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Migrant Workers, Protection Of Human Rights In The Context Of HIV/AIDS, And Indigenous Issues

Statement by the International Labour Office

Migrant workers

At the beginning of the 21st century, the total number of persons living outside of their countries of origin worldwide was estimated at over 150 million, of which the ILO counts some 100 million as migrant workers and their families.[1]

Some 30 million migrant workers are found in irregular (unauthorized) situations that make them particularly vulnerable to exploitation and abuse. Women as well as men work on commercial agricultural plantations, in sweatshops and in construction; they work long hours, under hazardous working conditions, often with poor remuneration and without access to social security benefits.

Female migrants face additional risks of exploitation, working as domestics, in the informal sector, or as sex workers; many are victims of trafficking for the purpose of exploitation. Sadly, increasing reports of abuse, exploitation, trafficking and violence committed against both male and especially female migrant workers in every region give reason to increasing concern for treatment of non-nationals.

In the last couple of years, protection of the rights and dignity of migrants has finally been given its due as a central concern in world affairs. The extensive attention to combating xenophobia against migrants at the recent World Conference in Durban, the imminent entry into force of the 1990 UN Convention on protection of rights of migrant workers, growing migrant and civil society activity, and the high profile given to the mandate of the UN Special Rapporteur on Human Rights of Migrants are among the most visible manifestations of this shift.

More broadly, a global trend has moved discussion on international migration out of back rooms, into the headlines, and onto the agendas of conferences around the world. Indeed, few events happen today that do not have a migratory implication or consequence. An increasing number of States are recognizing that, in the era of globalization, labour migration is assuming ever-greater importance in development processes and particularly in advancing regional economic and social integration.

Inter-governmental consultative fora seeking shared approaches on migration issues have emerged in virtually every region. Some of these followed consultations organized

by the joint interagency International Migration Policy Program (IMP), which ILO co-sponsors together with IOM, UNFPA, and UNITAR.

International standards provide States a basis for national practice in addressing migration. The 1990 UN Convention and the two ILO Conventions, number 97 and number 143, on migrant workers represent a complementary set of standards[2]

We recall that the UN Convention drew considerable inspiration from these ILO Conventions, and the legal provisions regarding regular migrant workers and international cooperation on migration are largely common among these standards. No less than 68 States have now signed or/and ratified at least one of these three instruments. This body of international law provides the normative underpinning for both national migration policy and international cooperation in the field of migration, particularly labour migration. In addition to spelling out specific rights applicable to migrants, these instruments provide an explicit agenda for international inter-state consultation and cooperation in the main areas of migration management.

The widening global concern offers unprecedented opportunities to address more adequately and effectively migration to ensure it benefits home and host countries while upholding rights and dignity of all migrants. Our experience permits ILO to suggest that only a comprehensive national and international approach to labour migration will achieve these ends.

Major elements of policy must include:

1. An informed and transparent labour migration admissions system for each country designed to respond to measured, legitimate needs, taking into account domestic labour concerns as well. Such a system must rely on regular labour market assessments to identify and respond to current and emerging needs for workers, men and women, high and low skilled. Tighter restrictions and border controls have not halted migratory flows nor have they reduced the number of workers crossing borders. Instead they have put more pressure on those who migrate. When options for legal migration are unavailable in the face of strong pull/push pressures, irregular migration channels become the only alternative, one which presents lucrative "business" opportunities for engaging in smuggling and trafficking of migrants. Lack of access to and information about legal channels for migration leave women especially at risk of being pushed into irregular migration channels and trafficking.
2. A standards-based approach to protecting basic human rights of all migrants, in tandem with combating trafficking and exploitation of migrants. The point of establishing legally defined rights and policy standards is social legitimacy and accountability, which can only be ensured by a foundation in the rule of law. Social legitimacy –and public cooperation—for law enforcement and crime suppression is not established by force. As the contrasting experience of dictatorships and democracies demonstrate, the legitimacy of law enforcement and of the State itself comes of its association with justice, human dignity and democratic values.
3. Adoption and enforcement of minimum national conditions of work standards in all sectors of activity, to serve as a complementary system of criminalizing abuse of persons and discouraging irregular employment. This involves enactment of

- clear national minimum standards for protection of workers, national and migrant, in employment. ILO Conventions on such aspects as occupational safety and health, against forced labour, and on non-discrimination provide minimum international norms for national legislation. A necessary complement is monitoring and inspection in agriculture, domestic work, sex industry and other sectors of 'irregular' employment, in particular to identify and prevent trafficking, exploitation, child labour and forced labour, as well as to uphold minimal decent workconditions.
4. Establishing the necessary institutional mechanisms and practical measures, in consultation among government, social partners and other civil society organizations concerned. Practical measures are needed for public advocacy and awareness raising, to combat discrimination, for rights restoration, recovery and healing services for victims of trafficking, as well as on admissions, monitoring, social services, etc. Particular attention is required to elaborate gender sensitive migration policies which recognize gender equality as integral to the process of policy making, planning and program delivery at all levels.
 5. The World Conference in Durban emphasized the need for particular attention to combating discrimination and xenophobia against migrants. Taken together, over 40 paragraphs of text related to migration and xenophobia adopted at the Durban Conference comprise a comprehensive and viable plan of action to combat discrimination and xenophobia against migrants at national, regional and global levels. Its main points reinforce ILO recommendations. These include:
 - Strengthening the rule of law by adoption in national law of relevant international standards to protect rights of non-nationals.
 - Making racist and xenophobic discrimination, behaviour and action unacceptable and illegal.
 - Elaborating administrative measures and procedures to ensure full implementation of legislation, and accountability of all government officials.
 - Establishing independent national human rights/anti-discrimination monitoring bodies to monitor and enforce anti-discrimination legislation; and receive and act on individual complaints.
 - Promoting respect for diversity and multicultural interaction.
 - Encouraging communications media to emphasize positive images of diversity and of migration.
 - Incorporating multi-cultural and diversity training in educational curricula.
 - Addressing multiple discrimination — race, ethnicity, gender — in policies and monitoring.

ILO itself is now compelled to focus increasing attention on labour migration. The ILO Governing Body agreed last month that the topic of migrant workers will be the main topic for General Discussion at the International Labour Conference in 2004, to take place in Geneva. Among concerns to be addressed are review and possible revision of applicable ILO standards as well as activities of the Office in support of its tri-partite constituents. More broadly, this exercise will identify new challenges and articulate new responses to make of international labour migration a process which both ensures decent treatment for migrant workers as well as contributing to the well being of home countries and host countries of migrants.

ILO is committed to support its tripartite constituents in elaborating in each country the policy, legislative and practical measures to effectively manage labour migration,

including to ensure protection of the basic human and labour rights of all migrants. We stand ready to cooperate with UN and civil society partners in mobilizing advocacy, awareness raising, protection, and direct action to put in place and monitor such measures, ensure public support, and effectively implement them.

The protection of human rights in the context of HIV/AIDS

Human rights abuses based on people's HIV status often take place at the workplace. These can take numerous forms such as: mandatory HIV testing of job applicants or persons in employment; breaches of confidentiality regarding HIV-related personal information; discrimination in access, terms and conditions of employment and stigmatisation of workers living (or presumed to be living) with HIV/AIDS. By threatening fundamental rights, the epidemic reduces the opportunities for decent work for women and men and erodes the realisation of the key ILO goals of social justice and equality.

The protection of human rights, and in particular protection against discrimination on the basis of HIV status (real or perceived), is essential for the prevention of HIV/AIDS. The ILO also considers that HIV/AIDS should be recognised as a workplace issue. This is necessary not only because HIV/AIDS affects the workplace — violating workers' rights, undermining incomes and livelihoods, cutting the labour force, reducing productivity and profitability — but also because the workplace has a role to play in the wider struggle to limit the spread and effects of the epidemic.

The ILO's rights-based approach to combatting HIV/AIDS at the workplace is underpinned by several instruments, which together provide the ILO and its partners with a sound basis for the protection of the rights of those infected and affected by HIV. ILO standards dealing with equality of opportunity and treatment in employment; occupational safety and health; social protection; labour inspection; the worst forms of child labour; and many others form the basis of an ethical and human rights-oriented legal framework for national policies and programmes on AIDS. They are not, however, HIV/AIDS specific.

To complement and strengthen these, the ILO has adopted a pioneering *Code of Practice on HIV/AIDS and the World of Work*.

The Code was launched at the United Nations General Assembly Special Session on HIV/AIDS, in June 2001. It is the product of widespread consultation among the ILO's tripartite partners — workers, employers and governments in all regions. The Code provides guidelines for developing concrete responses to HIV/AIDS at enterprise, community and national levels in the following key areas:

- prevention of HIV/AIDS,
- management and mitigation of its impact on the world of work,
- care and support of the workers infected and affected by HIV/AIDS and elimination of stigma and discrimination on the basis of real or perceived HIV status;
- Non-discrimination in terms of employment;
- the banning of screening for employment purposes;
- the continuation of the employment relationship;
- confidentiality and;

- gender equality are among its fundamental principles.

The code is a voluntary instrument, but it can be adapted to a range of situations — from national strategic plans to enterprise policies — and its provisions can be incorporated into labour legislation. It has so far been translated into over 20 languages, covering all regions of the world, in response to local demand. The process of implementing the code focuses on advocacy, supported by research into the socio-economic and labour impact of the epidemic, and strengthening the capacity of the tripartite constituents to contribute to national efforts against HIV/AIDS. Advisory services are being provided for governments, employers' and workers' organizations in over 20 African countries, and education and training programmes are being developed. A training manual is in preparation for the social partners, but the code itself spells out the steps that need to be taken to implement concrete responses at the workplace. In order to ensure that the principles set out in the code apply equally to ILO staff members, the Office has elaborated a Policy on HIV/AIDS for ILO Staff (July 2001).

The ILO welcomes the Declaration of Commitment on HIV/AIDS adopted by heads of State and Governments and their representatives at the UNGASS which calls for measures to protect "in the workplace the rights and dignity of persons living with and affected by HIV/AIDS — in consultation with representatives of employers and workers, taking into account of established international guidelines on HIV/AIDS in the workplace" (paragraph 69). Finally the ILO is pleased to be, since October 2001, a cosponsor of UNAIDS. As a cosponsor the ILO brings UNAIDS direct access to the world of work, where HIV/AIDS prevention and care and support programmes are urgently needed.

Indigenous issues

The ILO is responsible for the only two international Conventions relating directly to indigenous and tribal peoples, the Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the earlier Convention No. 107. ILO's work in this area, involves not only the supervision of these Conventions, but also a considerable amount of technical co-operation and policy advice, in both ratifying and non-ratifying States. These activities aim to provide equality of opportunity and treatment for indigenous and tribal peoples in all spheres of life, whilst providing them with a framework in which they can participate and be consulted within the context of legislative and development processes that affect them. To date, 14 states have ratified Convention No. 169 and a number of others are examining doing so.

Within the context of the supervision of Convention No. 169, it is worth noting that two related themes have arisen repeatedly over the past few years. These have been the duty of States to consult with indigenous and tribal peoples when consideration is being given to any measures that affect them, and the same duty of consultation prior to the exploration or exploitation of natural resources on their lands. In terms of technical co-operation, two ILO projects take as their specific focus indigenous and tribal peoples. For a number of years, they have been instrumental in bringing issues pertaining to these peoples to the fore in a number of national and international forums through the provision of policy advice and capacity-building assistance, as well as directly improving the living conditions of these peoples in a number of countries.

In addition to maintaining its contacts with the Working Group on Indigenous Populations, the ILO has also been actively involved in recent preparations for the forthcoming first session of the United Nations Permanent Forum on Indigenous Issues. It is our hope that this first Session will pave the way towards the creation of a strong and effective mechanism for the benefit of the world's indigenous peoples.

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Footnotes

1. International Labour Office, *Migrant Workers*, International Labour Conference 87th Session, Geneva, 1999.
2. These are: the ILO Migration for Employment Convention (#97) of 1949, ratified by 42 countries, the ILO Migrant Workers (Supplementary Provisions) Convention (#143) of 1975, ratified by 18 countries; and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ratified by 19 countries and signed by 11 others. Texts and related information available respectively on the ILO website, at www.ilo.org/ilolex, and on that of the Office of the UN High Commissioner for Human Rights, www.unhchr.ch