

Civil Society Days 2015, 12-13 October

THEME 3: Achieving goals for labour mobility, labour rights and decent work

ACTION PAPER FOR WORKING SESSION 3.1 and 3.2¹

3.1: Reforming migrant labour recruitment policies and practices

3.2: Reforming migrant labour employment policies and practices

1. INTRODUCTION OF THE ISSUE

There are approximately 232 million migrants in the world, with the overwhelming majority migrating for work. They are domestic workers, construction and agricultural workers, teachers, nurses and professionals. They often travel long distances due to a lack of decent work at home seeking opportunities to support their families, improve their income, and build a better life. How these workers move and under what terms are critical questions for global economic and social development. Governments must address a fundamental question that implicates the entirety of the global labor market: How should people be treated as they move from their communities and cross borders to work.

With poverty and violence driving more and more families from their homes, xenophobic forces have pushed for the further criminalization of undocumented workers and their families, more border controls and detention, and nativist exclusion with disastrous and often deadly results. Meanwhile origin and destination country governments have become dependent on migrant workers for their labour and remittances, and states and corporate interests have sought to “manage” the movement of migrants like everyday commodities in temporary, seasonal and circular migration programmes that limit worker rights and drive down wages. Temporary work visas are often disproportionately used by temporary staffing and outsourcing agencies, a precarious employment model which has dramatically increased globally, spreading to all sectors and occupations including those that used to employ workers directly. This has contributed to a global jobs crisis, characterized by deeply concerning high youth unemployment and an alarming rise in precarious work – in the form of part-time, contract, informal, irregular, or temporary jobs—which have been occupied in large part by migrants and women.

Women and children bear an enormous burden due to the structures of global labour migration. Work visa programs separate families and generally deny the right of family reunification. No worker should have to give up her right to her family in order to work. States must expand opportunities for migration that provides citizenship routes and limit temporary migration schemes that deny rights, separate families and create a second-class of often racially or culturally “different” workers in the host country. Further, in many sectors where women and children interface with the labour market including agriculture and domestic work, labour inspection is weak or nonexistent, and employers

¹ This draft Action Paper has been prepared as input for the 2015 GFMD Civil Society Days by Migrant Forum in Asia and AFL-CIO

are left as de facto immigration enforcement agents. Immigrant workers often face the highest rates of wage theft, sexual harassment, and death and injury on the job.

Primarily, it is the responsibility of states to ensure that migrant workers, regardless of status, are informed and are able to claim their labour rights, in particular the rights to freedom of association, collective bargaining, equal treatment and social protection, and must ensure that they are protected when they report abuses and violation of their rights. Employment strategies should aim to raise global living standards by creating decent work and faster wage growth in industrializing economies rather than reducing wages in industrialized nations through precarious work and temporary labour migration programmes.

2. KEY RELATED CIVIL SOCIETY RECOMMENDATIONS FROM THE “5-YEAR 8-POINT ACTION PLAN” AND GFMD 2014

Civil Society’s 5-year 8-point Action Plan

Point #7 and #8 from the (2013) Civil Society 5-year 8-point action plan for follow up, in collaboration with governments are on labour mobility:

- #7: Identification or creation, and implementation, of effective standards and mechanisms to regulate the migrant labour recruitment industry [...] benchmarks could include a global synthesis of existing recruitment problems and solutions, national or transnational; a global convening of legitimate private recruitment actors; development of a compact on reducing abuses in the recruitment field.
- #8: Mechanisms to guarantee labour rights for migrant workers equal to the rights of nationals, including the rights to equal pay and working conditions, to form and organize in trade unions, to ensure portability of pensions, and to have paths to citizenship for migrant workers and their families. This recognizes the long-term needs of many nations for migrant workers, while guaranteeing human security and rights to those workers to meet economic, demographic and development needs while affirming the States’ role to protect the rights of all workers. Benchmarks could include addressing the movement of peoples in the global trade agenda and national progress in complying with the worker-related international conventions, in particular ratification and implementation of the UN Migrant Workers Convention and the ILO Convention on Domestic Workers.

“Stockholm Agenda” on migrant and migration-related goals and targets in post-2015 global and national development agendas, has several recommendation on labour:

- Create and preserve decent work opportunities in countries of origin which make migration and re-migration an option instead of a necessity and mitigate brain drain
- Ensure that migrants enjoy decent working conditions and social protection that conform to international human rights and labour standards
- Ensure portability of skills
- Reduce costs of labour migration, with priority to abolishing debt bondage and recruitment charges to migrant workers

The below table is an extract from the draft *Global Movement Report*, a report presenting progress on Civil Society’s [5-year 8-point action plan](#). Through interviews with key civil society actors, a survey

² <http://gfmdcivilsociety.org/wp-content/uploads/2014/06/Civil-Society-Migration-Stockholm-Agenda-June-2014.pdf>

completed by more than 330 civil society organisations across the world, and document review, this report aims to reflect some of the progress or stagnation with regards to the 8 points. In the below some findings on point 7 and 8:

POINT 7: MIGRANT LABOUR RECRUITMENT			
Benchmarks	Verification	+ -³	Justification
More Ratification of C181?	NORMLEX	+/-	To date, 30 countries have ratified ILO's Private Employment Agency Convention, 1999 (No. 181). Since the HLD in 2013, 3 countries have ratified the convention (Zambia, Niger, and Mongolia). Significant countries are still to ratify the convention.
Has civil society engaged in the identification of policies and practices in the area of recruitment (positive and negative)?	Interviews Document Review	+	This is an area that civil society has been particularly engaged in through action research identifying problems in supply chains and by assisting and advising businesses and governments regarding reforms in both policies and practices. RecruitReform.org consolidates civil society efforts in one place.
Have governments reformed their policies and practices?	Interviews Document Review	+/-	There are some promising movements among many governments, particularly in Asia, to reform recruitment policies, but most still need to translate in reality.
Has there been an increase in national and regional multi-stakeholder platforms on recruitment and employment practices?	Interviews Document Review	+/-	ILO Fair Recruitment Initiative/ IOM IRIS / More discussion of Recruitment during RCPs
Do more businesses endorse and operate by the Dhaka principles?	Interviews Document Review	+/-	The HP Supply Chain Foreign Worker Standard (December 2014) and the Electronics Industry Citizenship Council incorporation of text on recruitment fees in its code of conduct (March 2015) are positive signals that the business world is starting to consider the Dhaka Principles.
POINT 8: LABOUR RIGHT FOR MIGRANT WORKERS			
Ratification of C189 – ILO Domestic Workers Convention	NORMLEX	+/-	To date, 21 countries have ratified ILO's Domestic Workers Convention, 2011 (No. 189). A diverse spectrum of countries (Ecuador, Costa Rica, Argentina, Colombia, Ireland, Switzerland, Finland, Dominican Republic, Belgium, Chile, and Panama) has ratified C189 since the High-Level Dialogue Conference in October 2013. However key countries receiving domestic workers have not yet ratified the convention
Ratification of 1990 UN Migrant Workers Convention	UN Treaty Collection	+/-	While ratifications of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) have increased at a steady rate, there are still less than 50 countries who are a signatory to the convention. The upcoming 25th anniversary (on 18th December 2015) represents an opportunity for renewed advocacy of the convention. This is an area where civil society campaigns are in place, such as the Step it Up campaign. However the last ratification was Madagascar in 2014.
Ratification of C97 – ILO Migration for Employment Convention	NORMLEX	-	The last ratification of the Migration for Employment Convention, 1949 (C97) was the Philippines in 2009.
Ratification of C143 – ILO Migrant Workers Rights Convention	NORMLEX	-	There have only been 23 ratifications of the Migrant Workers Rights Convention, 1975 (C143) thus far and no new ratifications since 2007 (Tajikistan).
Has the protocol to the ILO Forced Labour Convention (2014) been translated into national law and implementation?	NORMLEX	-	According to Article 8 of the Protocol "the Protocol shall come into force twelve months after the date on which ratifications of two Members have been registered by the Director- General". To date, only Niger has ratified the protocol. Thus, despite the overwhelming majority that adopted the protocol at the (ILC) on 11 June 2014 (437 for, 27 abstentions, 8 against), limited progress has been made.

³ Green (or +) indicates good progress has been made. Orange (+/-) indicates some progress has been made. Red (-) indicates no substantial progress on this point.

3. KEY ACTIONS

Over the past years a number of promising initiatives and actions have been undertaken by civil society, international organizations, and some states. Below are a just three examples of initiatives, the Working Sessions will drive at collecting more examples, and analysis how these can be stepped up:

- The civil society Open Working Group on Labour Migration & Recruitment which was set-up in 2014 is committed to knowledge sharing and collective advocacy to reform migrant labour recruitment practices globally, and has made progress moving recruitment reform globally, in line with efforts like the ILO's fair recruitment initiative.
- The CDM initiative, *Contratados* (see below) is a recent worker led initiative that seeks to build recruitment transparency through the reporting of recruitment related abuse and workers sharing their experience in the recruitment process.
- In the United States: California regulation of the recruitment industry and Supply Chain Transparency Act. Obama administration Executive Order "Strengthening Protections against Trafficking in Persons in Federal Contracts," which bans recruitment fees to workers.

4. KEY EXISTING PRACTICES AND TOOLS

Below a few examples are given of existing global and regional frameworks and tools. The Working Sessions will drive at discussing how these tools and practices can be (better) used by civil society to advocate for changes in migrant labour recruitment and employment policies and practices:

- CDM, *Contratados*⁴
- ILO, *Fair Recruitment Initiative*⁵
- IOM, *International Recruitment Integrity System (IRIS)*⁶
- Verité, *Fair Hiring Toolkit*⁷
- *UN Special Rapporteur on the human rights of migrant recruitment report.*⁸
- *Sustainable development goals*⁹
- Generally: ILO standards and programmes
- Collective bargaining
- Open Working Group on Labour Migration and Recruitment: www.recruitmentreform.org

5. KEY SUGGESTED GOALS AND INDICATORS

The Working Sessions will be geared towards deepening existing goals and benchmarks and action, starting from the following five goals:

- Goal 1: Improve laws and regulations governing labour recruitment, migration and employment of migrant workers

⁴ <http://contratados.org/en>

⁵ http://www.ilo.org/global/topics/fair-recruitment/WCMS_320405/lang--en/index.htm

⁶ <http://iris.iom.int/>

⁷ <https://www.verite.org/helpwanted/toolkit>

⁸ http://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-26-35-Add1_en.pdf

⁹ <https://sustainabledevelopment.un.org/post2015/transformingourworld>

- Goal 2: Empower migrant workers to organize and advocate for fair recruitment, migration and employment collectively and individually
- Goal 3: Promote employer and business accountability to respect migrant workers' rights in recruitment, migration and employment
- Goal 4: Enhance civil society strategies and capacity to promote and protect the rights of migrant workers in recruitment, migration and employment
- Support for Target 8.8 of the Sustainable Development Goals to *“Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.”* Indicators could include:
 - increased amount of legislation banning recruitment fees to workers,
 - increased collective bargaining coverage for migrant workers, equality in wages and working conditions between nationals and migrant workers.

6. RECOMMENDATIONS AND ACTION STEPS FOR THEIR IMPLEMENTATION

The working session will be defining actions to recommend to governments and for civil society to take forward. At the global level the authors of this Action paper in particular propose to work on the following three recommendations:

1. Regional consultations in major migration corridors, which must include workers, employers, and migrant worker organization, to take steps toward policy mechanisms to promote access to justice and recruitment transparency.
2. Enhanced data collection and publication on wages, working conditions, recruitment conditions, and visa sponsorship by employment sector.
3. Private sector implementation of human resources and procurement policies that promote direct hiring, ban recruitment fees, and protect core labour standards among suppliers.

7. GUIDING QUESTIONS FOR DISCUSSION DURING THE SESSION

1. What legal, regulatory, institutional and enforcement mechanisms are necessary to promote fair recruitment and migration, and robust protections for migrant workers?
2. What implementing, redress and accountability mechanisms will be needed?
3. What practical, replicable and scalable strategies can be used by civil society to promote individual and collective empowerment of migrant workers?
4. What civil society strategies, tools and practical steps have proven successful and replicable in promoting corporate accountability for migrant workers' rights in supply chains?