

Decent Work for Migrant Workers: Rights & Justice in a Globalized World Order

Crisis, Migration & Precarious Work



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1. "DECENT WORK FOR MIGRANT WORKERS IN THE CURRENT LABOUR MARKET"

I paint a picture of what's going on and what's at stake in the intersection of migration-- which is essentially labour mobility-- globalization of a world economic order and the world of work

Starting with a brief definition of these issues should set the stage for this discussion.

Migration today?

ILO calculated that 105 million of the 214 million people living outside their countries of birth or citizenship in 2010 are economically active. That is to say: employed, self-employed or otherwise engaged in remunerative activity. That is about half of the total number and a very high proportion of those of working age. Given an estimate of one accompanying dependent for each active adult, over 90 per cent of migration today is bound up in labour and employment.¹

Economic contributions and the employment characteristics of migrants are central to labour markets and labour force composition, in more than 100 countries today. For example, foreign born workers now comprise about 10%

of labour forces in Western European countries and around 15% in immigration countries of Australia, Canada and the USA.² Taking account of the first and second generation offspring of immigrants arrived since the 1960s would give figures of around 20% of work forces "issue de l'immigration" in a number of Western European countries.

Migration serves as an instrument to adjust the skills, age and sectoral composition of national and regional labour markets. Migration provides responses to fast-changing needs for skills and personnel resulting from technological advances, changes in market conditions and industrial transformations. In countries of aging populations, migration is replenishing declining work forces and injecting younger workers, in turn contributing to increased dynamism, innovation and mobility in those work forces.

Globalization?

Rather than attempting a definition, it is useful to emphasize that contemporary globalization is the universalization of the capitalist mode of production and accumulation: private ownership and control over capital, its use and its regeneration. But not necessarily control or responsibility for its costs and consequences.

1 ILO, International Labour Migration: a Rights Based Approach, International Labour Office, Geneva, 2010, page 1.

2 Recent figures for most EU countries and "immigration countries" mentioned are found in the OECD International Migration Outlook: SOPEMI 2011 Statistical Annex

The evolution of ever more complex material and economic means, technology, demographics and social-political factors has given rise to increasingly internationalized interdependence, interaction and mobility of these material and economic means as well as of technology and knowledge.

Impact on world of work.

At the risk of being pedantic, here I put a few words on economic activity and development. *Development* in its broadest sense can be said to be:

*the elaboration of productive means, forces, and capacities to provide goods, services, technology and knowledge to meet human needs for sustenance and well being. It is building the material means for: extraction and transformation of resources; for production of goods, services and technology; for constructing infrastructures for transportation and distribution of resources, goods, services and people; and it is providing for human well-being in terms of housing, nutrition, healthcare, education and culture in its broad sense.*³

Elaborating these material means requires ‘developing’ the labour force and its skills to do all this as well as to expand technology, knowledge, and capital itself.

The ‘development’ or elaboration of national and international systems of government over the last century recognized that governance of societies and nations required regulation among conflicting and competitive interests at play in elaboration and operation of the productive means, and for distribution of goods, services and knowledge.

Normative development, in fact driven by organized power of working people, established a universal expectation that all persons have rights to access a minimum level of sustenance in ‘decent’ conditions.

Indeed, the economic processes of industrialization clearly required normative regulation as well as stimulus to provide protection for persons engaged in work; to provide employment and occupation for the adult population; to ensure social protection; and to facilitate dialogue between the main economic actors in society: employers and workers.

2. IMPERATIVE FOR INTERNATIONALIZED SKILLS AND LABOUR MOBILITY

Evolution and diversification of technology along with transformations and relocations of industrial processes and changes in the organization of work itself are constant characteristics of the world of work today. This constant evolution requires accelerating complexity, diversity and specialization in the competencies and skills of work forces in each and every country.

3 In “Rethinking Development and Migration; Some Elements for Discussion,” forthcoming paper by Patrick Taran, Global Migration Policy Associates.

No country today can form or train the entire range and number of ever-evolving skills and competencies needed to perform the ever more complex, inter-related work that needs to be done on its territory to function in a globalized economic context. The result is demand for specialized skills not available locally. Some of these demands cannot be met locally: skills needs evolve more quickly than training systems, displaced and older workers cannot always be retrained for new technologies and skills sets. Even if disposition exists, the technological basis, the facilities, and available specializations may not be adequate. In some countries, the allocation of resources, the technological basis, and/or the disposition of training policy and institutions is not available.

This context drives today a constantly increasing and now globalized international mobility of skills, competences and labour at all skill levels. Migration –international labour and skills mobility-- has become the key factor to sustaining and renovating essential processes of development: production of goods, services and knowledge, distribution, including notably construction of facilities for and provision of housing, education, healthcare and transportation.

All well and good one can say. But we have a global crisis. Well, more than one. Some say that there is a global crisis of accumulation of capital. Everyone recognizes we remain mired in a global financial crisis. And that the crisis has become a global employment crisis.

So not just financial capital and financial capital institutions in crisis, in bankruptcy. But employment is in crisis in many lands, with increasing proportions of active population unemployed. And where here in Europe, figures of youth employment reach unimaginable heights, 50% now in several EU member States. And conditions for many of those remaining employed are deteriorating.

3. GLOBAL CRISIS

The global crisis beginning in late 2007 led to a serious slowdown in world economic activity, particularly affecting Western Europe and North America, and to a lesser but important extent, Central and Eastern Europe. Massive layoffs occurred and continue to take place; they often affected temporary and migrant workers from the start.

As the most recent ILO Global Employment Trends Report for 2012 --subtitled “Preventing a deeper jobs crisis”-- emphasizes, the global crisis is also a still-deepening crisis of work and unemployment.⁴

At least 200 million people are unemployed and 400 million new jobs must be created over the next ten years to avoid further increase in unemployment. Migrant workers in particular face not only rising unemployment but also

4 ILO: Global Employment Trends 2012: Preventing a deeper jobs crisis, International Labour Office, Geneva, January 2012, page 9

structurally-defined shifts into more precarious work and working conditions.

The financial crisis has had a higher impact on certain sectors of the economy, some of which employ large numbers of migrant workers. Worldwide as in Europe, migrant workers are particularly concentrated in construction, manufacturing, agriculture, hotel and catering, and health and care work, including domestic services. These sectors have also been especially hit by the current crisis.

At the same time, under tremendous political and financial pressures, governments themselves are *smashing the State* as it were: cutting budgets and downsizing, in particular eliminating social protection, social support and health, education and welfare programs, along with other expenditures. These cuts reduce if not eliminate services that compensated for unemployment and precarious exploitative employment by aiding workers and their families to obtain basic nutrition, housing, health care and schooling. I sometimes observe that migration is a/the key zone of contention between labour and capital today. It is certainly where division of wealth is fought out-- how much of what is generated goes to working people --and populations-- versus how much is returned to capital. It is where conditions of work are fought out. Will work be, remain or become decent. Or not. And whether, not just to what extent-- working people will remain organized to defend and advance their interests.

An excerpt from the executive summary of a report on the UK accurately sums up features also described in reports on Belgium and Germany, and consistent with data from other EU member countries:⁵

“Migrants, especially those from outside the EU15 who have limited access to social security provisions, face the paradoxical position of being welcomed by businesses and the state due to their high flexibility and minimal utilisation of the welfare state on the one hand, whilst facing increasing unease and hostility from anti-immigrant groups, the same state that welcomes them and large numbers of the general public on the other. The highly unregulated and flexible economy has allowed many migrants to easily find work and businesses to remain competitive whilst simultaneously creating the conditions for widespread exploitation and producing divisions amongst workers, both between (native) born/migrant and between different groupings of labour migrants. Exploitation is linked to a hierarchy of vulnerability with the rights and entitlements guaranteed or not by a migrant’s legal status, the legal provisions between the UK and a migrant’s ‘home’ country, unionisation, racism, contract type and flexibility all affecting this vulnerability hierarchy.”

5 Ian M. Cook, Hierarchies of Vulnerability: Country report United Kingdom; Labour migration and the systems of social protection, Multikulturni Centrum Praha, Czech Republic, 2011, page 4

With the onset of the economic crisis there has been a significant drop in the numbers of people migrating to the UK. The downturn has also led to increased levels of unemployment, but this has not disproportionately affected migrants already working in the UK. There are serious consequences for the social protection of migrants however, especially in regards to: welfare cuts that will result in even fewer checks on employment practices and increased living costs, the increased downwards pressure on profit margins and numbers of UK-born workers ‘forced’ into the labour market due to changing unemployment regulations and cuts in housing benefits.

4. REDEFINING A NEW REGIME FOR LABOUR

I’m wondering if migration is not the vector being used, consciously or not, to define a new world order for labour. The treatment imposed on the 20-30% of work forces comprised of foreign migrant workers can certainly have a defining influence on the treatment imposed on the work force as a whole.

Recent developments in Canada show how it has been done. Two years ago, the Canadian government authorized opening some 142 occupations to hiring of temporary foreign workers, who had previously been authorized mainly for agricultural and other seasonal work. A year later, the government issued an order authorizing employers to not only pay the foreign workers under this programme 15% less than prevailing wages, but also allowing employers who hire temporary foreign workers to pay national workers the same 15% less for the same work.⁶ Perhaps as a consequence, one third of all new jobs created in the last year have been short term jobs, often filled by foreign workers under the temporary programme.

If, furthermore, government administration of the increasing foreign component of work forces is shifted to interior home affairs ministries, if enforcement moves from labour standards to immigration enforcement, if interior policing solutions to conflict are applied instead of social dialogue, what will be the consequences?

Well, I offer one image I saw on TV recently that suggested a rather frightening future. The scene was of line of video game type policemen facing a stampede of men running at them along a path next to an armored car. Suddenly, the dozen or so police began shooting at the running mob with automatic weapons, mowing down the men. By the way, the mob did not appear to have weapons, and the policemen were standing in a line in short-sleeved shirts.

Only it wasn’t a video game. It was an action scene from Maricana, South Africa, shown on CNN. The video clip showed the South African Interior Ministry’s response to migrant workers organized into a non-official union

6 Reported by Karl Flecker, Canadian Labour Congress in briefing to Global Coalition on Migration, Tema, Ghana, 10 September 2012.

striking to demand decent wages against a transnational mining corporation. Another report I read stated that the mineworkers rally had been panicked by tear gas lobbed from behind; the only way to run away from the gas was on a path to where the police were waiting for them, guns at the ready, as the video showed. The video, taken from just behind the police line as they fired automatic weapons, was disseminated globally on CNN and other media... as if to say, you migrant workers try this anywhere else and this is what your gonna get.

In more and more countries, migration is, shall we say, controlled under interior or home affairs ministries, rather than labour or employment ministries. Even though 90% of migration ends up in the world of work, or directly dependent on those in world of work.

Judicial decisions are also trumping labour standards for migrant workers, especially freedom of association and collective bargaining rights. Rulings by the European Court of Justice regarding labour issues and migration, albeit intra-community labour mobility, in the *Viking*, *Laval*, *Rüffert* and *Commission v. Luxembourg* cases illustrate a trend to subordinate labour protections to protection of 'free market' competition. These decisions explicitly constrain the applicability of labour protections in countries where work takes place for workers employed or posted to those countries from other member states by national or foreign enterprises. Although applicable to intra-community labour migration, they would have implications for treatment of third-country migrant workers as well.

The Committee on Employment and Social Affairs of the European Parliament, in view of these ECJ decisions, "consider(s) that the exercise of fundamental rights, as recognized in Member states, ILO Conventions, and the EU Charter of Fundamental Rights, including the right to negotiate, conclude and enforce collective agreements and the rights to take industrial action, should not be put at risk."

Judicial Decisions elsewhere have explicitly constrained full application of labour standards to migrant workers, particularly those in irregular situations. For example, the US Supreme Court Ruling in *Hoffman Plastics vs NLRB* (National Labor Relations Board) explicitly subordinated freedom of association rights to immigration enforcement.

5. BUT THE PLOT THICKENS NOW

New evidence based on more accurate forecasting suggests that the world may be on the eve of far greater international mobility as a factor of viable economic activity. And if restrictions in rights, working conditions and remuneration can be imposed on this growing proportion of work forces, what better way of influencing developments for labour-capital relations as a whole?

Within 15 years, the majority of world's countries – and populations – will be in work force decline and population

ageing mode.⁷ Germany loses 5 million members of its work force in the next ten years, the Russian Federation was recently losing annually some 1 million workers in its domestic labour force. The Japanese labour force will shrink 37% over the next 25 years. A recent study says that Switzerland will need 400,000 additional workers by 2030. And Qatar, 1 million additional migrant workers before 2020. And there's the big one: China's work force will decline by between 126 and 180 million people in less than 20 years.

Algeria, Argentina, Azerbaijan, Brazil, Colombia, Indonesia, Iran, both Koreas, Lebanon, Mauritius, Mexico, Morocco, Peru, Qatar, Saudi Arabia, Singapore, Tunisia, Turkey, Vietnam, UAE --among others-- have reached or are reaching zero population growth rates.⁸ Tunisia reached it 7 years ago

That means that over the next 15 years, competition for the most crucial economic resource of all today, labour and skills, will intensify. In particular, for skills and for cheap, docile, flexible unprotected labour.

When labour does move as it must, it is often subject to abuse, exploitation and draconian repressive measures. Those who suffer most are the many persons simply obeying –often with little choice– the laws of supply and demand of the globalized capitalist market economy. In this situation, the basic dignity and rights of migrants as workers and human beings are undermined, especially those in irregular situations. Is this description set to become the norm for work forces generally?

So what now?

Today, we see an accelerated stratification of labour mobility into three distinct regimes, with a corresponding stratification of rights and protections.

Firstly, the 'traditional' immigration regimes, usually for permanent or long term, and generally with eventual family reunification provisions. These regimes are today usually administered with long term perspectives regarding obtaining population growth or stabilization and desired work force skills and labour power in immigration countries. They generally are premised on equality of treatment and integration with existing populations.

Often closely related are specific regimes of employment-based admissions to recruit specific skills sets

7 For a corporate view on the phenomena, see Ernst & Young online report: "Six global trends shaping the business world: Demographic shifts transform the global workforce" at <http://www.ey.com/GL/en/Issues/Business-environment/Six-global-trends-shaping-the-business-world---Demographic-shifts-transform-the-global-workforce>

8 See for example the CIA World Factbook, Country Comparison: Total Fertility Rate(s) at <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2127rank.html>. 2.2 children per woman is considered the 'replacement rate' of zero population growth, below which population will decline.

and competencies, often for time bound periods. In the European Union context, these include regimes for admission of various specified categories, such as high-skilled workers, intra-company transfers, and the 'blue card' regime. In the EU case, these regimes spell out access to rights protections and equality of treatment.

A third category is the explicitly short term, temporary, sometimes seasonal migration regimes, now promoted under the generic misnomer "circular migration." There are generally distinct categories for high and low skilled. Most such regimes establish specific set time periods for categories, and varied renewal and transfer options. Needs determination and admissions are usually based on some kind of labour market assessment, often driven by employer demands, which may or may not take real unemployment and employment data into account.

The current widespread promotion of 'circular migration' characterizes it as the solution to both employment needs and to protection of 'national cohesion and cultural integrity' of nation states. It is also explicitly based on premises that rights, particularly labour rights, are negotiable and that wider access for migrant workers to higher wage labour markets can be traded for reductions in application of labour rights. As an IOM spokesman said once to me, lower wages and labour costs of course facilitates creation of more jobs. Circular migration is explicitly temporary, and the corollary premise is that engagement of foreigner workers for temporary, short term periods mean that they will not expect to stay, thus posing a challenge to social cohesion in societies defined by exclusive definitions of racial, ethnic, cultural and historical identity.

However, certain premises associated with circular migration contradict the notions that human rights, non-discrimination and equality of treatment are universal, applying to all human beings. The appeal for short term temporariness doesn't correspond to employer or worker real needs in many circumstances. For example, employers need to invest considerable time and resources in training and adapting foreign workers; they cannot expect to earn profit from 'imported' skills and labour at first and once investment is made in training and adaptation, employers expect personnel to stay on to realize return on investment. Also, many migrant workers are of family-making age; 'circular' migration regimes that separate parents and children for extended periods of time over numbers of years seriously undermine social reproduction and levy high social costs.

Ireland faces a dramatic crossroads for its nature, its national values, and its future in this current intersection of crisis, unemployment and migration. Needs for foreign workers remain, foreign workers remain, while many Irish are once again becoming migrant workers elsewhere. The policy challenges confronting Ireland require reconciling labour market stability, international competition and security of earnings for workers, along with ensuring equality of treatment and protection for all workers --including migrants and families. If one group of workers is excluded from full participation ultimately many workers are, natives and immigrants alike.

Essential questions need to be posed by government, employers, trade unions and migrant advocates alike: policy remedies and solutions can only be effective to the extent they are 'evidence based' and take into account, address and reconcile the real conditions and issues.

In my experience, key questions include:

- What are the main trends in characteristics of the work force and population?
- What work, types of work and skills needs are expanding, contracting, developing in Ireland?
- What are conditions of work and how are they evolving by sector --including the most marginal?
- What policy remedies are needed to meet employment needs and obtain decent work given competitiveness pressures, work force, aging population trends and social security sustainability?

6. STEPS FORWARD

On European Migration Policy, the European Trade Union Confederation (ETUC) frames --appropriately-- the trade union advocacy agenda as "finding the right model to protect migrants, demanding the respect of the regulation and creating a new legal framework on a better migrant protection."⁹ This formula certainly applies for Ireland, and far beyond trade union advocacy.

How ever the future is designed, labour migration will be ever more important to this country. And it must be governed under the rule of law, with the involvement of its key stakeholders, notably employers and worker unions as well as civil society partners. It must uphold equality of treatment and the full application of rights and protection for all workers present in the country. In this context, I suggest several elements consistent with the ILO Multilateral Framework for Labour Migration¹⁰ that merit further attention in Ireland:

1. Obtaining **collection and analysis of relevant labour migration and labour market data** to guide policy formulation.
2. **Engaging social partners** --employers and worker organizations-- in migration policy and administration.
3. Strengthening the **standards-based approach to migration**, in national law and practice, namely by ratification of ILO Conventions 97 and 143 on

9 ETUC: Workplace Europe: Trade Unions Supporting Mobile And Migrant Workers, European Trade Union Confederation (ETUC), Brussels, 2011

10 ILO, Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, International Labour Office, Geneva, 2006. Available at: http://www.ilo.org/public/libdoc/ilo/2006/106B09_343_engl.pdf

migration for employment and the International Convention on rights of migrant workers.

These are the inescapably essential foundations for:

4. Consolidating **institutional mechanisms for policy formulation and administration of labour migration**, particularly in the ministry responsible for labour and employment
5. Reformulating an **informed and transparent labour migration system** to meet measured, legitimate labour needs – in the context of a vision for sustaining development
6. **Enforcing minimum decent work standards in all sectors of activity**, to suppress abuse of workers and reduce incentives for recruitment of irregular migrants.
7. Continuing to implement the exemplary Irish national **plan of action against discrimination and xenophobia**.
8. Extending social protection, specifically **social security coverage and portability** to all migrant workers.
9. Retooling **vocational education and training** to meet current and foreseeable future national needs as well as international demand.
10. Enhancing the **contribution of labour and skills mobility to the global employment agenda**.

CONCLUSION

Ireland must act to reformulate its migration regime to ensure the future viability of its work force and to ensure that all participants in that work force are entitled to decent work. History tells us that migration has been an essential ingredient of growth and development of many countries. It already has been to the growth and prosperity of this country over nearly two decades. And it will be essential to the economic survival of Ireland in the years to come. However, unless regulated by appropriate laws and policies, migration will entail high costs in violations of rights of persons, in social disruption, in reduced productivity, and in lost opportunities for economic recovery and continued development.

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