



Rights, Labour Migration and Development: The ILO Approach

Background Note for the Global Forum on
Migration and Development

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I. Introduction

1. Human and labour rights of migrant workers are articulated in the international labour conventions adopted by the tripartite members of the ILO. Migrant workers are entitled to the enjoyment of these rights by the mere fact of being workers. ILO member States are bound to apply the conventions they have ratified. However, principles and rights at work deriving from eight fundamental conventions need to be respected, promoted and realized by all ILO member States, in good faith and in accordance with the Constitution, by the very fact of membership in the Organization, even if these conventions have not been ratified. This is the tenor and purpose of the 1998 ILO Declaration of Fundamental Principles and Rights at Work and its Follow-up. The provisions of the eight conventions ensure protection to migrant workers and also promote their contribution to development. It is noteworthy that as early as 1919, the preamble to the ILO constitution recognized the need for and the interest of the protection of workers employed in countries other than their own.
2. Migration and development raise the issue of the set of rights, which in addition to ensuring protection to migrant workers, reinforces the positive linkages between them. They also bring up the workers' right to work in their own country and not to migrate. Migration would thus be a choice and not a life necessity.
3. In what follows, the rights deriving from the eight fundamental ILO conventions, those directly related to migration and development and, finally, the right to work in countries of origin so as to provide an alternative to migration will be reviewed.

II. The fundamental principles and rights at work

4. 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.
5. All migrant workers, regardless of their status, should enjoy 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.
6. There also are practical explanations of the relationships between the fundamental principles and rights at work, on the one hand, and development, on the other. Development here is considered as economic growth, social advancement and greater

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).



political participation in countries of origin, sustenance of economic growth in countries of destination, and human capital formation of migrant workers.

7. Freedom of association and the effective right to collective bargaining are empowering standards as well as learning systems in themselves but also can cause the other standards to be more effective. By providing an organized voice for workers, these standards make it possible for workers' views to be included in national and international economic policies as well as in the workplace. These policies are much more effective and sustainable if they include the voices of workers along with those of business, financial and other interests. Obviously, the recognition of the right of migrant workers to organize and participate in collective bargaining will increase the effectiveness of policies².
8. The abolition of forced labour is clearly essential to the protection of freedoms. This is an unquestioned ethical principle. However, it also bears an unambiguous relationship to income and human capital formation, which are likely to be depressed by forced labour. Trafficking of human beings is one of the manifestations of forced labour in international migration. The exploitation they entail turns migration into a negative experience for migrant workers as well as for countries of origin and destination. Confiscation of travel documents also lead to forced labour situations.
9. The elimination of child labour should help improve the education, health and motivation of children. This is of great importance at a time an increase in the number of children crossing international borders on their own, for work purposes, is observed. Child labour has an opportunity cost for working boys and girls and for their countries of origin. It keeps them from developing the human capital that would allow them to raise their incomes and contribute to the development of their countries in later years.
10. Equality and anti-discrimination is a basic principle underlying human and labour rights. It is about 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, countries of origin and destination. This will be taken up with more elaboration below under III. Rights, migration and development. Suffice it here to say that equality and non-discrimination allow migrant workers to use all their potentials and be rewarded for them 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. They also preserve the competitiveness of national workers in their countries' labour markets by not undercutting the cost of their labour.

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



III. Migrant workers, development, and human and labour rights

11. Men and women migrant workers contribute to development in countries of origin and destination. In countries of origin they do so by alleviating pressures on labour markets as well through remittances, skills acquired during migration, and investments by expatriate communities. In countries of destination, they contribute to development by meeting demand for workers necessary for economic activities, by increasing demand for goods and services and by contributing their entrepreneurial skills. Maximizing these contributions by migrant workers will only be possible if they are in a position to develop their potentials, which is closely related to the exercise of certain labour rights. Contribution to development cannot be dissociated from the protection of migrant workers. This is clear in the provisions of the two International Labour Conventions specifically dedicated to migrant workers. After reviewing them, the following paragraphs will emphasize the relationship between maximizing contributions to development and the exercise of labour rights.

12. The two ILO specific instruments on migrant workers, the Migration for Employment (Revised) Convention, 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as well as their accompanying Recommendations³, provide a framework for guidance on what should constitute the basic components of a comprehensive labour migration policy, the protection of migrant workers, the development of their potentials and measures to facilitate as well as to control migration movements. More specifically, they call for measures aimed at regulating the conditions in which migration for employment occurs and at controlling irregular migration and labour trafficking, and measures to detect the informal employment of migrants with the aim of preventing and eliminating abuses. They also provide minimum standards of protection for all migrant workers, independent of their migrant status. In addition, the two instruments call for measures related to the maintenance of free services to assist migrants and the provision of information, steps against misleading propaganda and the transfer of earnings. They define parameters for recruitment and contract conditions, participation of migrants in job training and promotion, and for family reunification and appeals against unjustified termination of employment or expulsion. Most importantly, the two instruments call for the adoption of a policy to promote equality of treatment and opportunity between regular status migrants and nationals in employment and occupation 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.

13. Remittances are the most tangible contribution of migrant workers to alleviating poverty, forming human capital and investing for income generation and employment creation in their countries of origin. Article 9 of Convention No. 97 provides that each party to the Convention 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 the migrant may desire.

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>



14. However, to reinforce the impact of remittances and of investments on development in countries of origin, earnings and savings need to be maximized, in accordance with migrant workers' capabilities and potential. Rewards need to be proportionate to their skills and the jobs they perform. They should also have the opportunity to advance in their careers and to develop their potential. The foundation for the maximization of earnings, savings and skills is that immigrants lawfully within the territory of a State party are treated no less favourably than nationals. 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, which is 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.
15. Consistent with the aim of maximizing benefits from migration, article 14 of Convention N. 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.
16. Cases of non-payment or underpayment of wages have been registered. This denies migrant workers parts of their incomes and deprives their countries of origin of financial transfers that could have been used for reducing poverty and promoting development. Ensuring the payment of wages, therefore, is a right of importance to migrant workers and to their countries of origin⁵.
17. The rights referred to in paragraphs 14 and 15 above also contribute to maximizing the contributions of migrant workers to the economies of countries of destination. Training, recognition of skills and labour mobility should allow them to better meet demand for labour. They should also permit them, along with some other measures, to contribute their entrepreneurial skills and thus enlarge the supply of goods and services. Remuneration and social security benefits should allow them, as consumers, to increase demand for goods and services and thus to contribute to economic growth.
18. It is worth underlining that the exercise of rights mentioned in the two above paragraphs should also contribute to preserving the competitiveness of national workers in labour markets of countries of destination. Allowing migrant workers to work for a lower pay, longer hours or without social security coverage would result in

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



reducing their labour cost compared with that of national workers. This would undermine the latter's chances in their own labour markets.

19. 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, allow them to raise their productivity and the level of their contributions to the economies of countries of destination⁶.
20. 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.
21. Due to the specific nature of the jobs available to women migrant workers in the international labour market, a good number of whom are domestic workers, ensuring and maximizing their contributions to development requires enhanced protection for them and for the fruit of their labour.
22. 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.
23. The rights referred to in paragraphs 14 and 15 above are also stipulated, in respect of all workers, in relevant sectoral international labour conventions, many of which provide for non-discrimination and equality of treatment. These applicable Conventions are listed in the annex to this note. As pointed out above, the ILO instruments on migrant workers provide for equality of treatment and call for the adoption of a policy to promote equality of treatment and opportunity between regular status migrants and nationals in employment and occupation. In addition, promoting equality of opportunity and treatment for and elimination of discrimination against nationals as well as migrant workers on the basis of race, colour, sex, religion, national extraction, political opinion and social origin, are the specific objectives of the fundamental 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 than the specific ILO instruments the principle of equality of treatment between migrant workers and nationals before the court and tribunals, 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. Finally, non-discrimination and equality of treatment are cornerstones of the widely ratified International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR).
24. The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration provides is a guide to the formulation of labour migration policies that guarantee the rights of migrant workers,

⁶ Migrant Workers Recommendation, 1975 (No.151)

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



reinforcing their protection and enhancing their contribution to development⁸. Annex II to the Framework lists examples of good practices indicating how Governments, social partners, as well as Civil Society Organizations (CSOs), have put in practice the principles of labour migration policies.

IV. The right to decent work in countries of origin

25. For the ILO, essential roots of labour migration lie in deficits in decent work in countries of origin. This deficit is reflected by 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 explicitly notes in its preamble the ILO instruments on migrant workers. Paragraph I (1) of the Recommendations states that the promotion of full, productive and freely chosen employment provided for in the Employment Policy Convention and Recommendation, 1964, should be regarded as a means to achieving in practice the realisation of the right to work. Under Convention No. 122, as well as recommendation No. 169, ratifying States are under the obligation to formulate and carry out employment policies. If these did not produce expected results, State parties should modify them. The International Covenant on Economic, Social and Cultural Rights (ICESCR), in accordance with Article 2, provides that State parties undertake to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant. The ILO supports, and will respond positively to requests for technical cooperation in, the formulation and implementation of employment policies.
26. 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.

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



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