



PATHWAYS OUT OF IRREGULARITY

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A Comprehensive Approach to
Addressing Irregular Migration:
Rights, Labour and Social
Cohesion

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Presentation outline

- Labour
- Rights
- Social cohesion
- Conclusions





LABOUR

Irregular labour migration: Data

- 214 million international migrants globally (Population Division UN-DESA, 2010)
 - Approximately 3.1 % of world population
 - 105 million migrant workers (ILO, 2010)
 - This figure is higher if dependants are included meaning that over 90% of all international migrants are bound up with the world of work
- Significant irregular migration to some countries/ regions
 - Estimated 10-15 % of migrant population globally (Hatton and Williamson, 2002; ILO, 2004)
 - 1.9-3.8 million in EU-27 in 2008 (Clandestino project, 2007-09)
 - 10.75 million in U.S. (DHS, 2010)
 - A global phenomenon – e.g. Argentina, Malaysia, Russia South Africa



LABOUR

Impact of current wave of globalization

- Continuing high supply of labour
 - Failure of globalization: To create decent work opportunities in many developing countries of origin with growing and youthful populations
- Continuing demand for both high-skilled and low-skilled labour (and not a large reduction in this demand despite economic crisis)
 - Mobility of capital and rapid advances in technology and organization of work increasingly require that labour and skills be available where new investments are made and where these changes are taking place
 - Irregular migration provides for the quintessential cheap, flexible and docile labour force



LABOUR

Demographics: Stronger demand foreseen

- Rapid rates of decline in populations and workforces in destination countries (Taran, 2011)
 - Russian Federation losing one million workers per year in its labour market
 - Germany will lose 5 million workers in next ten years
 - China's working age population forecast to decline by 126 million in 2025
 - Declining fertility rates in many destination countries (e.g. South Korea, Spain) as well as traditional countries of origin (e.g. Mexico, Tunisia)
- Increase in productivity and any economic growth is unlikely to compensate for this decline



RIGHTS

Context and principles

- Sovereign prerogative of States to determine which non-nationals may enter their territory for the purpose of employment in accordance with economic interests and labour market needs
- BUT
 - Migrants in an irregular situation and members of their families are human beings entitled to human and labour rights
 - “No one is illegal” – “everyone has the right to recognition everywhere as a person before the law” (UDHR, Art. 6)
 - Rule of law framework should therefore govern irregular migration and the treatment of migrants



RIGHTS

Labour standards and human rights

- ILO International Labour Standards
 - ILO Conventions and Recommendations are in principle applicable to all workers irrespective of nationality and immigration status unless otherwise stated
 - 8 fundamental conventions
 - Conventions with specific provisions on migrant workers – e.g. Domestic Workers Convention, 2011 (No. 189)
 - Conventions of general application – e.g. labour inspection
- Nine core international human rights instruments
- Specific standards protecting migrant workers
 - ILO Conventions No. 97 and 143
 - 1990 UN Convention on Migrant Workers (core HR instrument)
- Regional standards
 - European Convention on Human Rights; (Revised) European Social Charter



RIGHTS

Migrant workers in an irregular situation

- ILO International Labour Standards (Convention No. 143)
 - Basic human rights of all migrant workers to be respected
 - Regular status of migrant workers in the event of loss of employment protected
 - But this is not tantamount to “a right to stay”
 - Equal treatment in respect of rights arising out of past employment (e.g. remuneration, social security)
 - Access to legal proceedings
 - No costs on expulsion
- International and regional human rights law
 - Employment rights – equal working conditions
 - Social rights (health, education)



RIGHTS

Application in practice

- Application of a rule of law framework
 - Ratification and implementation of pertinent instruments
 - Adoption of rights-based (labour) migration policies
 - A useful tool: ILO Multilateral Framework on Labour Migration (2006)
- Strict separation (“firewall”) between immigration law enforcement and enjoyment of basic “social rights”
 - No denunciation of migrants in an irregular situation to immigration authorities by health/ education providers
 - Labour inspection to focus on monitoring conditions of work rather than detecting undeclared/ unauthorized work
 - Possibilities for migrant workers to bring complaints against exploitative /abusive employers without fear of expulsion



SOCIAL COHESION

Preventing marginalization/ social exclusion

- Avoiding creation and perpetuation of an “underclass” in society
- Protecting employment rights
- Providing access to social rights
- Developing possibilities for regularization
 - Right to “earned adjustment” (ILO, 2004) – 3 criteria:
 - (1) no criminality, (2) in employment, (3) element of integration
 - Regularization is supported by specific international standards protecting migrant workers
 - Importance of establishing equitable regularization procedures



SOCIAL COHESION

Endorsing legal migration

- Creation of more legal migration channels to address recognized labour demand in low-skilled sectors (e.g. agriculture, food production, hospitality, domestic work)
 - Draft EU Directive on conditions of admission and residence of third-country national seasonal workers reflects this need
 - But important to avoid a de-regulatory approach focusing only on temporary / circular migration and reduction of rights
 - Today, in Europe, “social cohesion” is viewed in some circles as discouraging access to a more secure residence for migrants from non-EU/EEA countries



CONCLUSIONS

- Need to understand irregular migration
 - As essentially a labour issue where powerful economic interests are at play
 - In the broader context of globalization and rapid demographic changes
- Importance of a comprehensive approach
 - Irregular migration is not just a law enforcement issue
 - The labour dimension, rights and social cohesion are crucial elements in finding pathways out of irregularity, particularly given the trend suggesting increasing future labour demand in light of declining workforces
- But such an approach can only be rooted in a rule of law framework



Thank you for your attention!

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