



**The Thirteenth OSCE Economic Forum:
“Demographic Trends, Migration, and Integrating Persons belonging to
National Minorities: Ensuring Security and Sustainable Development in the
OSCE area”**

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**Promoting ratification and implementation of international migration
conventions and agreements on non-discrimination**

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Migration is a global reality in which all countries participate, and much of it is work-based. Today, 86 million people living outside their countries of origin or citizenship are economically active: employed, self-employed or otherwise engaged in remunerative activity. Foreign-born workers comprise 10% of the labour force across Western Europe. Women continue to constitute about half of all migrants, but most are now migrating on their own as primary income earners.

Among many of the beneficial elements of labour migration are non-inflationary economic expansion, job creation, growth and cross-fertilization of skills, technology exchange, rejuvenation of populations and stimulation of development through remittance flows. The ambition and the drive that motivate men and women to migrate generally help them to find jobs in many countries, work hard, and benefit both themselves and host country nationals. Demographic trends in some regions suggest that immigration will in some instances be an important component of a long-term solution to the anticipated problems raised by ageing.

Despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social exclusion. Gaps in working conditions, wages and treatment exist among migrant workers and between migrant and national workers. In a significant number of cases unemployment rates, job security and wages differ between regular migrant workers and national workers.

The ILO has been invited to contribute to this meeting of the OSCE Economic Forum on the issue of “Promoting ratification and implementation of international migration conventions and agreements on non-discrimination”. We welcome this opportunity. In

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our view, the ratification and implementation of international labour standards and other relevant instruments in the field of migration and non-discrimination are indeed crucial to any viable and effective strategy to move forward in the economic and social integration of migrant workers. The ratification of international conventions in itself is, however, not an achievement. International standards in these areas are most effective if they are relied upon and perceived as integral part of national and multilateral labour migration policy design and implementation, rather than as an end in themselves or just as one of many policy options.

Towards a fair deal for migrant workers

Last June, the 92nd Session of the International Labour Conference adopted a visionary Resolution and Conclusions on migrant workers, which includes an ILO Plan of Action for migrant workers.² These Conclusions recognized that migration – labour migration in particular—is a major global challenge for governance, international cooperation and for protection of the rights and dignity of the individuals involved. They are a major push by the international community, including representatives of workers and employers, towards tackling global migration through comprehensive and consistent policies, structures and action in the field of labour migration. The International Labour Conference called for the adoption of national policies aimed at equal treatment of migrant workers with nationals in respect to labour laws and access to social protections, combating exploitation and the promotion of basic human rights for all migrants. It cannot be overemphasized that these Conclusions represent a tripartite consensus of governments and workers and employers' organizations from 178 countries.

With regard to the topic of the present statement, one element of the Conclusions needs to be particularly highlighted, which is that to be effective, credible and enforceable, national policy and practice regarding labour migration requires a sound legal foundation based on the rule of national and international law.

It goes without saying that the fundamental principles and rights as contained in the 1998 Declaration on Fundamental Principles and Rights at Work and the ILO's eight fundamental human rights conventions³ need to be ensured for all men and women migrant workers. Then there are, of course, ILO's specialized instruments on migration, Conventions Nos. 97 and 143. Together with the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families they form the multilateral legal framework for labour migration. It

² The comprehensive ILO report prepared for the General Discussion at the 2004 International Labour Conference, *Towards a Fair Deal for Migrant Workers in the Global Economy* (English) is available on-line at: <http://www.ilo.org/public/english/standards/realm/ilc/ilc92/pdf/rep-vi.pdf>

The full *Report of the Committee on Migrant Workers, ILC 2004* which contains the above Resolution is available (in English) at:

<http://www.ilo.org/public/english/standards/realm/ilc/ilc92/pdf/pr-22.pdf>

³ Conventions Nos. 29 and 105 on forced labour, Conventions Nos. 100 and 111 on non-discrimination, Conventions Nos. 87 and 98 on freedom of association and collective bargaining, and Conventions Nos. 138 and 182 on the abolition of child labour.

should also be stressed, that as a general rule, International Labour Conventions and Recommendations cover and protect nationals and non-nationals. Those in areas such as social security, occupational safety and health, protection of wages, labour inspection, and concerning private employment agencies, are particularly relevant to the migrant workers.

ILO Conventions Nos. 97 and 143

One of the key points of the 2004 ILC Resolution was the explicit recognition that the Migration for Employment Convention, 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations Nos. 86 and 151 remain valid and relevant today. Accordingly these instruments should be actively promoted.

Without going into a detailed analysis of Conventions Nos. 97 and 143, it is useful to recall the main features and advantages of these instruments. Both Conventions cover issues concerning the whole migratory process and apply to persons who migrate from one country to another with a view to being employed otherwise than on their own account.⁴ Firstly, the Conventions are intended to provide a framework for guaranteeing protection of migrant workers, through

- Provision of correct information about conditions in the country of employment;
- Equality of treatment and, in the case of C.143 equality of opportunity and treatment,
- Measures to facilitate the adaptation of migrants to living and working conditions in the country of employment;
- Mechanisms for the transfer of migrants' earnings.
- Access to social and medical services, access to legal proceedings and appeals against unjustified termination of employment or expulsion.
- Facilitating family reunification, although there is no right to family reunification as such.

Secondly, the instruments deal with the organization of migration, through measures aimed at regulating the conditions in which migration for employment occurs, and for measures aimed at combating irregular migration, as well as containing provisions on cooperation between States.

The Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Convention No. 111 is one of the fundamental human right Conventions that has a particular role to play in combating discrimination against migrant workers and national minorities.⁵ Under this Convention, ratifying States undertake to adopt and

⁴ The Conventions allow for certain execution in the scope of application, namely seamen, frontier workers, and members of the liberal professions entering the country on a short-time basis-

⁵ Convention No. 111 has been ratified by virtually all ILO Members from the OSCE area. The United States and Estonia are currently taking steps towards ratification.

implement a national policy to promote equality of opportunity and treatment in employment and occupation, with a view to eliminating direct and indirect discrimination on the basis of race, colour, sex, political opinion, religion, national extraction and social origin, and any other ground identified at the national level. Such a policy must go beyond establishing formal equality in law. It should take into account the root causes of inequalities and address discrimination that occurs in law and practice.

The ILO emphasizes the need to undertake educational campaigns to promote respect and tolerance. But it is also necessary to strengthen the capacity of competent national authorities to identify and solve cases of discrimination, while at the same time enhancing migrant workers' access to judicial and other remedies. The Convention also provides for the involvement of employers' and workers' organization in promoting non-discrimination and equality. It goes, without saying the Convention No. 111, together with other international non-discrimination instruments plays an important role in combating discrimination as a root cause of irregular labour migration and human trafficking.

Examples of ILO action to promote implementation of conventions relevant to migrant workers

The 2004 Plan of Action for migrant workers

First and foremost, it is necessary to refer to the Plan of action for migrant workers, which has been adopted by the ILC in June 2004. The plan consolidates and further develops the ILO's programme in the field of labour migration. Under this plan, a non-binding multilateral framework for a rights-based approach to labour migration is being developed, which proposes guidelines and principles for policies based on best practices and international standards. The Plan also provides for measures to ensure a wider application of international labour standards and other international instruments, awareness raising, capacity building and technical assistance in a number of specific areas (e.g. national migration policy development, integration of a gender-perspective, legislative assistance, strengthening labour administration, enforcement mechanisms; promoting awareness of labour rights, measures to combat racism, discrimination and xenophobia).

Standards supervision

The ILO supervisory bodies examine and comment on the application of ratified ILO Conventions on the basis of periodic reports by governments and observations made by workers' and employers' organizations.⁶ The work of these bodies offers guidance to governments, workers and employers' organization, and the ILO as a whole regarding better application international labour standards. The supervisory process has been useful in identifying and addressing application deficits regarding a wide

⁶ Texts of all ILO standards and comments of the ILO supervisory bodies are available on the ILOLEX database at www.ilo.org/normes

range of relevant standards such as those on forced labour, non-discrimination, freedom of association, child labour, labour inspection, protection of wages etc.

Addressing labour market discrimination

The ILO's International Migration Programme conducted comparative empirical research in recent years measuring discrimination in access to employment by immigrant workers in Belgium, Germany, Italy, the Netherlands and Spain; independent studies using ILO methodology were done in Denmark and Switzerland. The findings showed discrimination in access to employment to be of significant importance in all countries covered by the research with net-discrimination rates of 35 per cent commonly found.

A number of ILO initiatives assist government, as well as workers' and employers' organizations in addressing employment discrimination against migrant workers. A typology of anti-discrimination/integration measures has been developed, which recognizes some 60 different types of measures and initiatives to facilitate integration and combat discrimination by the different social actors and institutions and it has already compiled a considerable number of profiles.⁷

Since July 2004, the ILO is implementing an EU-financed project to support broad community engagement throughout European Union member countries in facilitating integration of and combating discrimination against immigrants. This is being done by disseminating effective practice, identifying indicators of integration, developing evaluation tools, and convening social partner networking.

Combating forced labour

The Special Action Programme to combat Forced spearheads ILO activities against forced labour, including trafficking. Among the migrant workers particularly vulnerable to forced labour exploitation are domestic workers, many of whom are women, because domestic service occurs mostly in the informal sector and in the private sphere. The Special Action Programme is a broad-based technical cooperation programme working at the request of member states and in close collaboration with workers and employers, civil society and other international organizations. The programme provides, inter alia, assistance in putting in place effective national laws and strengthening enforcement mechanisms, including legal sanctions against employers using forced labourers. It also promotes public awareness and understanding of the problem in order to shine a spotlight on these human and labour rights violations. The programme has just issued a new publication entitled "Human Trafficking and Force Labour Exploitation – Guidance for Legislation and Law Enforcement."⁸

⁷ See www.ilo.org/migrant/discrimination

⁸ Available on-line at www.ilo.org/declaration

Closing remarks

Promoting the integration of migrants through protecting their rights and dignity and through sound labour migration management, through ratification implementation of international migrant workers conventions and recommendations makes sense as a method to secure and further consolidate the positive effects of migration. The ILO's instruments have the unique advantage of combining policy and action in the areas of employment policy, human rights protection and labour migration management. Further, their application and supervision includes social dialogue as a basic principle, which is essential in addressing labour migration issues.

Convention No. 97 has been ratified by 43 countries, with 15 among them from the OSCE area. The most recent ratification was that of Albania which was registered on 2 March 2005.⁹ Convention No. 143 has registered 18 ratifications, including 10 OSCE Participating States.¹⁰ Clearly, the current status of ratification of the latter two Conventions is far from being satisfactory. The ILO has therefore been given a clear mandate by the International Labour Conference last June to identify obstacles for ratification and to assist its Members to remove them. The ILO stands ready to provide advice on the contents and requirements under these and other relevant Conventions, and provides assistance in drafting or revising legislation and labour administration reform that might be necessary to apply these standards.

The ILO looks forward to working with its Members and constituents from the OSCE area towards possible ratification of Conventions Nos. 97 and 143 and the implementation of the 2004 Plan of Action and welcomes the cooperation and support from of the OSCE in this regard.

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⁹ Albania, Belgium, Bosnia and Herzegovina, Cyprus, France, Germany, Italy, the former Yugoslav Republic of Macedonia, Netherlands, Norway, Portugal, Serbia and Montenegro, Slovenia, Spain, and the United Kingdom.

¹⁰ Bosnia and Herzegovina, Cyprus, Italy, the former Yugoslav Republic of Macedonia, Norway, Portugal, San Marino, Serbia and Montenegro, Slovenia, and Sweden.