness-raising campaign should include tools to assist member States which had ratified the instruments in working towards their full implementation, as well as to assist other member States that express an interest in the possibility of ratifying the instruments.
12. In this regard, the Committee believed that the Office, should take steps to build on its existing work on labour migration statistics, including the global estimates, so as to further enhance the collection of data on labour migration disaggregated by sex and, depending on migration patterns, other factors, so as to contribute to evidence-based policy making and discussions on labour migration. Further, the Committee proposed that the Office follow up previous research reviewing bilateral arrangements on migration of low-skilled workers, carried out in 2014-15, by undertaking further analysis of the compatibility of those bilateral arrangements with the international labour standards. In addition, the Committee considered that the Office should develop a compendium on the provisions from international labour standards that were relevant to migrant workers.
13. The Committee also stressed that it was particularly important for the Office to support the sharing, between governments and social partners internationally, of good practices and experiences in relation to the implementation of the instruments, including within and between regions.
14. The Committee expected the Office to undertake the technical support requested by member States and highlighted the importance of the provision of technical support

and advice to workers' and employers' organizations to enable them to actively participate in policy-making and implementation in relation to labour migration.

15. The Committee further recalled that the Committee of Experts noted that the objective of the instruments was as relevant now as it was when the instruments had been adopted. The Committee was aware that details of certain provisions might be considered to have "lost their relevance, not being fully responsive to, or necessary, in the current migration context". In this regard, the Committee noted the opportunity provided by tripartite discussions in various ILO forums, including the Standards Review Mechanism, to ensure the continued relevance of the instruments to the world of work. The Committee considered that the tripartite constituents may, within the general discussion on labour migration in the Conference next year, wish to clarify the possible need for a review or consolidation of Conventions Nos 97 and 143, as well as the need to complement the existing international labour standards.

16. The Committee requests the Office to take into account the General Survey on the migrant workers instruments and the outcome of its discussion of the General Survey, as reflected above, in the preparation of relevant ILO work, particularly in the context of outcome 9 of the Programme and Budget for 2016-17, and the general discussion on labour migration which will take place at the 106th session (June 2017) of the International Labour Conference.