

**Agenda item 6:****Priority Resolutions:****(b) Organising****(i) ITUC policy on labour migration****Migration: A decent work issue****A shift in migration policy is urgently needed**

The ITUC demands that governments shift their migration policies to ensure they contribute to decent work objectives and stop being overzealous with security concerns. International migration flows must be regulated in the framework of the ILO's decent work agenda with the genuine participation of workers' and employers' organisations, the full respect of all workers' rights and a guarantee that the right to equal treatment between local and migrant workers will be protected. The ITUC rejects the current deregulatory economic approach to migration which exacerbates decent work deficits both in countries of origin and destination, and treats migrant workers as an ultra-flexible workforce that can be hired and fired according to business cycles.

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International migration is not a new phenomenon. Few people in the world today need to go back further than two or three generations in their family tree to uncover a migrating ancestor. And today just like in the past, the main driver for migration remains the search for a better job, a decent job, a better life.

The mobility of workers across borders is a fundamental component of the globalisation process. The United Nations estimates the number of international migrants at 215 to 220 million i.e. 3% of the world's population. If all migrants were together in one country, it would be the 5th most populated country on earth. Even though the recent economic crisis has slowed the rate of migration, estimates indicate a steady increase since the year 2000 when the number of migrants was estimated at 150 million.

Every country in the world is affected by migration, either as a country of origin, transit or destination. Many are all three at the same time. According to UN estimates, 33% of the world's migration takes place between developing countries and about 38% of migrants leave developing for industrialised countries. The remaining 29% consists of migration originating from industrialised countries. Few developing countries have

put in place a legal framework to deal with labour migration, and stronger technical and financial support from the international community is needed in that matter.

The huge deficit of care and health workers at the global level has been the driving force behind the feminisation of migration. 50% of migrants are women and their particular needs are rarely taken on board. Yet migrant women are more vulnerable to sexual and physical abuses and discrimination. Migration policies need to be gender responsive.

International migration will undoubtedly continue for the foreseeable future motivated by factors that include family reunification, political instability, corporate globalisation, poverty, unemployment and other decent work deficits in some countries, matched by demographic changes and labour shortages in others. The construction of walls, militarisation of borders and criminalisation of migrants are unlikely to significantly hamper international migratory flows, despite the considerable amounts of money spent by governments.

Labour migration will continue to have a profound effect on labour markets.

Unequal development among and within countries is a root cause of migration. Current migration flows need to be understood in the context of global economics and the structural inequalities it creates. The dismantling of production chains, deregulation and liberalisation of financial, commercial and services systems have left large sectors of the population jobless, especially in developing countries, forcing them to emigrate in search of better livelihoods. Rural workers have been particularly affected. This has led the trade unions to support the concept of a right to not migrate. In richer countries, the neoliberal integration of markets induced a process through which labour markets became more flexible, employment relationships less stable and workers' rights eroded. In that context of increased precarious work worldwide, migrants, and in particular low skilled<sup>1</sup> migrant workers, constitute an inexhaustible stock of cheap and ultra-flexible labour.

A policy shift is urgently needed to put the ILO decent work agenda at the heart of global and national migration policy frameworks and to end a paradigm which relies on exploitative market forces to drive labour migration. By prioritising the creation of quality jobs and upholding the principle of equal treatment and opportunity between migrant and local workers, governments can reduce inequalities, promote development, social inclusion and progress and ensure that migration takes place out of informed individual choice and not out of dire necessity.

The principles of equal treatment and non-discrimination at work, which are at the heart of the decent work agenda, must be the cornerstone of any migration policy. This is not a theoretical position: dismissing or worse, ignoring these principles, creates injustice and exploitation for migrant workers and induces a downward pressure on working conditions for all workers.

### **Governance of labour migration**

The rights-based approach to migration enshrined in the UN system and promoted by the trade union movement must be implemented globally. As migration is a human phenomenon, flows must be governed from a rights perspective and governments kept

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<sup>1</sup> "low skilled" is often misused in the context of migration. Many migration schemes erroneously categorise some occupations such as care jobs as low skilled, undervaluing migrants' skills and competences.

accountable for their obligations to uphold the fundamental human and labour rights of all workers, including migrants who find themselves with an irregular status.

Trade unions have an important role to ensure that migrant workers' rights are respected both in law and in practice. This role of the union movement must be fully recognized at both national and international levels. Unions raise migrant workers' awareness of their rights, help identify and denounce violations and contribute to ensuring compliance with international standards. The organisation of migrant workers into trade unions reduces exploitation and strengthens workers' representation and bargaining power, assists with community integration, aids in deepening social cohesion and contributes to building more equitable societies.

A clear and comprehensive international legal framework upon which to base national policies is provided by the 1990 UN Convention on the Rights of all Migrant Workers and the Members of their Families, the ILO Migration for Employment Conventions No. 97 and Migrant Workers Convention No. 143 as well as their accompanying Recommendations No. 86 and No. 151. Unless otherwise explicitly stated, all international labour standards apply to migrant workers. Ratification and implementation of international instruments is a necessity to ensure good practice and the realisation of these rights.

The ILO multilateral framework on labour migration provides useful guidelines, principles and examples of best practices on labour migration policies which are regularly updated to take account of new developments. The CEDAW General Recommendation No. 26 gives clear guidance on how to define gender sensitive migration policies. These instruments need to be further promoted including among international organisations and used at the national level.

Beyond the existence of these international legal instruments and their respective supervisory mechanisms, there is no clear institutional framework dealing with migration at the global level. In the absence of such a framework, a range of institutions have come to facilitate states' response to migration. Some of them are embedded in other policy fields like for example the Global Migration Group<sup>2</sup> (GMG), a grouping of UN and other international organisations.

A disturbing development however has been the rise of influential and informal networks which gather governments' officials in flexible and non-binding settings. The IOM (International Organisation for Migration) has been promoting these informal networks at the bilateral, regional and global levels. The GFMD<sup>3</sup> (Global Forum on Migration and Development), is certainly the best known of such networks at the international level.

The trade union movement objects that behind the informal character of these networks, in practice, they are being used by governments as a platform to negotiate bilateral agreements behind closed doors and outside of the normative framework of the UN.

The IOM is a key player in the GFMD and indeed a key international institution working on migration. But it is not a UN agency and does not have fully inclusive membership. From a trade union perspective, the IOM cannot and should not become

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<sup>2</sup> GMG members are ILO, IOM, OHCHR, UNRC, UNCTAD, UN-DESA, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNITAR, UNODC, UN Women, WHO and the World Bank

<sup>3</sup> GFMD a non-binding state-led process that is not part of the UN system but meets annually

the institutional authority in that matter, as it has no normative basis for its work and no competency to oversee the implementation of states' obligations under international migration law. The IOM has further been involved in the design and promotion of migration programmes contravening international human rights and fundamental labour standards. This is notably the case in a Guatemala / Canada agreement in which the IOM promoted a labour migration contract restricting the right of Guatemalan farm workers to join a union in Canada<sup>4</sup>.

The lack of a clear institutional governance framework results in migration flows being “managed” through various institutions that co-exist across the bilateral, regional, inter-regional, and multilateral levels, through both formal and informal channels. The overall picture is incoherent and fragmented. In practice, states may take advantage of the absence of a clear international framework to formulate unbalanced and inconsistent policy where security concerns or economic interests are prioritised over states' obligations to uphold human and labour rights.

The trade union movement rejects the network approach currently promoted in forums such as the GFMD as they lack a normative reference for the protection of individual rights and rely on an unequal bargaining position among states which ultimately allows the powerful to pick and choose the type of migration they want under conditions they themselves define. A world in which all highly skilled migrants would go from developing to industrialised countries while lower skilled ones would stay in the developing countries is neither desirable nor sustainable.

The trade union movement demands an enhanced role and a more central place for the ILO in the global institutional governance of migration. Indeed, the ILO is the only UN agency with a constitutional mandate to protect migrant workers, and this mandate has been re-affirmed by the 1944 Declaration of Philadelphia and the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Although several institutional arrangements may be envisaged, it is absolutely essential that the global governance of migration be based within the UN system within a clear normative framework to oversee the implementation of states' obligations under international migration law. Multilateralism is important as it puts countries of origin and destination on an equal footing, preventing less powerful states from being compelled to accept the rules that emerge from the constraints created by the policies of the more powerful ones.

The 2013 UN High-Level Dialogue on Migration and Development is an opportunity to redress the deficits in the current system and put the ILO at the centre of a multilateral governance mechanism, reaffirming the centrality of decent work in migration issues.

***The ITUC and its affiliates commit to***

- ***Defending migrant workers' rights in law and in practice;***
- ***Campaigning for the ratification and implementation of relevant UN and ILO Conventions;***
- ***Promoting the role of the ILO in the global debate on and governance of migration with a particular focus on the 2013 UN High Level Dialogue.***

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<sup>4</sup> Under the terms of the contract, Guatemalan workers “should not distract” themselves “with any group or association” and their passports are withheld by the employer. They are further required to “beware of having relations with women” and “use deodorant before the flight and every day” they stay in Canada. CLC-CTC publication: “Canada’s Temporary Foreign Worker Program (TFWP) - Model Program — or Mistake?” April 2011 - <http://documents.clc-ctc.ca/HR-EQ/Model-Program-or-Mistake-2011-InDesign-EN.pdf>

## Global labour markets

Migration policies must be tied to employment and labour market policies with Labour Ministries and social partners having a leading role. Trade unions must be involved in the design, implementation and assessment of migration policies. They can contribute to the identification of labour market shortages and training needs and help ensure that systems are in place to effectively protect migrant workers' rights. The coordination and cooperation between trade unions and migrants' organisations and networks is crucial to help formulate and implement sound migration policies.

Labour market shortages can be primarily addressed by investing in the skills and qualifications of unemployed and underemployed national and foreign workers already present in the territory and by improving the working conditions in the sectors experiencing shortages. In addition, possibilities should be created for the admission of economic migrants, based on a clear consensus between public authorities and social partners about proven present and desired future labour market needs, keeping in mind human rights principles such as freedom of movement.

Migration policies favouring and facilitating the admission of the highly skilled, while denying access to lower skilled workers, should be avoided. Opening legal avenues for low-skilled workers from developing countries should be promoted when it is backed by genuine tripartite analysis of labour market shortages and/or of demographic trends. Trade unions see little benefit in the current segmentation of labour markets which grants migrant workers differentiated treatment and protection depending on the level of their skills. The ITUC objects to policies that provide highly skilled workers with a wider set of rights and benefits leaving lower skilled migrants at a disadvantage, sometimes even deprived of their most fundamental rights<sup>5</sup>.

Migration policies must be mindful of the negative effects of global competition for skilled labour, especially from developing countries, as it depletes these countries from highly needed human resources for their economic and social development (the so-called brain drain effect). Ethical recruitment practices should be defined and implemented in close cooperation with the social partners of both countries of origin and destination. The WHO Code of practice on the international recruitment of health personnel is a positive example. Particular attention should be paid to the brain waste or the under-utilisation of skills and qualifications of migrants in countries of destination.

Social partners and labour ministries must ensure that employment and migration policies are gender sensitive, monitor the enforcement of rules and regulations applicable to working women, and take firm action to sanction and discourage gender discrimination in the world of work such as the gender pay gap and gender unbalanced social security entitlements. Particular attention should be paid to migration flows in women dominated sectors such as the domestic and care sectors. In the light of a very high rate of serious human and workers' rights violations suffered by migrant domestic workers, the ITUC urges all member states to ratify and implement the recently adopted ILO Convention on Domestic Workers No 189 which addresses the particular needs of migrant domestic workers.

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<sup>5</sup> The evacuation of foreign staff in Libya is a case in point: while qualified staff in the oil industry were repatriated back home by multinational companies, lower skilled international staff are forced to scramble for security and survival along desert routes desperately looking for refuge.

Policies to promote collective bargaining and improve the quality of jobs are essential to prevent both local and migrant workers from being trapped in the vicious cycle of low-paid, low-skilled jobs. Putting in place education and training policies adapted to migrants' skills levels and responsive to present and future labour market needs are essential to enhance national productivity and ensure the full integration of migrants in host societies. A better coherence of migration, employment, training and integration policies is even more urgent in these countries with a shrinking workforce as a result of population ageing.

***The ITUC and its affiliates demand:***

- ***Structural and constructive dialogue between trade unions and Labour Ministries on migration policies;***
- ***Coherence among government agencies and policies;***
- ***That labour market shortages be identified on the basis of a thorough and evidence based tripartite analysis which takes account of trade unions' viewpoints.***

**Undocumented workers**

Despite all barriers, irregular migration has grown in recent years in virtually every country. The co-existence of restrictive migration policies with labour market shortages is one element, among others, explaining this growth.

Workers in an irregular situation are particularly vulnerable to abuse and exploitation as fear of deportation often prevents them from seeking legal redress when their rights are violated. Fear also often blocks the exercise of their rights to form and join trade unions. Relevant international instruments provide for the principle of equal treatment with regards to wages, working conditions and employment related social protection and benefits for all migrant workers, regardless of their status. Failure to recognise that right perpetuates exploitative work situation and puts a *de facto* downward pressure on working conditions in the sector concerned.

Exploiting undocumented migrant workers must be treated as an offence punishable by sanctions significant enough to deter such unscrupulous practices. It should be legally possible to extend sanctions to the whole subcontracting chain by establishing joint liability between contractors and sub-contractors as undocumented workers are often employed through intermediaries. People smugglers, migrants' agents or others found guilty of trafficking undocumented workers should face serious financial and penal consequences. Undocumented migrant workers, however, should never be punished under criminal laws for the mere fact of not holding a visa or work permit. In order to encourage undocumented workers to seek legal remedy when they have been victims of unscrupulous employers, grievance mechanisms, including legal assistance, should be readily available and options for transitioning to regular migratory status be established and clearly communicated.

The migratory regularisation of undocumented workers may in practice, be an important tool to put an end to exploitation and abuses. Governments in close consultation with the social partners should consider establishing clear criteria and conditions under which long-staying irregular migrants are offered a chance to earn regular status.

***The ITUC and its affiliates commit to:***

- ***Organising, defending and facilitating the access to justice for undocumented migrant workers;***
- ***Actively engaging in the debate on the conditions under which the regularisation of irregular migrant workers should be envisaged and supporting regularisation campaigns accordingly.***

**Shift from permanent to temporary migration**

There is no universal definition of temporary migration. It is usually understood as any non-permanent stay outside the country of origin generally for the purpose of work. Circular migration involves the notion of repetitive movements back and forth between countries of origin and destination. Both temporary and circular migration can be spontaneous or “managed” by a specialised entity. Entities most commonly engaged in temporary or circular programmes are private recruitment or placement agencies, public or non-profit partners mandated by bilateral governmental agreements, and bureaus of employers’ organisations which may themselves also hire recruitment agencies.

Today temporary labour migration flows largely exceed permanent ones, although reliable data is missing in several countries. According to OECD statistics, in 2009 the number of temporary migrant workers in these countries approximated 1.9 million while the number of permanent labour migrants was registered at 1.5 million.

Circular migration has recently been promoted on the international scene as a “triple win solution” that would maximise the benefits for both countries of origin and destination as well as for the migrants themselves. The promotion of this flawed “triple win” theory, strongly supported by the IOM and the GFMD, is mainly driven by a neo-liberal approach to labour markets, the assumption being that temporary migration can easily be stopped and migrants encouraged to leave when the demand for labour decreases. OECD statistics show a decline in permanent regulated labour migration flows of about 7% after the 2008 economic downturn but it was indeed free-circulation movements within the European Union and temporary labour migration which saw the biggest changes with falls of 36% and 17%, respectively<sup>6</sup>.

In practice, problems associated with circular migration programmes are among the most exploitative of any migration arrangements.

Firstly, they often limit the fundamental rights of migrants to join and form a trade union. Even in the limited number of programmes in which these rights are granted, in practice collective bargaining is almost impossible as the working conditions are defined and imposed on the migrants prior to departure.

Secondly, the wages tend to be lower than the ones paid to local workers, access to social security schemes is often limited and training options are non-existent. Workers with lower skill levels are also the ones granted the poorer working and living conditions.

Thirdly, in the countries of destination, migrants are generally not allowed to change jobs or employers, to freely choose the time of return, or to enjoy the right to family reunification. They rarely receive pay for overtime work, often a requirement of the employment. In numerous cases, severe violations of rights have been reported such as the withholding of identity documents, the prohibition of free circulation outside the

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<sup>6</sup> International Migration Outlook 2011 OECD

dormitory, non-payment of wages or abusive reduction of paid salaries to re-pay food, accommodation (including unsafe, overcrowded, or unhygienic accommodation) or agency fees.

Lastly, these programmes are often used by employers to avoid unionisation of the workforce, ensure maximal flexibility in hiring and firing and keep the labour costs at the lowest levels.

The ITUC opposes all migration arrangements in which workers' rights are not respected and the principle of equal treatment between migrant and local workers is flouted.

***The ITUC and its affiliates commit to***

- ***Denouncing and exposing these temporary and circular migration schemes.***

**Recruitment agencies**

To keep the costs of recruitment processes down, governments are opting for new forms of organising labour mobility. Increasingly, they delegate responsibilities in migratory processes, in particular the recruitment process, to non-state actors, such as private employment agencies. Yet, because they are usually left unregulated and unmonitored, recruitment and placement agencies play a pivotal role in the surge of forced labour. In 2005, ILO experts estimate that global profits made from forced labourers exploited by private enterprises or agents reach 44.3 billion US dollars every year, of which US\$ 31.6 billion is from trafficked victims<sup>7</sup>.

There is an urgent need to regulate cross-border recruitment agencies. Ratification and implementation of ILO Convention 181 on private employment agencies is a good starting point. All transnational agencies should be duly registered and licensed. Moreover, licensing mechanisms should be subject to tripartite monitoring and review systems and all recruitment agencies should be required to disclose on an annual basis the scope and nature of their operations and the systems that are in place to guard against abusive practices. This would include the reporting of all legal cases where the agency has been charged with abusive treatment of workers or violation of their rights.

Public authorities, especially in countries of origin, must monitor and inspect recruitment agencies on a regular basis to ensure compliance with rules and regulation. Clear rules should prevent recruitment agencies from misinforming migrant workers about their working conditions in destination countries, and breaches of that rule must be severely sanctioned. Joint liability for user-companies should also be established in the national law of destination countries and the public labour inspection systems of destination countries must be adequately empowered and funded.

The practice of charging workers fees for placement should be abolished in both sending and receiving countries. Workers should have access to effective complaint mechanisms and remedies for abusive behaviour in both sending and receiving countries.

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<sup>7</sup> "Forced Labor and Human Trafficking: Estimating the Profits", Patrick Belser, ILO, 2005

*The ITUC and its affiliates commit to:*

- *Denouncing and exposing recruitment agencies who abuse migrant workers;*
- *Advocating for the establishment of a regulatory framework in both sending and receiving countries regarding the regulation of cross border employment agencies and working for international standards and more intergovernmental cooperation in that matter;*
- *Supporting migrant workers abused by unscrupulous recruitment agencies in seeking a remedy and getting compensation.*

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The General Council is requested to endorse the above policy statement, and to instruct the General Secretary to ensure that labour migration be one of the ITUC's core priorities for 2012 and beyond, promoting the above mentioned policy framework worldwide and developing relevant projects, campaigns and communication activities such as foreseen in the 2012 ITUC Action Plan on migration.