



Core Elements for an International Labour Conference Plan of Action on Migrant Workers

Joint Statement of MFA-MRI delegation to the 92nd ILC Session, Geneva delivered during the session of the ILC Committee on Migrant Workers 2 June 2004, Palais des Nations

Introductory Note

This document consolidates the broad policy perspectives and views of Migrants Rights International (MRI) towards the discussion of Agenda Item VI: "Migrant Workers" at the 92nd Session of the International Labour Conference. For a full background information on Agenda Item VI, refer to the report prepared for the session by the International Labour Office, "Towards A Fair Deal for Migrant Workers in the Global Economy" (International Labour Conference, 92nd Session, 2004)."

In harnessing ILO tripartite action on the Agenda Item, Migrants Rights International supports the proposal for the establishment of an ILO tripartite "Plan of Action" on the issue of international labour migration, and should therefore contain the following core elements.

Migrants Rights International (MRI) is the international federation of migrant workers unions, associations, church-based organizations, legal organizations and NGOs promoting the human rights of all migrants. Our membership comes from the different world regions. In Asia, MRI works in partnership with the **Migrant Forum in Asia (MFA)** which is a network of over 200 migrant workers associations and trade unions and migrant support groups based in 20 Asian countries.

The Overall Framework

The basic starting point for the discussion on the rights of migrant workers rests on the universal principle that all human beings are born free and equal in dignity and rights.¹ All migrant workers are entitled to respect of this inherent dignity as human beings and as such to respect for their fundamental human rights. Therefore, in all policy considerations and recommendations for government, trade union and employers' action in the treatment of migrant workers, we affirm that the principles of equality and non-discrimination should prevail. We urge the ILO and its social partners to adopt a framework for

¹ Universal Declaration of Human Rights.

action that promotes a policy environment with the necessary and enabling labour and social welfare policies to ensure that mobile people can migrate with rights and for their social, economic and cultural empowerment.

The Overall Context of Labour Migration

Migration and the many social, economic and human rights issues that surround it are now part of critical global discourse. We note with deep concern that the exploitative, discriminatory and xenophobic treatment received by many migrant workers are often structural in character, reflected in legislation, policies and social attitudes and practices, and based on class, gender, race, ethnicity, nationality and position in the international power relations.² While there is still a lack of legal, transparent and rights-based channels for labour migration that are equally open to migrants, in many instances, migrant workers resort to desperate and dangerous ways of migration, including clandestine movements. These issues, combined with the continued erosion of minimal international standards pose serious challenges currently posed to the international community.

Migration and Globalization

Indeed, globalization has widened economic inequalities within and between countries, further impoverishing masses of people, especially women, and placing them at risk to the demand for labour that is often low-paid and unprotected in labour-importing countries. In the pursuit for profit, the movement of capital across national borders is promoted and facilitated, but that of labour is restricted and controlled. The belief that *migrant workers are economically necessary but socially undesirable* puts premium to economic gains while migrants' human and labour rights tend to be compromised and violated.³ Not all migration for employment is undertaken as a result of the migrant's free choice. Poverty and insecurity often force migrants to unwillingly look for any work in order to survive.⁴

MRI-MFA Calls and Recommendations:

On the Application of International Norms and Standards

All States should sign and ratify or accede to, and fully implement the principal international and regional instruments that protect the human rights of migrant workers and members of their families, including the ILO Convention No. 97 on Migration for Employment (Revised) (1949), the ILO Convention No. 143

² *Declaration on Racism, Discrimination, Xenophobia and Related Intolerance Against Migrants and Trafficked Persons*, adopted by the Asia-Pacific NGO Meeting for the Asia-Pacific Governmental Meeting of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Tehran, Iran, 18 February, 2001.

³ *NGO Declaration on Racism*, Tehran, 2001.

⁴ ILO, *Facts on Migrant Labour*, March 2004.

also known as the Migrant Workers (Supplementary Provisions) Convention, 1975⁵ and most especially, we call on all States to ratify and implement the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. These international instruments, together with the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up, comprise a rights-based approach that must be inherent in the management of labour migration. Towards the universal ratification and full implementation of these standards, we urge the ILO and its social partners to launch campaigns to promote States` ratification and compliance with these Conventions.

On Promoting Rights-based Regular Channels of Labour Migration

We stress the need for States to make regular, rights-based migration the main mode of labour migration. Towards this end, international standards must be translated into practice and reflected in national, multilateral and bilateral measures, such as bilateral agreements on labour migration, national migration and labour legislation, and standard employment contracts for migrant workers.

On Promoting Equality of Treatment of Migrant Workers & Addressing Racism, Racial Discrimination, and Xenophobia

We urge States, Trade Unions and Employers to take concrete measures that would promote the equality of treatment of migrant workers and eliminate racism, racial discrimination, xenophobia and related intolerance in the workplace. Migrant workers must be ensured their full equality before the law, including labour law. States must eliminate barriers to: participation in vocational training, collective bargaining, employment, contracts and trade union activity; accessing judicial and administrative tribunals dealing with grievances; seeking employment in different parts of their country of residence; and working in safe and healthy conditions.⁶

On Human Rights Approach to Security Considerations

The implementation of national security measures in the treatment of migration, including labour migration, should have as their primary consideration the safety and human rights protection of all individuals. On this, the ILO could embark on a rights-based campaign on labour migration, promoting social dialogue and ensuring that human and labour rights take precedence over security considerations.

On Gender Dimension of Labour Migration

⁵ Recommendation No. 86 on Migration for Employment (Revised) (1949), and the Migrant Workers Recommendation, No. 151 (1975).

⁶ Par. 29, Programme of Action of the World Conference Against Racism, Durban, September 2001.

We acknowledge that the patriarchal and sexist ideology framing the current international division of labour intensifies women's subordination, undervalues women's work and contributes to the feminization of poverty, labour migration and trafficking, perpetuates gender stereotypes and restricts women to reproductive work, work in the entertainment industry, and jobs that require "feminine" attributes in labour-importing countries. These factors place migrant women at greater risk than men to exploitative and discriminatory treatment. The current "feminization of migration" is characterized by the increasing number of women migrant workers as well as the increased participation of women in the labour economy. Currently, almost half of the total international migrants are women and they account for several billions of dollars of remittances received by developing countries annually. Yet women migrant workers are among the most vulnerable group of migrants, particularly those in irregular situation. Women migrant domestic workers are highly vulnerable to human rights abuses and labour exploitation.

The integration of the gender dimension is crucial when dealing with the issue of labour migration. States should therefore take special measures to address the human and labour rights situation of women migrant domestic workers, including coverage of domestic work within the scope of national labour and other laws, and the implementation of labour standards in dealing with domestic work.

On Irregular or Undocumented Migrants

Based on the universal principles of human rights, States have the obligation to protect and promote the basic human rights of all persons subject to their jurisdiction, without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.⁷ Undocumented migrants, due to the absence of a secure legal status, are particularly vulnerable to exploitative labour practices, arbitrary detention and expulsion, physical, sexual, and other serious abuses of their human rights, which are further exacerbated by the lack of access to redress. States should therefore pay special attention to the protection of the human rights of irregular or undocumented migrants. States should also provide for opportunities for the regularization of irregular migrant workers; and avoid migration management policies and procedures that further victimize irregular migrants.

For example, harsh crackdown measures of forcibly deporting irregular or undocumented migrant workers have only highlighted the desperate situation of migrant workers who have in some cases resorted to committing suicide. Cases like these are only a reflection of the extreme poverty, lack of job generation, and unscrupulous practice by some recruitment and placement

⁷ Art. 2, UDHR; Art. 1 CERD; Art. 7, UN Migrant Workers Convention, entry into force July 2003.

agencies leading to indebtedness which further aggravates the desperate situation of the migrant workers.

On the Freedom of Association for Migrant Workers

The right to freedom of association of migrant workers is a fundamental step towards the realization of the effective recognition of their right to collective bargaining.⁸ This right should therefore be recognized, guaranteed and effectively implemented by States. The ILO Convention No. 87 on Freedom of Association and Protection of Migrant Workers and the ILO Convention No. 98 on the Right to Organize and Collective Bargaining establish and promote this right. The UN Migrant Workers Convention (Art. 26) provides for the right of migrant workers and members of their families, including those who are undocumented or in an irregular situation, to join trade unions and other associations, with a view to protecting their economic, social, cultural and other interests. Furthermore, as a reflection of the strong commitment to fighting racism and racial discrimination at work,⁹ trade unions have the responsibility to support this right to freedom of association by migrant workers – irrespective of their status – and to offer membership and active participation for them in trade union activities.

On Temporary Work, including GATS Mode 4

In the elaboration of multilateral, regional, and bilateral trade and labour agreements, including in the GATS Mode 4 at the WTO, the ILO should take the leadership in ensuring that international labour norms and standards are applied and taken into account in all these agreements. The multilateral framework for governance that is embodied by the UN and its specialized agencies such as the ILO – especially those with respect to human rights and sustainable development -- should take precedence and provide the parameters within which such trade agreements should take place and be implemented. The individual human rights of the worker, including access to legal rights and social security, should be guaranteed. By no means should these discussions treat the worker like a mere commodity to be traded.

On Migration and Development

The positive social, cultural, and economic role and contribution that migrants bring to their host countries and countries of origin as an important aspect of international migration should be recognized and valued by both home and host states. In 2002 alone, migrant workers sent home at least US\$88 billion through formal remittance channels, making remittances the second largest source of external finance for developing countries, next to foreign direct investment (FDI).

⁸ “Organizing for Social Justice,” Global Report under the Follow-Up to the ILO Declaration on Fundamental Principles and Rights at Work 2004.

⁹ See ICFTU Report on the World Conference Against Racism, Durban 2001.

However, while it is true that remittances have brought about prosperity and have some impacts on poverty alleviation, in many cases these have come at a cost of great sacrifice, pain and even death. One needs only to monitor the number of dead bodies of migrant workers being repatriated to their home countries everyday.

Therefore, policies geared at harnessing the developmental impacts of remittances should give primary consideration to the welfare of the migrant workers and members of their families, as well as on medium to long term impacts on poverty alleviation, reintegration, social investment, macro-economic stability, and economic growth.¹⁰ Towards this, the collaboration and support of the governments, civil society organizations including the migrants themselves, and the private sector are indispensable.

Addressing Root Causes of Forced Migration

While working towards the fundamental protection and promotion of migrant workers' rights, it is equally important to address the root causes of forced migration such as those linked to human rights violations, failed economic and fiscal policies, unfair trade relations, lack of good governance, corruption, and unsustainable development. While it is imperative to safeguard protection and standards for migrant workers in the host countries, including facilitating their integration to society, it is equally necessary to ensure the full responsibility of sending countries in protecting their workers abroad, improving the national economy, as well as providing incentives for savings and other facilities for the return and reintegration of the migrant workers.

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¹⁰ International Conference on OFW Savings, Remittances and Economic Potential: A Challenge to Governance, Partnership and Development, October 28-30, 2003, Tagbilaran, Bohol, Philippines .