

# Protecting migrant workers' human rights

## A trade union view



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The issue of migrant workers has moved to the forefront of debates on globalisation. Much has been written in on the issue of human rights and migrant workers, so let me focus on the specific role of the trade unions in protecting and promoting the rights of migrant workers. This represents the views not just of the TUAC but also our Global Union partner – the ICFTU together we have membership representing some 150 million workers in both OECD and developing countries – sending and receiving countries for migrants.

Our actions in this field are based on the following premises:

Firstly, trade unions do not regard migrant workers as a "problem". They are a consequence of imbalanced and at times unjust world economic development, reflected in the growing gap between the few wealthy countries and the vast majority of poor ones and beyond that between the rich and the poor within countries. Our emphasis therefore is on reducing the

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types of pressures which oblige people to migrate for work. Most migrants do not leave their country out of preference, but rather because of the absence of decent work opportunities at home. Taking jobs to the people, rather than people to the jobs, is the key to ensuring that migration is a truly voluntary act. Of course that is not done easily or quickly. It has to do rather with the promotion in all parts of the world of a broadly based sustainable development policy the objectives of which have been quantified in the UN Millennium Development Goals.

Secondly today, more than ever, there is a crucial need for a new approach to achieving a better understanding and consensus on globalisation and migration, an approach based on the human rights of migrant workers. If the global community does not work for this, there is a real risk from growing intolerance and conflict.

Thirdly the role of trade unions in the attaining this objective is crucial. The workplace and the labour market is, by definition, the place where migrant workers first inevitably come into contact with the societies to which they have come. This raises both opportunities and responsibilities for trade unions.

This paper focuses on three questions – from a trade union point of view what are the issues at stake with regard to migration and human rights? What instruments exist to protect migrant workers rights? What more needs to be done and a way forward to achieve this.

Firstly – the issues at stake. There are an estimated 175 million people living outside their country of origin in the world of whom 100 million are labour migrants, as distinct from refugees and asylum seekers with whom they are often confused in the public mind. This represents 2.3 per cent of the world's population. Increasingly, in international policy debate, developing country governments are arguing that freedom of movement of labour should be a natural concomitant of the increasingly free movement of goods, services, technology and capital that is the defining feature of this era of globalisation. However an "open door" policy on labour migration for many appears as simply one more strand of today's trend towards the liberalization of the global labour market. But human beings are not simply one more factor of production. Where movement of workers is implied, as it is for example under mode four of the

GATS negotiations, then clearly it raises basic issues of fundamental worker rights, equality of treatment and coverage by local collective agreements and so on.

I said at the beginning that whilst people should be free to look for employment in other countries, they should not be forced to do so. The "push" factors, encouraging migration have been aggravated by ill-conceived economic policies and lack of governance in many countries leaving workers with little option, but to move. Similarly, policies in industrialised countries, particularly the decline in public investment, salaries and working conditions in the public services, have led to labour shortages in such fields as health and education so increasing the "pull" factor for professionals in those categories of employment. Deregulation has also led to a race to the bottom making jobs in sectors like construction unattractive and underpaid for nationals and calling on foreign labour to fill those gaps, including through irregular migration channels.

Remittances today play a major role in supporting the economy of sending countries, but they should not be seen as a substitute for balanced and sustainable development, investment, trade, and development assistance. Decline in foreign development assistance as well as poor governance has meant that the migration push factors have been stimulated.

However at the same time that push and pull factors are increasing the pressure for migration, Governments' concerns in the current climate about security and terrorism has meant that they feel the

need to be seen by their electorates to be "managing" migration. This has led to policies restricting movements of workers which only add to the pressure for irregular migration in order to meet genuine labour shortages. One of the worrying side effects of the "war against terror" is that in the absence of visible enemies – immigrants become scapegoats.

This has several implications: - One priority for trade unions is to reduce the economic pressures which oblige people to migrate for work. As I said taking jobs to the people, rather than people to the jobs, is the key to ensuring that migration is a truly voluntary act. Of course that is not done easily, or quickly. It has to do rather with the promotion of the broadly based sustainable development and achieving the United Nations Millennium Development Goals. ODA has a role, and it would be a major step forward if the UN's 0,7 % goal for this assistance could be reached. The initiative by Presidents Lula and Chirac at the UN to encourage new sources of development finance needs support.

A further question is how migration actually is conducted. None of us can be unaware of the growth of irregular and undocumented migration and the dramatic consequences that trafficking in human beings that it has brought about. This is a field in which it can be difficult to draw the line between criminal activity and labour policies. But what is absolutely clear is that where migration is undocumented it increases the chances of gross exploitation to the point of near certainty. The tragic examples of the deaths of Chinese cockle-pickers in my own

country the UK is just one example.

Irregular migrants are entitled to be treated humanely and with proper consideration to their often very extreme circumstances. Trade unions have often joined with others in calling for the regularization of the status of such migrants and in mobilizing against enforced repatriation. But that does not detract from the need for countries to work together to ensure that where migration takes place, it does so legally, and in an orderly way and that public authorities assume their responsibilities.

Increasingly private intermediaries are playing a role in the migration process. And often they undertake their broker role outside any effective regulatory framework. Here too, the risks of exploitation or straightforward fraud are high. The worker may be required to pay exorbitant fees, or find that all of the promises made on departure are quite different from the realities of his or her new job. Far from home, with nobody to turn to there are few hopes of redress. The tragic plight of some of the recent workers taken hostage in Iraq again has drawn attention to what amounts to modern day slavery.

What conclusion can be drawn from this? It is clear that from a trade union perspective in addition to renewing the focus for sustainable and balanced development, migration has to be seen from a human rights angle, not from a security or commodity angle. The Declaration of Philadelphia stated 60 years ago: "Labour is not a commodity".

But what should the legal migrant be entitled to expect once in a new country and a new job and

what is being done about this now?

There exists within the ILO and elsewhere a body of rights that should apply to migrant workers. Much information is available on the Global Unions Research Network website – [www.gurn.info/](http://www.gurn.info/).

In the first instance respect for fundamental rights as a worker, as defined by the ILO Declaration of 1998 – freedom of association, collective bargaining, non-discrimination, no forced labour and no child labour. That includes the right to join and participate fully in a trade union. Obvious maybe, but all too often denied either in law or in practice. Some major destinations for migrants simply do not allow trade unions at all, as is the case in several states in the Arabian Gulf region, or more commonly, prohibit migrants from membership of – or full rights in such unions as do exist. ASEF documents have talked of a "utilitarian economist view" that union rights can undermine competitiveness. This may be a view of some but it is false as research by the OECD and World Bank has shown. Better economic performance is associated with better trade union rights.

Nor are all migrants properly protected against forced labour. Indeed some of the more dramatic cases of forced labour in the industrialized world in recent years have involved trafficked migrants. Child labour is also generally more prevalent among migrant communities than nationals.

But it is non-discrimination is the most widely relevant fundamental rights issue for migrant workers. The principle of equal pay and conditions for work of equal or equivalent value is a mat-

ter of basic justice and for this reason alone has the full support of trade unions. But in addition they have an obvious concern that migrant labour is not used to undercut employment conditions prevailing for the rest of the labour force.

Unfortunately, and despite fairly wide-ranging legislative protections, discrimination against migrants continues to be very difficult to root out, for all the reasons familiar to women and to other equality seeking groups – and maybe a few more. Segmentation of labour markets means that migrants often find themselves concentrated in the most undervalued and low paid jobs. Many studies show that migrants are more vulnerable to dismissal than are their co-workers. And despite the popular and slanderous image of the migrant taking abusive advantage of welfare systems, the reality is that many of them never get access to the benefits that their contributions should normally entitle them to receive. To give just one dramatic example on average US immigrants are estimated to pay in taxes 18 times as much as they draw in social benefits.

Clearly then much work has to be done to guarantee to migrants the minimum fundamental rights of all workers. But even when this is achieved, there are a series of other issues concerning the place of migrants in their host societies which require the attention of trade unions.

One of the most difficult and occasionally tendentious of them is that of assimilation and cultural identity. To what extent is it legitimate to expect migrants to adopt

the customs and practices of the societies to which they have come? And whatever the answer to that question is, how can it be reconciled with their frequent desire to maintain their own identity, community, and observances.

I accept that there are no easy, one size fits all solutions. But trade unions are at the sharp end in dealing with this issue. From our experience there are some basic principles which can lead to the right types of outcomes.

The first is that where societies demonstrate openness and tolerance towards migrants protect them against discrimination and racism, and where they offer opportunity for them to integrate, for example through language training, then things will go that much better.

The opposite scenario is one which raises the danger of immigrant communities retreating back into themselves, and adopting extreme forms of cultural or religious identity. It is then that mutual suspicion and hostility can grow, and social exclusion and division take root. Where this has been allowed to happen, then the consequences are often most strongly felt among second generation migrants born in the countries to which their parents first came. They are unlikely to accept the type of treatment that the previous generation tolerated. And the ambiguity of their cultural status is likely to give rise to strong reactions to perceived injustice.

And such reactions are both fed by and are fed off by the activities of the xenophobic right which has made its appearance in such worrying manner on the political

stage of too many European countries as the background survey for this meeting shows.

These issues lead into very broad and complex debate that go beyond the workplace into such areas as education, family life, religion, and language. Nevertheless trade unions are grasping the nettle as I said at the beginning we have opportunities as well as responsibilities.

Opportunities, because when approached and made welcome, when it is clear that trade unions are ready and able to defend their interests and rights, migrant workers will often be more inclined to join and become active in unions. In doing so, they strengthen the union movement and enrich it as they bring their unique experiences and cultures. As a matter of fact, the trade union movements in many countries, Canada, Australia, and the US, to name a few, were built by migrants and they continue to strengthen it everywhere in the world. In California – just to give one example immigrants from Latin America are a key part of the rejuvenation of the labour movement.

The responsibility of trade unions is, to put it simply, inherent in their mandate. They have a major function to fight racism and discrimination at workplace, in the labour market, in the community and in society, in general. Indeed, unions exist to protect working people, and migrants are more in need of protection than most. Thus, unions all over the world are engaged in a range of activities, from political action and anti-racist campaigns to organizing migrants, giving them special training, integrat-

ing their issues in collective agreements, putting in place recruitment and promotion strategies in cooperation with the social partners, and extending specific assistance and services to migrant workers and their families.

To give a few examples of recent actions: Last year, in Spain, the UGT and Comisiones Obreras, denounced the emergency plan unveiled by the government for the repatriation of a thousand Moroccan immigrants who were living in the Canary Islands.

In South Korea, the Korean Trade Unions have run protest campaigns against the government's repressive policy of deporting undocumented immigrants. Instead, the unions called for a new work permit system.

A good example of large-scale political mobilization is the postcard campaign launched by the AFL-CIO in the United States. Addressed to members of the Congress and Senate, as well as President Bush, the cards call for a legal status, with equal rights, for all immigrant workers, together with the legalization of undocumented immigrants.

The unions that are furthest advanced in supporting migrant workers have understood the importance of providing them with vocational training and education services, while of course taking into account the linguistic and cultural specificities of the groups concerned. Britain's Trades Union Congress has produced a migration guide and also has an online trade union training course on the same topic. The Canadian Labor Congress, has produced an immigration toolkit that helps its mem-

bership to promote the adoption of progressive policies on immigration and refugees. The Spanish union confederations UGT and CCOO have each set up a network of specialized centres to deal with problems specific to migrants. These centres organize campaigns on regularization and family reunification, negotiate with the authorities about the issuing of residence or work permits, settle questions about social security access or employment contracts, organize training and follow up complaints of discrimination. In France, the labour confederation Force Ouvrière has provided a free phone number for victims of discrimination, as well as advice centres on legal and administrative matters, similar actions have been taken by the CFDT. The Belgian FGTB also offers a free legal service for immigrant workers.

Collective agreements are another concrete means of trade union action on this issue. The Canadian Labour Congress pioneered the inclusion of anti-racist provisions in collective agreements. A recent survey by the British TUC shows that black and Asian workers covered by collective agreements have an average hourly wage that is one-third higher than for those not covered.

In Italy, the social partners have set up innovative collective agreements which take migrant workers' concerns into account. For example Zanussi allows time for prayer during breaks, and after three years of service migrant workers are entitled to extra holiday, provided they agree to return.

In 1997, during the European year Against Racism, the Union

syndicale des travailleurs du Maghreb-arabe (USTMA) and the European Trade Union Confederation (ETUC) organised a joint conference to launch a trade union campaign to fight racism.

There are important opportunities in the international policy agenda. Trade unions have actively campaigned for the ratification, and effective implementation of, the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as well as the two relevant ILO Conventions, no. 97 and 143. Indeed, the UN Convention reinforces rights included in the ILO Conventions, including the right to organize into trade unions and to bargain collectively.

For trade unions the UN Convention breaks new ground on several fronts. It represents a significant advance for the defense of the fundamental rights of workers – documented or undocumented, regular or irregular – as well as their families. Moreover, it covers all aspects and dimensions of the migration process, from country of origin to country of destination. Its entry into force on the 1<sup>st</sup> of July last year was, therefore, a cause of optimism in the trade union world.

This is good news. The bad news is not only the time it has taken to bring this about – since 1990, but also as earlier speakers have already said the majority of the 21 ratifying states are migrant sending countries. The level of commitment among receivers is depressingly low. It has not been ratified by major receiving countries, either in Europe or in North America, nor for that matter, the Gulf countries, Jordan, Israel, Japan or Aus-

tralia and others. The trade union movement is stepping up the campaign for wider ratification, along with the UN and its agencies (notably, the High Commissioner for Human Rights, the International Labour Organisation (ILO) and UNESCO), NGOs and migrant workers' organisations.

This situation made this year's innovative general discussion at the ILO Conference of Conventions dealing with migrant workers' rights particularly important. Here too, the decision to undertake this examination reflected the inadequacies of the application of existing ILO Conventions and their effectiveness in providing much needed protection.

But to carry out their responsibilities, trade unions need to be creative and to be ready to devote often scarce resources to this, one of so many competing priorities.

The fact that you have chosen to dedicate this meeting to migrant workers is one more example of what has to be a collective effort to tackle what is one of the most urgent challenges of this era of globalisation.

Whilst this refers to the issue of international migration across national borders. It is clear that there is a parallel with the debate on the enormous challenges posed by internal migration in some countries and most notably in China from rural areas to the cities. The issue of achieving more balanced growth, respecting the rights of migrant workers here and the need to develop institutions including trade unions that can represent them seems to be a key issue for the decade ahead. Throughout developing countries respect for workers

rights is virtually non-existent in export processing zones and in some senses China has become the development model with the growth of special zones along the Eastern seaboard. That has to change and workers right shave to be respected if social conflict is not to result.

In conclusion an international debate has to focus on the six points setting out the way forward on which there was tripartite agreement at the ILO Conference in June:

1. There must be recognition that cross border movement of workers in search of employment and security is likely to continue in the coming decades because of the failure of globalization to generate jobs and economic opportunities where most people live. The differences – economic, demographic, social and political - that drive migration have widened over the past several decades and the trend is likely to continue. That fact should not deter us from seeking fundamental changes in the global economy to spur growth, more equitable income distribution, and less economic instability and poverty in the world's lagging regions.
2. Migration is an integral part of growth and development processes - more significant at some times and in some countries than others. Nevertheless like many aspects of development there are both positive and negative impacts for the migrants themselves and for the countries of origin and destination. There is increasing global recognition of

- positive contributions of migration though remittance flows, transfer of investments, technology and critical skills. The challenge is how to deal with migration in such a way that the positive effects are maximized, making it a positive phenomenon for migrants, their families, countries of origin and of destination.
3. Although migrants and their families have by and large benefited from migration, the numbers of those who toil under abusive and exploitative employment conditions without effective access to legal protection are still large. There is an urgent need for efforts, at national and international levels, to ensure that the human and labour rights of migrants are respected, in conformity with international standards: from universally recognized core labour standards to specific instruments addressed to migrant workers. The application of these standards is the key to effective protection of migrants' rights.
  4. If international and national standards are to have a tangible impact on the conditions of most migrants they have to form the basis on which migration processes are shaped. Unregulated migration puts many migrants in positions of vulnerability and their status often effectively excludes them from social protection. The enforcement of labour and workplace standards which serves as an effective deterrent to irregular migration and employment by discouraging substandard exploitative conditions. Thus, the effective management of migration with a

rights-based approach is crucial to the effective protection of migrants' rights.

5. Such effective management must rest on a set of principles of good governance developed and implemented by the international community that will be acceptable to all and which can serve as the basis for cooperative multilateral action. Existing ILO Conventions defining the rights of migrant workers, in particular C96 and C143, provide many of the key principles, but a sound comprehensive framework should include additional elements such as core labour standards, other normative instruments aimed at the protection of the well-being of migrants (on health and safety, protection of wages, freedom of movement, etc) as well as measures to strengthen labour institutions, labour markets and social cohesion. To be effective a comprehensive framework must be accompanied by an appropriate follow-up mechanism to support actions by governments and social partners in the implementation of these principles. Migrant women are often subject to multiple forms of discrimination. Concerned department of governments and the social partners should review the national legislative framework in order for adequately provide protection and developing, if necessary, specific programmes in this regard.
6. The ILO has to continue follow upon this years Conference discussion to ensure that various means of action can be used to further strengthen and expand

assistance to governments, employers' and workers' organizations in translating the framework principles into policy and practice at national levels. A number of areas are priorities including:

- increasing opportunities for decent work for migrant workers;
- ratification and application of international standards through national legislation;
- planning or improving regular worker migration programmes;
- combating discrimination and xenophobia;
- addressing the gender dimension;
- promoting the social and economic integration of migrant workers and their families;
- support development and job creation in sending countries;
- addressing the problems that arise with brain drain;
- designing bilateral, regional and multilateral agreements;
- extending social security and other benefits to migrant workers and their families.

At the same time the OECD needs to develop its role in its economic analysis on the trends of migration.

These are all fine words but to bring about change international institutions need to reflect on a well-defined plan of action which engages all constituents – governments, workers' and employers' organizations. And at national level, a coherent policy should be designed, based on social dialogue and on the implementation of policies aimed at combating discrimination and xenophobia.