

Situating Migrant Workers in a Decent Work Agenda: The Need for Solidarity in Recession Ireland



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CONTEXT

This paper was developed by Migrant Rights Centre Ireland (MRCI) to input to the roundtable on Migration and Decent Work organised by MRCI in collaboration with the Coalition to Protect the Lowest Paid on October 2012.¹ It aims to contribute to the debate on realising and addressing the rights of migrant workers who have made Ireland their home, within the broader struggle for decent working conditions for all low-paid workers. It also seeks to consider a rights-based response to labour migration in the future.

A far greater number of migrants remained in Ireland despite the recession. In 2011 the pace of inward migration to Ireland slowed but the number of non-Irish nationals living in Ireland numbered 544,357.² It is also forecasted that migration will increase in the future.³ By 2015, immigration at the current level will not be sufficient to maintain the working age population in many OECD countries, especially in the EU.⁴ Migration will continue to be a central element of Ireland's economic development.

The severity of the economic recession has compounded the issues for all low-paid workers including migrant workers. One fifth of all workers in Ireland are low paid and women, young people and migrants are adversely affected. In tandem the dismantling of the equality infrastructure⁵ and a continued push for labour force 'competitiveness' and flexibility in the workplace to attract inward investment is creating the conditions for the growth of precarious work.⁶ From a worker's point of view, precarious work is related to uncertain, unpredictable and risky employment.⁷ Ireland's labour market is now one of the most flexible in the OECD.⁸

Unfair treatment of migrant workers undermines wages and working conditions in national labour markets. Ensuring the protection of migrants' rights is a key element in achieving decent working standards for all workers.

1 The Coalition to Protect the Lowest Paid is made up of workers, trade unions and community organisations including *SIPTU, Mandate, Communications Workers' Union, UNITE, Migrant Rights Centre Ireland, Poor Can't Pay Campaign, Community Platform, the European Anti-Poverty Network Ireland and the National Women's Council Ireland.*

2 'All Non-EEA nationals remaining in the State for longer than 90 days are required to register with the Garda National Immigration Bureau. The provisional 2011 year end estimate of non-EEA nationals with permission to remain in the State is approximately 130,500.' Irish Naturalisation and Immigration Service, Press Release, Immigration in Ireland 2011- A year end snapshot, 3 January 2012

3 International Migration Outlook, 2011, Organisation for Economic Cooperation and Development, 2011.

4 Economy: Migration Starting to Rebound, 2012, International Migration Outlook, OECD, July, 2012.

5 The Equality Authority, established in 1999 under new Irish equality legislation and the recognised equality body under EU equality legislation, had 42% of its resources cut in Budget 2008. The Equality Authority is responsible for both employment equality and equal status legislation. This had a clear impact on its capacity to provide adequate protections to people in the nine ground covered under Irish equality legislation including that of race and membership of the Traveller community.

6 Precarious work 'refers to forms of work characterised by atypical employment contracts, limited or no social benefits and statutory entitlements, high degrees of job insecurity, low job tenure, low wages and high risks of occupational injury and disease.

7 Moving from Precarious Employment to Decent Work, Discussion Paper Number 3, John Evans & Euan Gibb, International Labour Office, 2009.

8 Decent Work? The Impact of the Recession on Low Paid Workers, A report for MANDATE Trade Union by Camille Loftus & Behaviour and Attitudes, 2012.

The ILO has developed an agenda for decent work that prioritises fair and sustainable working opportunities. It has four interdependent and reinforcing elements:

- Access to productive employment and income opportunities;
- Rights at work, particularly with respect to the core labour standards;
- Systems of social protection; and
- A voice at work through social dialogue.

The Decent Work Agenda is an approach that emphasizes employment that is accompanied by rights, representation and protection.

Given the impact of the current economic crisis on low paid workers, including migrants, it is vital that decent jobs become a governmental policy objective and the reality for migrant workers in their employment. The ILO Decent Work Agenda could be a useful framework from which to develop an Irish response.

MIGRATION: A DECENT WORK ISSUE

As migration trends indicate, Ireland will remain a multi-ethnic society with migrant families settling here despite the economic crisis. However, there has been a growing negative portrayal of migrants within Ireland because of an assumption that migrants should 'return home' when in fact many have 'settled' and made a home in Ireland. An Irish Times poll in 2009 showed that as the recession deepens there is a hardening of attitudes to the presence of migrants in Irish society.

Government labour migration policy aims to meet most of Ireland's labour needs from within the enlarged EU. However, skill shortages still remain in the Irish economy and these skills are sourced from outside the European Union. The main mechanism by which Non-EEA nationals take up employment in Ireland is through the work permit system, a guest worker model that accords no explicit rights to migrant workers. This system is restrictive as a worker's immigration status in the country is dependent on their employment and a worker can only work for the employer specified on the work permit. If a worker seeks to leave this employer they are no longer eligible to work. This effectively ties a worker to the one employer.

Current government policy is to provide a work permit system that enables migration of highly skilled workers only, yet demand for a broad range of skills continues to exist within the economy. For example, care work and the meat processing industry. It is also necessary to provide migration channels to respond to demands in essential skill areas. Without the legal channels of migration some unscrupulous employers will inevitably exploit workers to meet their on-going need. Diversification of skills need

must be factored into the labour migration reform process to ensure the development of the economy and the protection of labour rights and standards.

In 2011, 32,143 persons (20%) still required a work permit to work and to live in Ireland.⁹ In 2012, MRCI, through its casework, has seen an increase in the refusal rate of work permit applications. The unintended consequences of this are that it often pushes people into irregularity in employment and puts them at greater risk of exploitation and of becoming undocumented in the state. These risks remain prevalent as the work permit system still "ties" a worker to their employer.

Despite that fact that we have a system which rewards five years' employment with long term residency, in the main workers are expected to return home once they have no work. While some concessions have been made, such as the redundancy scheme which gives a six-month window to work permit holders to apply for any job without the need for a labour market test, the reality is that this is too short. These negative consequences and the lack of transparent migration channels into the future undermine both labour market need and worker rights.

ISSUES FACING MIGRANTS IN RECESSION IRELAND

The growing trend of migrant vulnerability is evidenced in the following ways:

- **Risk of Poverty and Destitution** – the percentage of non-nationals at risk of poverty and destitution stands at 18.4% and is higher than for Irish nationals which is 14.4%.¹⁰ Oxfam and the European Women's Lobby have identified that women are being disproportionately affected by the recession experiencing higher levels of poverty and more precarious working conditions.¹¹
- **Unemployment Rate** – Migrants are more vulnerable to losing their jobs in the recession. The rate of unemployment for migrants is 18.1% which is higher than for Irish workers at 14%.¹²
- **Accessing Social Protection** – For those migrants becoming unemployed, the operation of the Habitual Residency Condition means many migrants are denied access to fundamental social protections.¹³ The situation of women experiencing violence and supporting families has been highlighted as a particular concern.

⁹ Registration of Non-EEA Nationals, Garda National Immigration Bureau, 2010.

¹⁰ SILC data, Central Statistics Office data, 2009

¹¹ Women's Poverty and Social Exclusion in the European Union at a Time of Recession, Oxfam International/European Women's Lobby 2010.

¹² Central Statistics Office, 2011.

¹³ Migrants from new EU states 'denied welfare' JAMIE SMYTH Social Affairs Correspondent, The Irish Times- Monday, January 11, 2010

Non-EEA nationals and in particular undocumented migrants are facing “a severe and increasing risk of exclusion from the labour market and social assistance and services.”¹⁴ Despite the fact that such migrant workers have paid taxes and PRSI, they are not entitled to social protection due to their undocumented status.¹⁵

- **Access to Work & a Decent Wage** – Migrants are concentrated in specific sectors where wages are lower such as restaurant work, construction and domestic work.¹⁶ Some migrant workers report that their employers are not offering full-time hours any more but instituting short-time work, involving involuntary part-time employment or unpaid leave. Due to the significant drop in hours and wages many migrant workers can just about pay their bills.¹⁷
- **Lack of Progression** - There are barriers for migrant workers to progress at an individual level. Within the workplace many migrant workers are concentrated in low-paid work with few prospects to enhance their opportunities. Overall ‘migrants both men and women have a better educational profile than the Irish population as a whole but despite their relatively higher qualifications, migrant occupational profile is similar to the Irish population.’¹⁸
- **Worsening Working Conditions** - Migrants in low income jobs are reporting deterioration in their working conditions.¹⁹ The National Employment Rights Authority has reported a high rate of non-compliance with employment law with a 50% non-compliance rate with the National Minimum Wage reported for the first 6 months of 2012.²⁰ A recent survey conducted by the MRCI with 120 migrant workers in the restaurant industry showed high levels of breaches of employment law and lack of any enforcement of employment standards. For example, 80% have no contract of employment and 88% of the work places have never been visited by a Labour inspector.

- **Lack of Access to Redress for Exploitation** - A recent High Court ruling found that the Employment Permits Act 2003 prevents undocumented workers from seeking redress under labour law as the employment contract cannot be recognised. In effect this prevents undocumented workers from seeking legal redress in the employment courts.²¹
- **Forced Labour/Trafficking** - Incidents of modern day slavery are expected to increase in the recession. MRCI have dealt with over 180 cases of forced labour and trafficking over the last six years. Lack of identification of victims and prosecutions of perpetrators are serious barriers to tackling this problem. The lack of progress on these issues has been highlighted as an area of serious concern by international expert bodies.²²
- **Racism and Discrimination** – There is evidence of high levels of discrimination and racism against migrants. Migrant workers are being hindered from accessing employment because of racism. Non-Irish nationals are three times more likely to experience discrimination while looking for work, while Black people are seven times more likely. Moreover, in the workplace non-Irish nationals are twice as likely to experience discrimination as Irish nationals.²³

¹⁴ Study on Active Inclusion of Migrants, Final Report, Institute for the Study of Labor (IZA) and The Economic and Social Research Institute (ESRI), 2011.

¹⁵ Migrant workers losing their jobs, who are undocumented, and have paid taxes for many years are not being granted access to social protection.

¹⁶ The social situation in the European Union, 2020, European Commission and Eurostat, p 36.

¹⁷ Impact of the Recession on Migrant workers, MRCI, Migrants Forum Consultation Meeting May, 2012, 60 migrant workers in attendance.

¹⁸ An introduction to the situation and experience of women migrant workers in Ireland, Jane Pillinger, Equality Authority, 2006.

¹⁹ From boom to bust: migrant labour and employers in the Irish construction sector.’ Economic and Industrial Democracy, Krings, Torben, Alicja Bobek, Elaine Moriarty, Justyna Salamonska and James Wickham (2011).

²⁰ National Employment Rights Authority (NERA) Quarterly Bulletin, 2012 & National Employment Rights Authority Annual Report, 2009.

²¹ The High Court case concerned Amjad Hussein, trading as Poppadom Restaurant, challenging a decision of the Labour Court with respect to Muhammad Younis, who was awarded €92,000 for breaches of employment law.

²² US Trafficking in Persons Report, 2011 and the Organisation Security and Cooperation in Europe, Report by Marias Grazia Giammarino, Special Representative and Coordinator for Combatting Trafficking in Human Beings on her visit to Ireland, 2013.

²³ Immigrants at Work: Ethnicity and Nationality in the Irish Labour Market, ESRI and Equality Authority, 2008

INSTITUTIONAL BARRIERS

A number of institutional barriers are compounding the issues facing migrants. This is evidenced in the following:

Labour Migration Policy:

The Irish government have begun implementing restrictive labour migration policy. The current Work Permit System which requires a worker to work exclusively for a specific employer has reduced the categories of employment that are eligible for such permits.

It is current Government policy to issue employment permits to highly skilled workers only.

Migrant workers working in essential jobs for the economy such as meat processing and care work who had no difficulty in the past in renewing their work permits are now being refused. These workers are essentially being denied the opportunity to work despite having secure employment. This leaves workers in an impossible situation facing unemployment and the risk of becoming undocumented.

The government is currently reviewing the work permit system and new legislation will be published over the coming 6 months. Alongside this an Immigration Residency and Protection Bill is currently being drafted which will legislate for entry in to the state and should be in line with a new Work Permit System or visa regime. Within this context it is vital that the government ensure that migration policy is in line with labour market policy and responds to both the needs of the economy and the rights of migrant workers.

Enforcement:

In 2012 there has been a notable shift in combining labour inspectorate functions with immigration control functions. The National Employment Rights Authority conduct some inspection of work places with the Garda National Immigration Bureau. This has the effect of intimidating workers especially those in irregular situations. It undermines effective protection with this shift to an enforcement role. MRCI are concerned that forced labour and precarious working conditions will not be detected due to an over emphasis on immigration control.

Regularisation:

It is increasing difficult for undocumented workers to regularise their legal status. There are an estimated 30,000 undocumented persons in the state, many have been living and working in Ireland for many years. Such workers are more at risk of exploitation and are vulnerable to precarious work and forced labour. At present there is no government scheme whereby undocumented workers can regularise their undocumented status.

At an institutional level the immigration system has failed to provide clear and transparent access routes to long term residency and citizenship for children of Non- EEA nationals born outside of Ireland. With the lack of a defined immigration status for child dependents thousands of young

immigrants face significant barriers in securing long term residency and citizenship. This in turn has a direct and negative impact on their ability to access third level education and the labour market. It also has a negative social impact in terms of young immigrants being more at risk of social exclusion, feelings of insecurity and isolation. This creates a generation of migrants who are marginalized and unable to progress in education and the labour market which will further racialise and segregate migrants in to the future.

AN AGENDA FOR CHANGE

Migration is a global reality which will not change in the future. Migrant workers and their families are part of Irish society and must be treated equally. Those who have made their home here need to be protected and have access to a range of rights and opportunities. Without this approach racism and segregation will undermine the position of migrants and social cohesion within Irish society.

A labour migration system needs to be put in place that is transparent, humane and responds to the demands for essential work categories and highly skilled labour. Any reform of the work permit system needs to enable workers to change employer. As such the government needs to synchronise immigration policy with labour market policy in response to the ongoing demand for migrant labour. Also, the recognition that migrants have made their home here needs to be reflected in state policies and laws. As such specific institutional changes are required at a legal and policy level to ensure decent working conditions and progression routes are in place for migrant workers. This is critical to ensure that current trends are reversed and to prevent the further isolation of migrant workers within both the labour market and society.

Migrant issues need to become part of the overall struggle and agenda for decent labour standards. This will require civil society organisations to integrate these issues as part of their agenda to protect the rights of the most vulnerable workers. Using an approach based on solidarity and equality for all vulnerable workers will ensure that the pursuit of decent work conditions for all workers will not be undermined.

The Migrant Rights Centre Ireland is a national organisation working to promote justice, empowerment and equality for migrant workers and their families.

55 Parnell Square West, Dublin 1

T: (01) 889 7570

E: info@mrci.ie

F: (01) 889 7579

W: www.mrci.ie

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