

The International Labour Migration Survey, 2003

At its 283rd Session (March 2002), the Governing Body of the International Labour Office decided to place on the agenda of the 92nd Session (2004) of the International Labour Conference an item on migrant workers. The general discussion based on an integrated approach takes into consideration a broad range of approaches, means of action, and instruments available to meet the challenges, problems and opportunities posed by contemporary forms of labour migration. It recognises the fact that migration issues cut across practically all spheres of the normative and technical activities of the ILO.

In preparation for that general discussion, the ILO has developed a comprehensive report¹ – *Towards a Fair Deal for Migrant Workers in the Global Economy* – on the trends in migration and the conditions of men and women migrant workers; the state of law and practice regarding their treatment; the impact of migration on origin and host countries; and the experience with structures and policies established at national, regional and international levels for regulating migration and the employment of migrant workers.

On many issues addressed in this report, much light has been shed by the responses of ILO constituents to the *International Labour Migration Survey*², which was undertaken by the ILO as part of the preparation of the general discussion. Through this Survey the ILO obtained, as of April 2004, the latest information on trends in migration and conditions of migrant workers, the state of law and practice, impact of migration, and the experience with structures and policies for regulating migration and employment of migrant workers from 93³ Member States. While it was not possible to fully integrate all the findings in the body of the Report due to the extent of the responses and to the late arrival of some of them, the most important findings have already been cited in relevant sections and an overall summary of the responses was included as Annex 1 to the Report. A more detailed analysis is presented in this document.

The member States were invited to consult with the most representative employers' and workers' organisations regarding the completion of the Survey. The Office has received replies directly from some of the employers' and workers' organisations.

¹ Report VI, International Labour Conference 2004, ILO, Geneva, 2004.

² The International Labour Migration Survey, ILO 2003, also published in Arab, Chinese, French, German, Russian and Spanish. The full text of the Survey can be found at the following website: www.ilo.org/migrant.

³ Albania, Algeria, Argentina, Armenia, Australia, Austria, Bahrain, Belarus, Belgium, Bolivia, Brazil, Bulgaria, Burundi, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Ecuador, Egypt, El Salvador, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, India, Indonesia, Ireland, Japan, Kazakhstan, Kenya, Republic of Korea, Kuwait, Lebanon, Madagascar, Malawi, Malaysia, Malta, Mauritius, Mexico, Morocco, Myanmar, Netherlands, New Zealand, Nicaragua, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Tunisia, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Zimbabwe. The information for Barbados was extracted from the reply sent by a workers' organization.

An overview of the responses to the Survey

Regarding national labour migration policies, approximately 70% of member States who responded to the survey have declared that they have adopted a national policy on labour migration. Some trends in the objectives of the national migration labour policy were able to be determined. For example, countries such as Australia, New Zealand, Canada, Germany, United Kingdom or the United States promote the immigration of highly skilled labour, sometimes based on a points test, in areas where there is a shortage of skilled nationals (either on a permanent or temporary basis), while still leaving the door open for the entry of a limited number of migrants who do not fall within these categories (e.g. for family members or asylum seekers). Japan has recently shifted its policy towards promoting the acceptance of migrant workers in certain technical and professional fields in order to invigorate and internationalize its society.

The admission of highly skilled labour is also promoted in certain developing or transition countries in order to fill labour shortages (e.g. China, Czech Republic, Fiji, Republic of Korea, Mauritius, Poland, Thailand or Tunisia). In Austria, Belgium, Cyprus, France, Lebanon, Malaysia, the Netherlands, Norway, Sweden or Ukraine the principal focus is to ensure that nationals and regular migrants are fully employed. Recruitment of migrant workers is restricted to certain situations such as the absence of national workers with the appropriate skills to fill the position. The combat against irregular migration, human trafficking and smuggling was an objective for a number of both receiving and sending countries (e.g. Albania, Czech Republic, Germany, United Kingdom, Indonesia, Netherlands, Portugal, South Africa, Switzerland, Tajikistan, Thailand). The integration of migrant workers is focused on in Austria, Czech Republic, Portugal, Tajikistan, South Africa and Switzerland and the regularisation of irregular migrant workers is focused on in Argentina and Chile. Finally, policies in some countries (e.g. Egypt, Ethiopia, Mexico, Morocco, Philippines, Poland, Portugal, Tajikistan and Tunisia) aimed at assisting nationals working abroad, ensuring that they receive equal treatment when in the receiving country, and encouraging the return of migrant workers.

The majority of respondents replied that employers' and workers' organisations took part in the formulation of labour migration policies, laws and regulations. Of these, almost half specified that consultations were undertaken in the framework of formally established tripartite bodies. However, no consultations were undertaken or no response was provided to this question in approximately 25% of cases. Specific activities carried out by employers' and workers' organisations included advisory and integration services as well as training programmes specifically designed for migrant workers in the country. Some organisations also provided advisory and placement services for nationals going abroad.

The information provided in the ILM Survey indicated that issues related to migration were often dealt with, in addition to those specifically addressing migration issues, in a wide array of other laws and regulations, in particular in labour, employment, social security and emigration laws.

The majority of countries indicated that they have set up programmes or services for migrant workers and/or provide information on the rights and obligations of migrant workers under national law and regulations. In just over half of the responses, laws and regulations were translated into the languages most often used by migrants in their country. Other forms of assistance included governmental advisory services, settlement grants for migrant workers as well as information dissemination through various media (hotlines, websites etc.).

Most countries had signed bilateral agreements, mainly on labour migration and social security. The Survey confirms the trend of a revival of bilateral agreements as many of the agreements were signed in the 1990s and 2000s. A large number of agreements involve Central or Eastern European countries or ex USSR countries, some focusing on recruitment in EU countries. Finally, a few countries have begun to sign Working Holiday Maker (WHM) agreements that allow young people to undertake incidental employment while travelling in the receiving countries, under reciprocity. It should also be noted that 33 countries, including 23 countries that had not ratified Convention No. 97, replied that they had used, or intended to use, Recommendation No. 86, which provides a model agreement on migration for employment.

A third of countries replied that they had specific quotas for migrant workers who may be admitted for certain reasons, the most common being for employment in certain branches of activity or employment or to a lesser extent, for workers with particular levels of skills. The majority of respondents replied that they allowed for preferential treatment, usually between countries that have entered into bilateral agreements or that have strong political or economic ties.

There are very few cases where countries exclude migrant workers from specific countries. However, the exclusion of the admission of nationals from certain countries is not always negative. For example one country excludes the employment of nurses from certain countries where there is a nursing shortage.

Sixty-five countries provided admission for temporary migrant workers, less than a third of which require a deposit to ensure that temporary migrant workers will leave the country.

The most common criteria an employer must fulfill before hiring a migrant worker are the proof that there is a lack of qualified national applicants; awarding migrant workers a premium or wage no less than that offered to nationals; or working in selected industries/branches of economic activity.

Just under half of the respondents replied that private recruitment agencies could be granted authorization to bring in migrant workers. In the majority of these cases, authorization was granted on the condition that they were bringing in the worker on behalf of an employer. Twenty-three respondents replied that private recruitment agencies were allowed to charge migrant workers recruitment fees to cover services and twenty-six replied that fees could be charged for the foreign employment of nationals. In some cases, fees could be charged under certain conditions such as for specific occupations (e.g. performers, models, etc). In certain countries it was the employer – not the migrant worker – who paid the recruitment fees. The amount to be paid varied from country to country but was usually either a fixed fee or a percentage of the salary. Examples ranged from 10% of the first months salary to 14% of the annual salary. In some countries, this area was not regulated and was left up to the parties involved to determine. Thirty-one respondents replied that they had instituted special practices to combat recruitment malpractices. Initiatives included inter-governmental collaboration, awareness raising campaigns for potential victims of trafficking and the provision of advisory services to employers and migrant workers, as well as regional and international conferences.

The right to form or join a workers' organisation and to bargain collectively was available to "all workers" less frequently than the other fundamental rights and a relatively higher proportion of countries replied that the right was available to "nationals only". Irregular migrant workers seem to enjoy relatively better protection concerning the other fundamental rights (protection against forced

labour, discrimination at work, minimum age and equal treatment with respect to wages) as well as against sexual, ethnic and racial harassment. In addition, with respect to the right to join a social protection scheme and to access free public medical/health services, the number of responses indicates that “nationals and regular migrant workers” are more often covered, than “all workers”. This could reflect the lack of protection of irregular migrant workers in these fields. Concerning the rights reserved for “nationals only”, the figures are quite “low” for all the categories referred to in the Survey, except for the right to vote in local and national elections.

Even if occupational mobility is completely restricted in more than 20% of responding countries for temporary migrant workers, occupational mobility is allowed, subject to prior approval by the competent authority, in almost 70% of countries.

Just over half the countries that responded to the Survey replied that they allowed migrant workers to stay and seek other employment if they lost their employment through no fault of their own. However, 23% of countries declared that they allowed temporary migrant workers to stay and seek employment after the regular termination of their contract.

While the majority of respondents indicated that they monitored the working conditions of migrant workers through general labour inspections, only 40% indicated that they had a special system for monitoring migrant workers. Where specific systems existed, these included the monitoring of migrant workers by specialist units or regular labour inspectors. Other methods included administrative verification of work conditions by the competent authority. In general, where special labour inspections were carried out, they were aimed at ensuring that migrant workers have the same working conditions as national workers as well as monitoring the validity of work permits. Around 60% of respondents replied that there were no specific procedures; a number said that this was because they did not make the distinction between migrant and national workers. However, special inspections were carried out in over 66% of member States who replied, upon the reception of a complaint from a migrant worker.

Employment, residence and not having a criminal record seem to be the most frequent grounds needed to qualify for regularization. Many countries use a combination of these requirements, along with other criteria such as the existence of family ties with nationals or regular residents, the degree of integration of the migrant worker, or the presence of children in the family group asking to be regularized.

The ILM Survey asked the constituents whether there was any kind of information on labour migration that would be useful to them in policy making and administration. There were two main trends that came out of the responses. First was the need for reliable and detailed statistics in this area. The second was a need for specific information, by country, on different aspects of migration, including laws and policies. This document is designed to be a response to the second of these requests.

A summary by country of the responses to the Survey

This document – based on the responses to the International Labour Migration Survey received by the ILO from 93 member States – provides a summarized analysis of selected aspects of the responses by country.

The analysis refers firstly to the existence (or not) of a national labour migration policy, emphasizing the most important objectives and indicating if there is any intention of modifying it in a near future. The participation of the employers' and workers' organizations in the formulation of the labour migration policy and legislation is likewise indicated, as is the existence of formal structures established for such a purpose.

Next a brief explanation of the national labour migration legislation is presented (immigration and emigration). In addition, the competent national authorities with respect to migration issues, such as the granting of work and residence permits are noted as well as the measures they have taken to provide legal and administrative assistance for migrant workers.

A brief summary of the multilateral and bilateral labour migration agreements is then provided, including the date they entered into force, the subject of such agreements and their key provisions. In addition, the different admission categories, criteria to be met in order to receive preferential treatment, and causes of exclusion are given followed by a brief overview of the migratory categories and the economic needs tests that employers are required to fulfill before they are able to hire migrant workers.

The next section provides details on the rights and benefits and social protection of regular migrant workers (permanent or temporary) as well as irregular migrant workers. Equality of treatment with the national workers is also compared. With regard to occupational mobility and termination of employment, a brief summary is given on the criteria a migrant worker must meet before they can change employers and the effect termination of employment has on their continuing stay in the country.

The following section is dedicated to established regularization mechanisms for irregular migrant workers and the conditions they are required to meet in order to benefit from these mechanisms. The appeal procedure against eventual expulsion is also mentioned.

Finally, details are given on the emigration of nationals for employment in order to identify national mechanisms for the protection of nationals abroad, eventual connections with nationals abroad and how they are reintegrated into the country upon their return.

The summary of each country is concluded with a selection of relevant website addresses, which provide more detailed or practical information on migration in each of the countries looked at. The addresses did not necessarily form part of the answers to the Survey and are not an exhaustive list of the competent authorities in this area.

Unless otherwise indicated, the source of the demographic data mentioned in each summary is the *2002 International Migration Report*, United Nations, Division of Population. The governments' views on immigration/emigration levels are assessments of the 2000 level of overall immigration into or emigration from the country. The policy on immigration refers to the 2000 level of immigration for permanent settlement. The policy on emigration refers to the 2000 level of nationals leaving for residence outside the country.

The text of the country summaries is based on the answer received from the Governments. Comments from the employers' and workers' organizations have been integrated in the text where

appropriate. Text in italics is information that did not figure in the answers received and that the authors considered important to include in the country summary.

The summaries, presented in the English alphabetic order, are published in the language (Spanish, French or English) in which the answers were received. The answers received in other languages (e.g. German, Arabian, Chinese, Portuguese or Russian) were translated into English and the summary was carried out on the basis of these translations.