

ITUC Briefing Note for Preparatory ILC Meetings 106th Session of the International Labour Conference (June 2017)

General Discussion on Labour Migration: Addressing governance challenges in a changing labour migration landscape.

1. Context

In 2015, there were an estimated 244 million international migrants, a number that has risen by 71 million or 41 per cent since 2000. Half of them are women. Migrant workers represent 4.4 per cent of the global workforce. The largest proportion of migrant workers of all workers is found in the Arab States (one-third), followed by North America (one-fifth) and Northern, Southern and Western Europe (one-sixth).

All migrants are – directly or indirectly – on a quest for decent work opportunities. 71.1 per cent of all migrant workers are employed in the services sector. The rest are employed in industry, including manufacturing and construction, and in agriculture. Migrant workers often face discrimination and are overrepresented in dirty, dangerous and demeaning jobs. Migrant workers are particularly vulnerable to forced labour and modern slavery. Many face abuse and exploitation as unscrupulous recruiters and employers abuse gaps in labour migration governance, regulation and enforcement.

Migration across borders is likely to continue as a prominent feature of the “Future of Work”, one of the ILO’s seven centenary initiatives. Labour migration will therefore also have a significant impact on the transformations in the governance of work in the future. In November 2015, the ILO Governing Body agreed to hold a general discussion on labour migration with particular reference to effective labour migration governance at the national, bilateral, regional and interregional levels, and fair recruitment, which are key components of the ILO fair migration agenda.

The discussion will focus on global and regional labour migration trends, labour migration governance challenges, bilateral agreements on labour migration, regional labour migration and mobility and fair recruitment and should strengthen the ILO’s work and impact in the field of labour migration. The conclusions should also inform related discussions at the global level, most notably the negotiation and adoption of a Global Compact on Safe, Orderly and Regular Migration by the United Nations in 2018 and enhance policy formulation and implementation to promote fair migration at the national level.

The discussion at the ILC will build ILO Conventions 97 and 143 and their accompanying Recommendations 86 and 151, the ILO Multilateral Framework on Labour Migration, the outcomes of the 2016 General Survey discussion and the Fair Recruitment Guidelines adopted in 2016.

2. What we want

- **Political commitment to the ILO Migrant Worker Conventions should be renewed.**

To date, only 49 countries have ratified C97 on migration for employment and 23 have ratified C143 on Migrant Workers (Supplementary Provisions). In the 2016 General Survey, the Committee of Experts affirmed that the objective of the instruments remain relevant and noted the potential of the instruments to contribute to effective governance of the considerable migration challenges faced by the tripartite constituents. However, the Committee also noted that certain provisions might be considered to have “lost their relevance, not being fully responsive to, or necessary, in the current migration context”, and mentioned the possible use of the Standards Review Mechanism in this regard. The Committee considered that “the tripartite constituents may, within the general discussion on labour migration in the Conference next year, wish to clarify the possible need for a review or consolidation of Conventions Nos 97 and 143, as well as the need to complement the existing international labour standards”. The ITUC considers that the migrant worker Conventions remain up-to-date and relevant

to the global, regional and national governance of migration, although additional complementary standard(s) may be required. In addition to an awareness-raising and implementation campaign, as recommended by the Committee of Experts, the Office should undertake a well-resourced and highly visible campaign to promote the ratification of the Conventions.

- **Bilateral agreements on labour migration and labour mobility**

Increasingly, labour migration is being governed through bilateral agreements, without due attention to the application of the international normative framework and the obligation to protect the rights of migrant workers. Further, discriminatory practices are becoming embedded in such agreements, whereby different treatment entitlement packages, including pay, apply for migrant workers doing exactly the same work but coming from different countries of origin. Whilst they can be a useful element in regulating the conditions of recruitment and work, bilateral agreements cannot substitute for the adoption and implementation of national laws consistent with relevant international labour and human rights standards. The trade union movement has opposed the growing use of labour mobility clauses in bilateral and multilateral trade agreements as tending towards the commodification of labour, promoting temporary and circular migration while failing to guarantee the human and labour rights of workers. There is an urgent need for increased transparency and social dialogue in the negotiation of such agreements.

- **Fair recruitment**

Fair recruitment of migrant workers is critical. Effective regulation and monitoring of recruiters is necessary to prevent migrant workers from experiencing fraudulent and abusive conditions, including trafficking in persons and forced labour. The adoption of the Protocol of 2014 to the Forced Labour Convention, 1930, is an important instrument in this regard. The experts meeting on Fair Recruitment in 2016 agreed on the need to systematically address abuses in recruitment processes, protect the most vulnerable workers and ensure transparency and efficiency of such processes. Particular areas of concern emerging from the meeting include the scope and definition of recruitment fees and related cost and a clear prohibition on charging such fees and costs to workers or jobseekers; tied employment regimes which prevent workers from changing employers, even in abusive situations; and access to remedies such as joint liability. Additional challenges exist in relation to enforcement of laws across jurisdictions. These and other gaps and challenges could be addressed through a new binding international labour instrument on fair labour recruitment.

