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VULNERABLE GROUPS: MIGRANT WORKERS

The International Labour Office welcomes the entry into force of the **1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**.

It is increasingly evident that migration policy and practice can only be viable and effective when based on a firm foundation of legal norms, and thus operate under the rule of law

Extending rights-based policy and administration to cover all migrants has today become more important than ever. Under contemporary globalization, international labour mobility has increased, while levels of exploitation and deregulation have accelerated. The lack of legal protection for migrant workers heightens their attractiveness as instruments of “maintaining competitiveness” because they are obliged to work in situations where decent work conditions are not enforced. Irregular migrants are especially vulnerable because the threat of apprehension and deportation thwarts unionizing and impedes exposure of dangerous working conditions.

Current practices regarding labour migration present fundamental policy dilemmas for States, social partners, and civil society. Many States have placed increasingly strict barriers on legal entry of migrant workers, yet appear to tolerate the presence of some irregular migrants, especially those working in low-paid sectors lacking offer of national workers. Sectors employing irregular workers are usually those where little or no regulatory activity upholds minimum safety, health and working conditions that should ensure “decent work.” The absence of regulation reinforces employment of irregular migrant workers in substandard conditions, and provides incentive for shifting capital and employment from formal to informal activity.

Social legitimacy –and public cooperation—for governance comes of its association with justice, human dignity and democratic values. Legally established rights and policy standards framed by international norms ensure social legitimacy and accountability for governance; this legitimacy and accountability can only be ensured by a foundation in the rule of law.

Three Complementary Instruments

The 1990 Convention embodies the evolution of international norms elaborated over the last century to ensure a normative framework for policy, legislation and practices of States in regulating or ‘managing’ migration. The first conventions on the subject were established in the

1920s under ILO auspices. The ILO **Migration for Employment Convention**, of 1949 (**No. 97**) provided the basis for the modern normative framework. The ILO **Migrant Workers (Supplementary Provisions) Convention**, of 1975 (**No. 143**) addressed questions of irregular migration, and explicitly incorporated reference to application of the fundamental human rights norms embodied in the instruments of the UN Bill of Human Rights.

The two ILO conventions provide a basic framework for national legislation and practice on labour migration. These instruments stipulate that States actively facilitate fair recruitment practices and transparent consultation with their social partners, reaffirm non-discrimination, establish a principle of equality of treatment between nationals and regular migrant workers in access to social security, conditions of work, remuneration and trade union membership. 50 States have ratified one or both of the ILO Conventions, including eleven member States of the European Union.

The 1990 Convention is based on concepts and language drawn from the two ILO Conventions on migrant workers. It extends considerably the legal framework for migration, treatment of migrants, and prevention of exploitation and irregular migration.

The recent ratifications of the 1990 Convention bring to **62** the number of States that have now ratified one or more of these three complementary standards¹. Other signatory States to the 1990 Convention add up to **70** the number of countries that have or are in the process of establishing legislation and policy on the basis of international norms.

We stress that these three International Conventions together provide a comprehensive “values-based” definition and legal basis for national policy and practice regarding non-national migrant workers and their family members. They thus serve as tools to encourage States to establish or improve national legislation in harmony with international standards. The protection and structure offered by these instruments go well beyond providing a human rights framework. Numerous provisions in each add up to a comprehensive agenda for national policy and for consultation and cooperation among States on labour migration policy formulation, exchange of information, providing information to migrants, orderly return and reintegration, etc.

ILO experience shows that several complementary elements are required for viable, comprehensive and effective regulation of migration. These include:

1) An **informed and transparent labour migration admissions system** designed to respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must rely on labour market assessments conducted in consultation with social partners to respond to current and emerging needs for workers, high and low skilled. ILO research underlines this as a fundamental starting point: legal labour migration channels contribute to reducing exploitation, trafficking and smuggling of migrants².

¹ The ILO Migration for Employment Convention #97 of 1949, ratified by 42 countries, the ILO Migrant Workers (Supplementary Provisions) Convention #143 of 1975, ratified by 18 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by 21 countries and signed by 10 others. Texts and related information available respectively on the ILO website, at www.ilo.org/ilolex, and the Office of the UN High Commissioner for Human Rights website: www.unhchr.ch

² ILO; Mekong Sub-Regional Project to Combat Trafficking in Children and Women, *Legal Labour Migration and Labour Markets: Alternatives to Substitute for Trafficking in Children and Women*, p.1.

2) **Enforcement of minimum national employment conditions standards in all sectors of activity**, to criminalize abuse and exploitation of persons and to discourage irregular employment. A major incentive for exploitation of migrants and ultimately forced labour is the lack of application and enforcement of labour standards in countries of destination as well as origin. ILO Conventions on such aspects as occupational safety and health, against forced labour, and on discrimination provide minimum international norms for national legislation.

3) **A Plan of Action against discrimination and xenophobia** to sustain social cohesion.

The Declaration and Program of Action adopted at the World Conference Against Racism and Xenophobia (WCAR) in Durban in 2001 included 40 paragraphs on treatment of migrant workers, refugees and other non-nationals. These paragraphs together constitute a comprehensive and viable program of action to combat xenophobia and discrimination against migrants, a program that is an essential component of national migration policy.

4) **Institutional mechanisms for consultation and coordination** with social partners in policy elaboration and practical implementation, to ensure coordination within governments and consultation with social partners and concerned civil society bodies on all main areas of policy concern.

Labour migration will be the topic of the General Discussion at the International Labour Conference in Geneva in 2004. Main themes of discussion will be labour migration in the era of globalization, policies and structures for more orderly migration for employment, and improving migrant workers' protection. In preparation for this global discussion, ILO is reviewing relevant normative activities and instruments to determine how they might be more effective.

In conclusion, we emphasize that regulation of migration and of the labour market must be strengthened if the rule of law and democracy are to be sustained in this era of globalization. The three complementary international instruments for migration provide the necessary and coherent framework for national and international migration policies world-wide.

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