



Governing Body

316th Session, Geneva, 1–16 November 2012

GB.316/POL/1

Policy Development Section
Employment and Social Protection Segment

POL

Date: 4 October 2012

Original: English

FIRST ITEM ON THE AGENDA

Labour migration

Purpose of the document

This document reviews the changing landscape of international labour migration, the ILO response and comparative advantage, and the ILO's contributions to global debates and initiatives since the general discussion on migrant workers at the 92nd Session (2004) of the International Labour Conference. It puts forward some suggestions regarding how to raise the profile and influence of the ILO in global discussions relating to migration, with a view to providing policy space for the ILO's constituents in the area of labour migration.

In the light of the United Nation's 2013 High-level Dialogue on International Migration and Development and its follow-up, the Governing Body is invited to give guidance on actions to be taken and the ways in which the Office should work with the representatives of governments and of employers' and workers' organizations to strengthen the ILO's role in international labour migration (see the draft decision in paragraph 20).

Relevant strategic objective: Enhance the coverage and effectiveness of social protection for all. Outcome 7: More migrant workers are protected and more migrant workers have access to productive employment and decent work.

Policy implications: Decent work as a central element of the global discussions on migration and development and on policy space for the ILO's constituents in the area of labour migration.

Legal implications: None.

Financial implications: None.

Follow-up action required: Office to identify key priorities for substantive follow-up to the 2013 High-level Dialogue on International Migration and Development, and to establish a strategy to mainstream decent work in global deliberations on migration and development.

Author unit: International Migration Branch (MIGRANT).

Related documents: Conclusions on a fair deal for migrant workers in a global economy, in *Report of the Committee on Migrant Workers*, International Labour Conference, Provisional Record No. 22, 92nd Session, Geneva, 2004; *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (2006); *Independent evaluation of the ILO's strategy for the protection of migrant workers, 2001–07* (2008), in GB.303/PFA/3/5 and GB.303/11/1(Rev.).

Executive summary

International migration is a global, and largely a labour issue today. The ILO has a constitutional mandate, the tools (e.g. international labour standards and the non-binding *ILO Multilateral Framework on Labour Migration*), the expertise and the constituency to be a key player in international labour migration debates, and a wealth of recent, wide-ranging policy work and support to constituents that has been responsive to emerging issues and challenges.

However, debates about migration are often disconnected from labour market or economic considerations and, instead, are a function of interior or security policy issues. The ILO has tried to improve policy coherence and reconcile different interests by promoting cross-border cooperation including social partners, inter-ministerial and tripartite policy coordination at national level, inter alia.

Internationally, where the debate has focused on questions of migration and development as a consensus theme, the ILO has been active and contributed to the work of the Global Migration Group, an inter-agency coordination mechanism, among others. The future of the international migration agenda and architecture will be discussed at the High-level Dialogue on International Migration and Development to be held at the 68th Session of the UN General Assembly in 2013. This paper puts forward some suggestions concerning raising the profile and influence of the ILO in global debates relating to international labour migration.

Introduction

1. The ILO is the only United Nations (UN) agency with a constitutional mandate for the “protection of the interests of workers when employed in countries other than their own”. This mandate was confirmed in the 1944 Declaration of Philadelphia and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. The 2008 ILO Declaration on Social Justice for a Fair Globalization recognizes the movement of women and men migrant workers as one dimension of globalization that is reshaping the world of work in profound ways. The ILO has also adopted specific standards to protect migrant workers and guide migration policy, namely the Migration for Employment Convention (Revised), 1949 (No. 97), and its accompanying Recommendation (No. 86), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151). At the 92nd Session of the International Labour Conference in 2004 the ILO’s tripartite constituents, mindful of the changing dynamics of international labour migration, reached the consensus that a fair deal for all migrant workers requires a rights-based approach which recognizes labour market needs and adopted a Plan of Action for Migrant Workers.¹ Its centrepiece is the *ILO Multilateral Framework on Labour Migration*,² whose publication was authorized by the Governing

¹ ILO: “Conclusions on a fair deal for migrant workers in a global economy”, in *Report of the Committee on Migrant Workers*, Provisional Record No. 22, International Labour Conference, 92nd Session, Geneva, 2004.

² ILO: *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, (Geneva, 2006). The other elements of the Plan were identification of action to be taken for a wider ratification and application of relevant international labour standards; support for implementation of the ILO Global Employment Agenda at national level; capacity building, awareness raising and technical assistance; strengthening social

Body in 2006.³ Recognizing the sovereign right of all nations to determine their own migration policies, the Multilateral Framework provides non-binding guidance for improved governance of labour migration at national, regional and international levels, based on ILO standards and a wide range of good practices. In 2008, the ILO's strategy for the protection of migrant workers, including implementation of the Plan of Action, was subject to an independent evaluation which recommended the ILO to raise its visibility internationally through further cooperation with members of the Global Migration Group,⁴ and other international and regional organizations; step up its action on migration and development; and enhance Office-wide coordination, with a clearer distribution of roles and responsibilities across units and field offices, alongside adequate resourcing and staffing. The Governing Body requested the ILO Director-General to follow up on the evaluation findings and recommendations, to continue streamlining activities aimed at protecting migrant workers' rights and access to decent work, and to report back to the Governing Body.⁵

2. The UN as a whole reached a consensus that work should be undertaken on the links between migration and development. The UN General Assembly held its first High-level Dialogue on International Migration and Development in September 2006 which led, inter alia, to the establishment of the Global Forum on Migration and Development, an informal state-led consultative process, and to the creation of the abovementioned Global Migration Group, whose mandate includes, but transcends, migration and development. In view of the forthcoming second High-Level Dialogue (September 2013) and the centrality of labour migration in current international migration debates, it is timely for the Governing Body to be informed about the Office's experience in recent years in assisting member States and to provide guidance on future steps in order to strengthen the ILO's role and visibility in international labour migration.

International labour migration – trends, challenges and the ILO's response since 2004

The changing landscape of international labour migration

3. Migration today is driven by the search for a decent life and hence linked, directly or indirectly, to the world of work and decent employment opportunities. An estimated 214 million people – about 3.1 per cent of the world's population – live outside their country of origin, more than double the number 25 years ago. Of these 214 million people, approximately 105 million are economically active and, if their family members are also counted, they make up almost 90 per cent of the total international migrant population. With migratory pressures growing as a result of demand for both skilled and low-skilled workers in destination countries with rapidly ageing populations and workforces, the lack of jobs and decent working conditions in countries of origin, and widening income inequalities within and between countries, the numbers are expected to continue to rise

dialogue; improving the information and knowledge base on international migration; and ILO participation in relevant international initiatives concerning migration.

³ GB.295/PV, para. 218(c).

⁴ Inter-agency coordination mechanism comprised of 16 members: 15 United Nations entities and the International Organization for Migration.

⁵ See respectively: ILO: *Independent Evaluation of the ILO's strategy for the protection of migrant workers, 2001–07* (Geneva, Sep. 2008); GB.303/PFA/3/5 and GB.303/11/1(Rev.), paras 115–134.

despite ongoing high unemployment in many host countries. The percentage of women among the total number of international migrant workers has rapidly grown during the past decades due to increased demand for their labour. Remittances to developing countries reached US\$372 billion in 2011, an increase of 12 per cent compared to 2010, and are projected to increase further in the coming years.⁶

4. Labour migration has become a truly global phenomenon. In 2010 over two-thirds of international migrants moved in equal numbers either between developing countries or between industrialized countries, challenging the perception of international migration as involving mainly South–North movements. The past decades have witnessed a shift from state-organized migration to spontaneous or market-driven migration, with the private recruitment industry gaining in importance. The significance of the latter varies by country and region, depending on the skill level of the migrant worker, the permeability of borders and the informality of labour markets at destination. All too often these agencies have been found to engage in unethical practices, such as charging exorbitant fees to workers or providing false information about jobs, which have generated hardship for migrant workers and also distorted labour markets in countries of destination. Another trend has been the “mushrooming” of a range of temporary labour migration schemes that typically place more stringent and less favourable conditions of admission and stay on less-skilled workers relative to better-skilled workers, and feature strong return control mechanisms, often regardless of actual labour market needs. The rise in irregular migration, which is estimated to range between 10 and 15 per cent of total international migration, has been another issue that has dominated the international migration policy debate in the past two decades. The 2008 economic crisis in the Organisation for Economic Co-operation and Development (OECD) countries, together with the tightening of migration policies, seems to have curbed irregular migration in certain migration corridors. However, the number of migrant workers in an irregular situation might be growing, as many of those who lost their jobs have preferred, in the face of bleak employment prospects back home, to remain without authorization in host countries and have moved into undeclared work. This in turn is likely to undermine the skills prospects of these workers and their chances of reintegration into formal employment when economic recovery takes off again, in addition to making them more vulnerable to abuse and exploitation. The persistence of irregular migration and the undeclared work of migrants suggest the existence of policy failures.
5. Migrant workers, because of their less secure contractual arrangements and over-representation in sectors more sensitive to the business cycle, are more vulnerable to economic downturns than native-born workers, and certain migrant groups even more so. In OECD countries, for instance, young migrant workers between 15–24 years of age were hit harder than their native-born peers by higher unemployment rates and larger drops in employment rates. The latter is a worrying trend because a failure to enter into the labour market may result in the stigmatization of these workers, contribute to the worldwide “NEET” – Neither in Employment, Education or Training – phenomenon, and compromise their eventual labour market integration. Other trends that are increasingly shaping the migration experiences of youth are student-to-employment migration and the emigration of highly educated youth from developed countries affected by the current economic crisis to emerging economies.
6. Also, since the 1990s there has been a “revival” of bilateral agreements between countries of origin and destination – whether in the form of legally binding treaties or non-binding memoranda of understanding – that govern how people access and work in labour markets abroad. Many of these agreements have used the Model Agreement on Temporary and Permanent Migration for Employment (annexed to Recommendation No. 86), with clauses

⁶ The World Bank: Migration and Development Brief 18, April 2012 (Washington DC).

on working conditions, social security and regulation of migration flows. Similarly, labour migration increasingly features in discussions around regional integration agreements. Regional integration requires progressive policy harmonization/coordination on issues such as the recognition of skills and professional qualifications, and social security, for which access to reliable knowledge and data about the world of work is needed. Workers' and employers' organizations, as key actors in the real economy, can make important contributions.

7. Migration policy, while connected with labour market issues or other economic considerations is often ultimately dominated by interior or security policy concerns. As a result, while labour ministries are present during important deliberations on labour migration and employers' and workers' organizations have some voice, these inputs are limited and can be enhanced by further building the capacity of the labour ministry and the social partners to better address the linkages between migration, employment and labour markets. In the past years requests for interventions from the Office have continued and indeed diversified and also originate from other parts of government, such as ministries of foreign affairs, justice and interior or home affairs. Demands for ILO collaboration and expert inputs have also increased from both UN agencies and other international organizations, as well as from research institutions (see below).

The ILO response and its comparative advantage

8. The strategies that the Office has pursued to address the policy issues and challenges described above tackle the multiple interrelated aspects of labour migration governance while adapting to different country and regional circumstances. The intervention strategy focuses on the employment and labour market side of migration as well as on enhancing the protection of migrant workers and equality of treatment, with a focus on those economic sectors (e.g. agriculture, construction, domestic work) or individual characteristics (e.g. sex, age, ethnicity) that expose migrant workers to higher risks. Promoting policy coherence, protecting workers' rights, strengthening institutional mechanisms and encouraging social dialogue are distinct features of ILO interventions everywhere.
9. The Office addresses migration concerns as an integral part of the work of most technical departments and field offices. Migration features as a priority in a number of Decent Work Country Programmes. In-house coordination and cooperation with other agencies is increasing and should be further enhanced and institutionalized. This has also led to a more strategic fundraising strategy and has been facilitated by an Office-wide focal point network on labour migration. The Office is using an increased technical cooperation portfolio to leverage its labour-market-centred, rights-based approach to labour migration and support the active engagement of constituents. Projects have capacity-development and institution-building components and are implemented in collaboration with the ILO's constituents.

Mainstreaming employment and labour rights in national migration policies

10. The ILO encourages inter-ministerial cooperation and promotes the active engagement of employers' and workers' organizations in the formulation and implementation of national labour migration policies consistent with national employment and development policies and with international standards. This can be illustrated by the design and adoption of a national labour migration policy for Sri Lanka; by the creation of tripartite working groups and wider consultative processes for the revision of labour migration policies and legislation in countries such as Brazil, Colombia and Ecuador, with their labour migration

commissions or round tables, and in Georgia, with its inter-ministerial State Commission on Migration Issues; and by the drafting of national migration codes and ministerial orders in, for example, Azerbaijan, Cambodia and Viet Nam.

Enhancing the effectiveness of bilateral agreements

11. Similarly, the involvement of labour ministries and employers' and workers' organizations in the formulation and implementation of bilateral labour migration agreements increases the likelihood that these agreements will conform to international labour standards and reflect real labour market needs at all skill levels. In response to constituents' requests, the Office is providing assistance in the conduct of tripartite assessments of existing or future bilateral agreements. The Republic of Moldova's bilateral agreements on labour migration and social protection, the bilateral agreements concluded by India and the Philippines concerning health-care professionals and an agreement between France and Georgia on circular migration are thus being reviewed. The Office has also provided assistance to trade unions in countries of origin and destination regarding the signature of memoranda of collaboration aimed at protecting migrant workers (e.g. bilateral memorandum of cooperation between the Azerbaijan Trade Union Confederation (ATUC) and the Federation of Independent Trade Unions of Russia (FNPR) and memorandum of cooperation between ATUC and the Georgia Trade Union Confederation.

Promoting fair recruitment practices

12. The ILO Private Employment Agencies Convention, 1997 (No. 181), and the ILO Multilateral Framework on Labour Migration are among the most salient initiatives that the Organization has taken towards establishing clearly defined and enforceable regulatory frameworks on recruitment, in consultation with tripartite representatives of its member States and in line with international standards. Guidelines on the implementation of these instruments have also been developed. At the country and regional levels, the ILO has worked at reducing migrant workers' vulnerability through information, advice and legal aid, including through consular services (e.g. Thailand, Lebanon); simplifying recruitment regulations, including barriers to licencing; standardizing procedures related to recruitment processes and promoting model contracts in line with labour standards, developed in consultation with social partners and endorsed by the authorities in the destination countries; and promoting self-regulation and codes of practice in the private recruitment industry (e.g. Viet Nam). The Employment Service Convention, 1948 (No. 88), remains an important instrument.

Creating the space for the ILO's constituency in labour migration governance within regional economic integration processes

13. At the subregional and regional levels, the ILO increasingly collaborates with institutions of regional bodies on labour migration, reflecting the centrality of ILO expertise, among others, on social security and the development and recognition of skills. The Office is supporting the East African Community in the development of a legal instrument to coordinate the social security systems of member States. Collaboration with the Southern African Development Community has resulted in migration being included as a priority in the draft protocol on employment and labour. The ILO is working closely with the Association of Southeast Asian Nations and its Forum on Migrant Labour to strengthen the regional legal and policy framework to more effectively govern labour migration and enhance the capacity of the social partners to influence migration policy and protect migrant workers and their rights. Similarly, the Office has collaborated with the Andean Community on labour migration governance and has provided support to the Southern

Common Market (MERCOSUR) on advancing social dialogue on employment policies and assistance to migrants.

Global debates and initiatives since 2004 and the ILO's contributions

- 14.** The ILO has contributed to global processes established in the wake of the first High-level Dialogue on International Migration and Development, in particular to the Global Forum on Migration and Development and the Global Migration Group. The Global Forum operates primarily via round table discussions, which bring together government representatives and where international organizations enjoy observer status. Inputs by the ILO have sought in particular to extend recognition of the labour aspects of migration, the value of a rights-based approach to labour migration and the importance of social dialogue. These inputs have focused, inter alia, on specific issues such as skills development, return and social and professional reintegration, the role of diaspora communities for development, policy coherence, gender and migrant domestic workers, with a particular focus on the Domestic Workers Convention, 2011 (No. 189) and its supplementing Recommendation (No. 201). The ILO has attempted to build a bridge between civil society and participating governments and has provided special support when the participation of workers' and employers' organizations has been considered. Thus, in November 2011, the Civil Society Days of the Global Forum on Migration and Development were entirely devoted to labour migration, and the ILO Multilateral Framework on Labour Migration featured prominently as a resource tool in the discussions. A number of governments, international agencies, major civil society groups and employers' and workers' organizations⁷ are calling for the discussions to be held within the UN and its normative framework, while emphasizing the particular role, mandate and tripartite structure of the ILO.
- 15.** The ILO has given full support to common activities of the Global Migration Group and provided inputs as requested, although it has never taken the rotating chair of this Group. Contributions on migration, education and employment; migration and human development; rooting migration policies in human rights; irregular migration; and migration and climate change, have been made to symposia, expert meetings, common papers, briefs and statements, as well as to a handbook on mainstreaming migration into development planning. The ILO has also opened up its own activities to participation and contributions by other Group members, for example by inviting resource persons from Global Migration Group agencies to the ILO's Labour Migration Academy, organized since 2011 at the International Training Centre of the ILO in Turin. An example of a functional coalition of Global Migration Group members is the EC-UN Joint Migration and Development Initiative, which includes the United Nations Development Programme (lead agency), the ILO, the International Organization for Migration, the United Nations Population Fund and the Office of the United Nations High Commissioner for Refugees and which aims to strengthen the migration and development capacity of civil society in developing countries and seeks diaspora involvement.
- 16.** The ILO has been able to build a bridge between merely economic-efficiency-oriented and exclusively human-rights-oriented views of other agencies thanks to its approach that there should be coherence between employment and social protection policies, and that social and labour protection are ways of increasing or at least upholding productivity. Thus, the ILO has been invited to provide inputs to products by numerous other agencies. Its

⁷ For example, see International Trade Union Confederation: *Migration: A decent work issue*, General Council, 17–18 Oct. 2011, doc. 9GC/E/6(b)(i), p. 4.

principles of treating migrants as workers rather than as factors of production, placing issues of equality at the centre of analysis and defining development as more than GDP growth are now evident in major publications such as the *World Migration Report 2008* of the *International Organization for Migration and the Human Development Report 2009* of the United Nations Development Programme.

The way forward

17. Migration is one of the most complex policy areas for governments and employers' and workers' organizations, especially in times of economic downturn. The governance of labour migration is about balancing a host of different issues and interests.
18. By supporting multi-stakeholder coordination mechanisms at the national level and through regional economic communities and other subregional bodies, the Office has started a process to help balance these different needs. It has facilitated tripartite constituents' participation in labour migration governance, while placing labour migration issues within the broader employment and labour rights agenda.
19. The 2013 High-level Dialogue and its follow-up will provide an opportunity to affirm the value added of the link between employment and labour protection policies and to recognize the pivotal role of the ILO's constituency in the improved governance of international labour migration. The High-level Dialogue is expected to address four themes: contribution of migration and migrants to development; mainstreaming migration in development; irregular migration; and partnerships and cooperation. These are all areas in which the ILO has substantive contributions to make.

Draft decision

20. *The Governing Body:*

- (a) *calls upon the Office to identify key priorities for substantive follow-up to the UN's 2013 High-level Dialogue on International Migration and Development, and to ensure that the promotion of decent work becomes a central element in the discussions on migration and development; and*
- (b) *requests the Director-General to consider the establishment of a global tripartite forum to discuss labour migration and share experiences on a periodic basis, which would connect, as appropriate, the ILO's constituency to existing deliberative global structures on migration, such as the Global Forum on Migration and Development.*