ILO labour standards and “irregular” migration: Relevance and gaps,

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ILO labour standards and “irregular” migration: Relevance and gaps

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Structure of the presentation

- Key messages
- Definitions
- ILO labour standards
  - Core labour standards
  - Other applicable standards
  - Migrant worker standards
- Gaps and remedies
  - ILC 2004 Resolution
  - ILO Multilateral framework on labour migration
- Way forward
Key Messages

- Irregular migration cannot be discussed independently of regular migration, and should be treated as part a broader labour market issue and not only as a legal and security issue.
- Migration under irregular conditions exposes workers to worst forms of abuse and exploitation, and such migration should be prevented and minimised.
- Most ILO’s instruments (Conventions, Recommendations, codes of practice) apply to both nationals and all migrant workers unless otherwise stated.
- Basic human rights and core labour rights of all migrant workers including those in irregular status should be respected. ILO C143 and the ILO Declaration.
- Standards are not enough: effective enforcement and access to redress mechanisms are imperative.
- All stakeholders – source and receiving country govts., social partners, civil society, and migrants - need to cooperate in reducing irregular migration and ensuring protection of their rights.
Why migrant workers need special protection

• International status; employed in countries other than their own.
  • ILO Constitution

• Social justice considerations:
  – Migrants among particularly vulnerable groups of workers: (identified as such in the Constitution and the 1998 ILO Declaration).
  – Decent work for all workers including migrants
International protection regime

• Migrant-specific instruments
  – ILO instruments – to be elaborated.
  – United Nations
    – International Convention on the Protection of the Rights of All Migrant Workers and Members of their families, 1990
      • Protocol to prevent, suppress and punish trafficking in persons, especially women and children;
      • Protocol against the smuggling of migrants by land, sea and air

• Fundamental conventions of the ILO
• Other relevant ILO Conventions
• General human rights instruments of the UN
ILO Fundamental Conventions

1998 ILO Declaration on fundamental principles and rights at work and its follow-up

- Freedom of Association and the Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

In Asia these are frequent violations of these standards even for workers in regular status.
Other relevant ILO Conventions

- Safety and Health in Agriculture Convention, 2001 (No. 184).
- Private Employment Agencies Convention, 1997 (No. 181)
- Protection of Wages Convention, 1949 (No. 95)
- Labour Inspection Convention, 1947 (No. 81),
- Plantations Convention, 1958 (No. 110)
- Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- Maintenance of Social Security Rights Convention, 1982 (No. 157)
- Employment Policy Convention, 1964 (No. 122).
- Minimum Wage Fixing Convention, 1970 (No. 131)
- Occupational Safety and Health Convention, 1981 (No. 155),
- Occupational Health Services Convention, 1985 (No. 161),
- Safety and Health in Construction Convention, 1988 (No. 167)
(see ILO Multilateral Framework – Annex 1 for more comprehensive list)
Migrant-Specific ILO instruments

• Migration for Employment Convention (Revised), 1949 (No. 97) - (45 ratifications- New Zealand, Sabah (Malaysia); applies to Hong Kong SAR; Philippines - pending)
  – Migration for Employment Recommendation (Revised), 1949 (No. 86)

• Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) - (21 ratifications- only Philippines in Asia)
  – Migrant Workers Recommendation, 1975 (No. 151)
ILO Conventions and workers in irregular status

- C97 – applies only to those regularly admitted.

- C143- Deals with issue of bringing migration flows under control and hence eliminating irregular migration and suppressing activities of organizers of clandestine movements of migrants

- Consists of two main parts: States can opt to ratify part I or II or both.
  - Part I (Articles 1-9) deals with problems arising out of clandestine migration / illegal employment of migrants
  - Part II (Articles 10-14) substantially widens the scope of equality between migrant workers in a regular situation and nationals, in particular by extending it to equality of opportunity.

- Respect basic human rights of *all* migrant workers – Article 1.

- To determine and suppress clandestine movement and the illegal employment of migrant workers

- To punish the employers of such workers, organizers of such movements and those assisting-administrative, civil and penal sanctions including imprisonment

- Protective measures for migrant workers who have lost employment (against irregular status) or who are in an irregular situation
Rights of workers in irregular status in C.143

- Respect for their basic human rights- Art 1.
- Equality of treatment for rights arising from past employment regarding remuneration, social security & other benefits. Art.9 (1)
- Right to due process in respect of disputes
- Cost of expulsion not to be borne by the worker.
- States are free to regularize such workers.
Resolution on a fair deal for migrant workers in a global economy

ILO International Labour Conference 2004

• providing due consideration to the particular problems faced by migrant workers in irregular status and the vulnerability of such workers to abuse;

• ensuring that their human rights and fundamental labour rights are effectively protected, and that they are not exploited or treated arbitrarily;

• following best practice guidelines on preventing and combating irregular labour migration including amnesties and regularisations to be developed.
ILO Multilateral framework on Labour Migration

• Objectives: Better management of migration, protection of workers, and promoting migration-development linkages
• A framework of nonbinding guidelines and principles for policies based on best practices and international standards.
• Rights-based approach
  – in accordance with international norms and principles, while recognizing sovereignty of States to determine their migration policies.
• 15 broad principles and corresponding guidelines; compilation of best practices (132)
• A tool kit for guiding migration policies in countries.
• Framework adopted by Meeting of Experts in November 2005 (ILO Governing Body to approve it this month)
8. The human rights of all migrant workers, regardless of their status, should be promoted and protected. In particular, all migrant workers should benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which are reflected in the eight fundamental ILO Conventions, and the relevant United Nations human rights Conventions.

9. (a) All international labour standards apply to migrant workers, unless otherwise stated. National laws and regulations concerning labour migration and the protection of migrant workers should be guided by international labour standards and other relevant international and regional instruments.

10. The rights of all migrant workers which are referred to in principles 8 and 9 of this Framework should be protected by the effective application and enforcement of national laws and regulations in accordance with international labour standards and applicable regional instruments.

11. Governments should formulate and implement, in consultation with the social partners, measures to prevent abusive practices, migrant smuggling and trafficking in persons; they should also work towards preventing irregular labour migration.
Specific guidelines- MFW

4.4. implementing policies that ensure that specific vulnerabilities faced by certain groups of migrant workers, including workers in an irregular situation, are addressed.

8.1. governments should ensure that national laws and practice that promote and protect human rights apply to all migrant workers and that they are respected by all concerned;

8.4.2. protect migrant workers from conditions of forced labour, including debt bondage and trafficking, particularly migrant workers in an irregular situation or other groups of migrant workers who are particularly vulnerable to such conditions;

9.2. adopting measures to ensure that all migrant workers benefit from the provisions of all relevant international labour standards in accordance with principles 8 and 9 of this framework;

9.5. adopting measures to ensure that all migrant workers, including those in an irregular situation, who leave the country of employment are entitled to any outstanding remuneration and benefits which may be due in respect of employment and as applicable are given a reasonable period of time to remain in the country to seek a remedy for unpaid wages;

9.9. entering into bilateral, regional or multilateral agreements to provide social security coverage and benefits, as well as portability of social security entitlements, to regular migrant workers and, as appropriate, to migrant workers in an irregular situation
10.5. providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation;

11.1. adopting and implementing legislation and policies to prevent irregular labour migration and eliminate abusive migration conditions, including the trafficking of men and women migrant workers;

11.3. implementing effective and accessible remedies for workers whose rights have been violated, regardless of their migration status, including remedies for breach of employment contracts, such as financial compensation;

11.4. imposing sanctions and penalties against individuals and entities responsible for abusive practices against migrant workers;

14.4. given the particular problems faced by irregular migrant workers or other vulnerable migrant workers as a result of their status, considering the implementation of policy options referred to in Convention No. 143 and its accompanying Recommendation No. 151;
MFW - Good practices

• A number of good practices listed in regard to workers in irregular status
  54. Migrant Forum in Asia
  57. Platform for International Cooperation on Undocumented Migrants (PICUM)
  44. Spain- 2005 regularization campaign
Gaps and obstacles

- Workers in irregular status covered by core labour and most labour standards; but serious gaps in policy and practice regarding such rights- e.g. freedom of association
- Workers: Fear of detection and deportation in asserting rights: Lack of access to information and awareness of rights
- Negative attitude of states towards irregular migration; pressure to convince public that migration is under control.
- Dilemma between ‘promotion of overseass employment’ and ‘protection of workers’ in source countries
- Gaps in international instruments, their ratification and enforcement:
- Gaps in social dialogue: lack of consultative mechanisms involving all stakeholders.
- Lack of access to redress mechanisms
Way forward

• Prospects for improved conditions – very limited in the Gulf; in Asian countries with large numbers of migrant workers in Irregular status: Malaysia, Korea and Thailand?

• Rights-based ILO Multilateral framework is non-binding; How to promote application of its principles and guidelines, especially in receiving countries?

• Strengthening cooperation between NGOs and trade union movement in addressing problems of workers in irregular status.

• Improving access to justice and redress mechanisms essential.

• Addressing root causes; Reduce migration pressures in sending countries through creation of decent work; address demand - irregular employment and undeclared work in receiving countries.