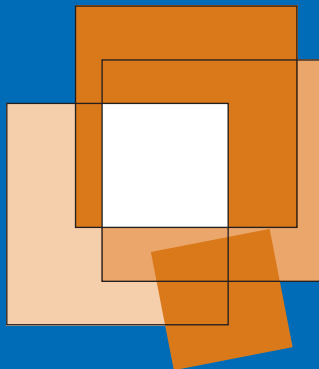




International
Labour
Office
Geneva

RIGHTS, LABOUR MIGRATION AND DEVELOPMENT: THE ILO APPROACH



INTERNATIONAL MIGRATION BRIEF

International
Migration
Programme



Foreword


*The ILO's concern with international migration stems from its mandate on labour issues. It is specifically concerned with international labour migration – that is, international migration as it relates to **workers**. Thus, as early as 1919, the ILO expressed the need to protect migrant workers by including in the Preamble to the Constitution as one of the objectives of the Organization, “the protection of the interests of workers when employed in countries other than their own.” The ILO's mandate, articulated in the Decent Work agenda, includes respect of rights at work and international labour standards, employment promotion, social protection and social dialogue. The ILO approach to international labour migration combines interests in ensuring global economic growth and employment, including through international mobility of labour, and the protection of migrant workers. Migrant workers are protected by rights, international labour standards, and other economic and social policies. Social dialogue in the formulation and implementation of international and national action and policies is promoted*

In 2004, the International Labour Conference (ILC) adopted by consensus a resolution providing for an ILO Plan of Action for Migrant Workers, which encompasses all areas of the ILO's mandate. The General Discussion on Migrant Workers at the Conference and the Resolution it adopted under the title “Towards a fair deal for migrant workers in the global economy” express a renewed international interest in migration. This interest has essentially and rightly centered on promoting the linkages between migration and development. Interest in promoting migration and development linkages was reaffirmed in the setting up and the report of the Global Commission on International Migration (GCIM), in the High-level Dialogue on International Migration and Development, held at the United Nations General Assembly in September 2006 and the summary of its Chair, as well as in the first Global Forum on Migration and Development (GFMD), held in July 2007, and its conclusions.

The ILO Plan of Action provides a perspective on promoting these linkages while reinforcing the protection of migrant workers. The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, the first element in the Plan of Action, adopted in March 2006 elaborated on this perspective. The Multilateral Framework is a set of principles and guidelines intended to assist countries in the formulation and implementation of labour migration policies. Drawing upon the expertise accumulated in different areas of ILO's mandate, including international labour standards in migration and other fields, its premise is that the interests of sending and receiving countries and the rights of migrant workers are compatible.

This brief presents the perspective of the ILO on the human and labour rights of migrant workers as provided by ILO conventions and international human rights instruments and on the link between those rights, labour migration, and development. Thus, it briefly outlines the basic normative framework for the protection of the rights of migrant workers, which includes the 1998 ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up, ILO conventions specifically pertaining to migrant workers, and other conventions which are particularly important to the situation of workers employed in countries other than their own, including on the need to provide decent work at home so that individuals will only have to migrate for work out of choice and not necessity.

In publishing this perspective, the ILO International Migration Programme wishes to place before interested audiences the parameters of the Office's approach and activities in international labour migration.



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I. Introduction

Migrant workers have human and labour rights, as contained in international labour conventions adopted by the tripartite members of the ILO. They are entitled to these rights because they are **workers**. As early as 1919, the ILO recognized in the Preamble to its Constitution the need to protect workers employed in countries other than their own. By ratifying ILO conventions, member States agree to implement their provisions in national law and policy. There is also a group of principles and rights at work in eight fundamental conventions which should be respected, promoted and realized by all ILO member States in accordance with the Constitution, by the very fact that they are members of the ILO, even if they have not ratified those conventions. This is the purpose of the 1998 ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up. The eight conventions ensure protection to all workers, including migrant workers, and also promote their contribution to development.

Providing rights to migrant workers not only protects those workers, but also reinforces the positive linkages between migration and development. It must be emphasized as well that increasing employment opportunities at home provides workers the right to work in their own countries and not to migrate. Migration then becomes a choice and not a life necessity.

The following provides a brief review of the rights deriving from the eight fundamental ILO conventions, those directly related to migration and development and, finally, the right of individuals to work in their countries of origin so as to provide an alternative to migration.



II. The fundamental principles and rights at work

Four categories form the fundamental principles and rights at work. These are:

- (i) freedom of association and the right to collective bargaining;
- (ii) the abolition of forced labour;
- (iii) equality and non-discrimination in employment and occupation; and
- (iv) the elimination of child labour.

These principles and rights are enshrined in eight fundamental conventions¹ that are considered enabling international labour standards. They are the human rights at work, and respect for them will enable results in other areas too, including development.

All migrant workers, regardless of their status, are entitled to these human rights. In particular, all migrant workers should benefit from the principles and rights of the eight fundamental conventions and the relevant United Nations human rights instruments. Failure to respect migrant workers' rights has a negative impact on development. Development here is considered as economic growth, social advancement and greater political participation in countries of origin, sustenance of economic growth in countries of destination, and human capital formation of migrant workers.

Freedom of association and the effective right to collective bargaining provide an organized, collective voice for the assertion of workers' rights in the workplace. A collective voice for workers also makes it possible for their views to be included in national and international economic policies. These policies are much more effective and sustainable if they include the voices of workers with those of business, financial and other interests. Recognizing migrant workers' right to organize and participate in collective bargaining will increase the effectiveness of policies².

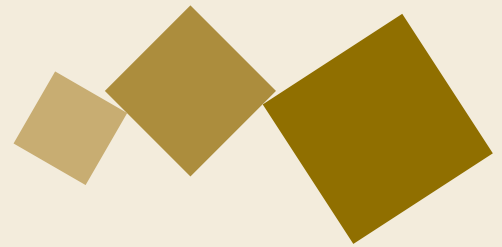
The abolition of forced labour is fundamentally a question of freedom and is an unquestioned ethical principle. It also bears on income and human capital formation, which are depressed by forced labour. Trafficking of human beings is one of the manifestations of forced labour in international migration. The exploitation they entail is a negative experience not only for migrant workers, but also for the countries from which they originate and those in which they work. An experience migrant workers sometimes face that can lead to forced labour situations is confiscation of their identity or travel documents

The elimination of child labour obviously improves the education, health and motivation of children. Unfortunately, the number of children crossing international borders on their own for work purposes is increasing. Child labour has an opportunity cost for working boys and girls and for their countries of origin. It prevents them from fully developing the human capital that would allow them to raise their incomes and contribute to the development of their countries in later years.

¹ Eight Fundamental Conventions: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87); Right to Organise and Collective Bargaining Convention, 1949 (No.98); Forced Labour Convention, 1930 (No.29); Abolition of Forced Labour Convention, 1957 (No.105); Equal Remuneration Convention, 1951 (No.100); Discrimination (Employment and Occupation) Convention, 1958 (No.111); Minimum Age Convention, 1973 (No.138); and Worst Forms of Child Labour Convention, 1999 (No.182).

² See Marshall, Ray, *Labour Standards, Human capital, and Economic Development*. Economic Policy Institute, 2005 (EPI Working Paper No. 271), pp. 2-4.

Equality and anti-discrimination is a basic principle underlying human and labour rights. It recognizes the equal worth of all human beings. This is especially important for the protection and working conditions of workers labouring in foreign countries, in a world constituted by nation-states where rights naturally derive from citizenship. But it also has practical consequences for migrant workers and countries of origin and destination, as described more fully below. Suffice it here to say that equality and non-discrimination allow migrant workers to fully use their potential and be rewarded in ways that enhance their earnings and their and their families' living conditions, allow them to raise their contributions to development in their countries of origin and improve their participation to economic activities in countries of destination. Treating migrant workers the same as other workers preserves the competitiveness of national workers in their countries' labour markets by not undercutting the cost of their labour.



III.

Migrant workers, development, and human and labour rights

Men and women migrant workers contribute to development in both countries from which they come and those in which they work. In countries of origin they contribute to development by alleviating pressures on labour markets, by sending remittances home, by acquiring increased skills, and by making investments. In countries of destination, they contribute to development by meeting the demand for workers, by increasing the demand for goods and services, and by contributing their entrepreneurial skills. These contributions by migrant workers can only be maximized if they are in a position to develop their potential. This is closely related to the exercise of labour rights. Development contributions cannot be dissociated from the protection of migrant workers, as is clear in the two ILO Conventions specifically dedicated to migrant workers.

The Migration for Employment (Revised) Convention, 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations³ provide a framework for the basic components of a comprehensive labour migration policy, the protection of migrant workers, the development of their potential, and measures to facilitate as well as to control migration movements. More specifically, they contain provisions to regulate the conditions in which migration for employment occurs, to control irregular migration and labour trafficking, and to detect the informal employment of migrants in order to prevent and eliminate abuse. Minimum standards of protection are provided for all migrant workers, independent of their migration status. In addition, the two instruments contain provisions on providing information and certain free services to assist migrants, taking steps against misleading propaganda, and transferring earnings. The Conventions define parameters for recruitment and contract conditions, participation of migrants in job training and promo-

tion, family reunification, and appeals against unjustified termination of employment or expulsion. Most importantly, the two Conventions provide for policies to promote equality of treatment and opportunity in employment and occupation between migrant workers in regular status and nationals in the areas of access to employment, remuneration, social security, trade union rights, cultural rights and individual freedoms, employment taxes, and access to legal proceedings⁴.

With regard to alleviating poverty, forming human capital and investing for income generation and employment creation in their countries of origin, remittances are the most tangible contribution migrant workers make. Article 9 of Convention No. 97 provides that ratifying countries undertake to permit, taking into account national laws and regulations, the transfer of such part of the earnings and savings of the migrant for employment as he or she desires.

³ Website- <http://www.ilo.org/ilolex/english/>

⁴ OSCE, IOM, ILO "Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination."- Convention No.143, Article 14 (a) permits limited restrictions on equality of opportunity in access to employment. <http://www.osce.org/item/19187.html>

⁵ See Protection of Wages Convention 1949 (No.95).

⁶ Migrant Workers Recommendation, 1975 (No.151).

However, to increase the impact of remittances and investments on development in countries of origin, earnings and savings should be maximized in accordance with migrant workers' capabilities and potential. Rewards should be proportionate to their skills and the jobs they perform. Migrant workers should have the opportunity to advance in their careers and fully develop their potential. Earnings, savings and skills are maximized when migrants lawfully within the territory are treated no less favourably than nationals. Thus, Article 6 of Convention No. 97 provides for equality of treatment in respect, *inter alia*, of:

- a. remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holiday with pay, restrictions on home work, minimum age for employment, apprenticeship and training;
- b. accommodation;
- c. social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency covered by a social security scheme), subject to specific limitations provided for by appropriate arrangements, national laws or regulations. Social security allocations are lagged labour rewards;
- d. employment taxes, dues or contributions payable in respect of the person employed.

Consistent with the aim of maximizing benefits from migration, Article 14 of Convention No. 143 provides for the right of regular migrant workers to geographical mobility and for the recognition of occupational qualifications acquired outside the territory of the State party, including certificates and diplomas.

Migrant workers sometimes experience non-payment or underpayment of their wages, denying them their earned incomes and depriving their countries of origin of remittances and investments that could have been used for reducing poverty and promoting development. Ensuring the payment of wages, therefore, is an important right for both migrant workers and their countries of origin⁵.

The rights referred to in paragraphs 14 and 15 above also further the ways in which migrant workers can contribute to the economies of countries of destination. Training, recognition of skills and labour mobility enable migrant workers to better meet destination countries' demands for labour. Along with other measures, they can better contribute their entrepreneurial skills and thus enlarge the supply of goods and services. Remunerations and social security benefits allow them, as consumers, to increase demand for goods and services and thus to contribute to economic growth.

The exercise of rights mentioned in the two above paragraphs additionally contributes to preserving the competitiveness of national workers in labour markets of countries of destination. Destination countries' toleration of inferior pay and conditions for migrant workers reduces their labour cost compared with national workers and thus undermines nationals' chances in their own labour markets.

Social integration of migrant workers and their families, manifested in their exercise of the rights to work, to education, to housing and other relevant rights, allows them to raise their productivity and the level of their contributions to the economies of countries of destination.⁶

The success of schemes of temporary or circular migration is contingent on the protection accorded to migrant workers and their exercise of labour rights. The right to accumulate periods of contribution to social security and to portability of benefits to countries of origin stands out among these rights.

Due to the specific nature of the jobs available to women migrant workers in international labour markets, particularly those in domestic work, ensuring and maximizing their contributions to development requires enhanced protection for them and for the fruits of their labour.

Rights of migrant workers, the use of their full potential and their contributions to development would be furthered by the licensing and supervision of recruitment and placement services. The Private Employment Agencies Conventions, 1997 (No. 181) and its Recommendation (No. 188) draw the parameters of policy in this respect.



Other rights of particular importance to migrant workers are contained in certain sectoral ILO conventions, many of which provide for non-discrimination and equality of treatment (listed in the annex to this brief). In addition to the equality and non-discrimination provisions contained in the ILO Conventions on migrant workers, promoting equality of opportunity and treatment and eliminating discrimination against both nationals and migrant workers on the basis of race, colour, sex, religion, national extraction, political opinion and social origin, are the specific objectives of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)⁷. The International Convention on the Rights of All Migrant Workers and Members of their Families articulates even more broadly the principle of equality of treatment between migrant workers and nationals with respect to remuneration and other working conditions, as well as with regard to migrant workers' access to urgent medical assistance and education for children of migrant workers.

The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration provides a guide for the formulation of labour migration policies that guarantee the rights of migrant workers, reinforcing their protection and enhancing their contribution to development⁸. Annex II to the Framework lists examples of good practices indicating how governments, social partners, and civil society organizations have put good principles of labour migration policies into practice.

⁷ C. 111 (1958) is ratified by 165 member States of the ILO.

⁸ ILO Multilateral Framework on Labour Migration: www.ilo.org/public/english/protection/migrant/download/tmmflm-en.pdf

IV. The right to decent work in countries of origin

For the ILO, essential roots of labour migration lie in deficits in decent work in countries of origin. The deficit is reflected in unemployment, underemployment and ensuing poverty. The creation of productive, freely chosen employment and decent work should allow workers to exercise the right to work in their own countries. The ILO Recommendation on Employment Policy, 1984 (No. 169) explicitly takes note of the ILO Conventions and Recommendations on migrant workers in its preamble. Further, Paragraph I (1) of Recommendation No. 169 states that the promotion of full, productive and freely chosen employment provided for in the Employment Policy Convention and Recommendation, 1964 (No. 122), should be regarded as a means to achieving in practice the realisation of the right to work. Under Convention No. 122, ratifying States have the obligation to formulate and carry out employment policies and to modify them if they do not produce expected results. The ILO supports member States, through technical cooperation, in the formulation and implementation of employment policies and will do its best to respond to requests for assistance.

The creation of decent work, where labour rights are exercised, social protection is provided and social dialogue is practiced in countries of destination should create the conditions for a positive international cooperation in labour migration, which would meet the interests of countries of origin and destination, as well as those of migrant workers themselves.



Annex

LIST OF INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS

Fundamental Conventions

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)
- Right to Organise and Collective Bargaining Convention, 1949 (No.98)
- Forced Labour Convention, 1930 (No.29)
- Abolition of Forced Labour Convention, 1957 (No.105)
- Equal Remuneration Convention, 1951 (No.100)
- Discrimination (Employment and Occupation) Convention, 1958 (No.111)
- Minimum Age Convention, 1973 (No.138)
- Worst Forms of Child Labour Convention, 1999 (No.182)

Migrant-specific Instruments

- Migration for Employment Convention (Revised), 1949 (No.97)
- Migration for Employment Recommendation (Revised), 1949 (No.86)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)
- Migrant Workers Recommendation, 1975 (No.151)

Other ILO Conventions

- Equality of Treatment (Accident Compensation) Convention, 1925 (No.19)
- Labour Inspection Convention, 1947 (No.81)
- Protection of Wages Convention, 1949 (No.95)
- Social Security (Minimum Standards) Convention, 1962 (No.118)
- Employment Policy Convention, 1964 (No.122)
- Minimum Wage Fixing Convention, 1970 (No.131)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No.144)
- Occupational Safety and Health Convention, 1981 (No.155)
- Maintenance of Social Security Rights Convention, 1982 (No.157)
- Occupational Health Services Convention, 1985 (No.167)
- Working Conditions (Hotels and Restaurants) Convention, 1991 (No.172)
- Safety and Health in Mines Convention, 1997 (No.176)
- Private Employment Agencies Convention, 1997 (No.181)

United Nations Convention

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

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