

# ILO Report Form for the General Survey Concerning Migration for Employment and Migrant Workers

## Guidelines for completing the questionnaire

### General remarks

Though all constituents should provide information, the questionnaire is developed with governments in mind, as they are primarily responsible for providing full information about the effect given to Conventions n° 97 and 143 and their accompanying Recommendations in law and in practice. Governments are also expected to identify the provisions of these conventions that represent an obstacle for ratification. However, responses to previous questionnaires on this subject were lacking. The Committee of Experts, in its 1999 General Survey, “regretted that (...) many governments merely summarized the legislation in force on the subject of emigration and/or immigration and that very few governments or employers’ or workers’ organizations supplied information on the application in practice of the different provisions of the instruments under review”<sup>1</sup>.

As trade unions reply to this questionnaire, they should concentrate on providing information regarding the implementation of these instruments *in practice*, and in particular identifying obstacles to the full protection of migrant workers’ rights. Of course, when relevant, you may also wish to refer to gaps in legislation or to provisions which seem not to be in conformity with the relevant Conventions, but you don’t need to describe all relevant laws. In this regard, it is important to indicate any recent changes in the law and practice of your country which have had the effect of restricting the rights of migrant workers or strengthening them.

A very low number of governments have provided answers to the questionnaire so far and therefore it is all the more important that trade unions provide information so that the ILO gets a full and accurate picture. Some of the key issues to be raised include the situation of migrant women workers and the situation of irregular migrant workers.

Trade unions may wish to draw particular attention to practices regarding the recruitment of migrant workers which often takes place within a legal and regulatory vacuum, leading to grave abuses of the rights of migrant workers and adding to the precariousness of work situations.

The guide below provides some suggestions as to the issues to raise in each section of the questionnaire.

\*\*\*\*\*

### Part I

*Question 1:* Trade unions should express their concern regarding any exclusion from labour law protection affecting migrant workers, as this undermines the protection of all workers.

---

<sup>1</sup> Para. 644.

Concerns should be expressed in particular, where the case arises, of restrictions of rights affecting temporary and undocumented workers and the use of temporary contracts to fill permanent jobs. Trade unions should stress that much of these concerns could be addressed through ratification and implementation of Conventions n° 97 and 143.

*Question 2 (dot four):* Trade unions are encouraged to provide, where possible, examples of policies or measures which have been introduced to combat misleading propaganda, or of instances where they believe national policies and legislation have had the effect of actively promoting misleading and negative perceptions of migrant workers.

In addition, trade unions could provide information on their own campaigns against xenophobia and prejudice against migrant workers.

*Question 3:* Bilateral labour agreements between origin and destination countries on the recruitment and employment of migrant workers are becoming more common. However, bilateral agreements commonly fail to include the full range of protections necessary to prevent the exploitation of migrant workers. They also fall well short of the provisions of the 1949 Model Agreement on Temporary and Permanent Migration<sup>2</sup> (the 1949 Model Agreement) or the principles set forth in the 2006 ILO Multilateral Framework for Labour Migration.<sup>3</sup> The agreements have also been criticised for reinforcing racial hierarchies/inequality in the labour market; wages and conditions of work are set country by country, reflecting biases and assumptions about the workers from those countries. Trade unions are rarely involved in the negotiation or implementation of such agreements. Trade unions should comment on the existence of such bilateral agreements, the extent to which they observe the 1949 Model Agreement, and whether they have been effective in practice. Further, trade unions should indicate the extent to which they are consulted in the negotiation or implementation of such agreements.

In addition, trade unions could elaborate, where applicable, on existing trade union cooperation agreements.

## **Part II**

*Question 4 (dot one):* In many countries, the fundamental rights of migrant workers in an irregular status are not protected in law or in practice. While the state may regulate immigration, once an irregular migrant worker is employed, he or she should enjoy the same rights and remedies as any other worker. It would be important to emphasise which rights irregular migrant workers are denied, particularly in the workplace, and the impact of the denial of such rights on workers and trade unions. Trade unions should identify whether irregular migrants are excluded from protection of fundamental rights at work, including access to justice.

*Question 4 (dot three):* In addition to the denial of equal opportunity and treatment regarding employment and occupation, conditions of work, accommodation (housing), social security and legal proceedings, it is very important to indicate the legal and practical

<sup>2</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R086](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R086); Annex RO86

<sup>3</sup> [http://www.ilo.org/dyn/migpractice/docs/28/multilat\\_fw\\_k\\_en.pdf](http://www.ilo.org/dyn/migpractice/docs/28/multilat_fw_k_en.pdf)

obstacles that migrant workers face regarding the exercise of the right to freedom of association. Trade unions should also insist that equal treatment with regard to trade union membership (i.e., the right to join or form trade unions) is, together with other equal treatment provisions, a key element to ensure full integration of migrant workers into the society of the country of origin – indeed, the fact that being a member of a trade union implies the right to engage in trade union activities, take part in their decision making, vote for leadership or be elected as representative. In some countries, e.g., migrant workers are unable to be elected into leadership, or sometimes only after a certain number of years in the country. Trade union membership is a unique avenue to ensure the integration of migrant workers and enhance their capacity to contribute to the economic and social progress of destination countries in particular.

*Question 4 (dot four):* Trade unions should indicate whether migrant workers' job security and/or security of residence are linked in law or practice to their health status. Trade unions might give examples of migrant workers being expelled from the country because of their health status (e.g., HIV-positive)

*Question 4 (dot five):* Trade unions should indicate whether national law or practice ties immigration status to a particular employer or employment, placing the migrant worker in an irregular situation should that employment be terminated.

*Question 5 (dot one):* Trade unions should indicate whether migrant workers are excluded from any provisions in law prohibiting non-discrimination, including anti-union discrimination.

*Question 5 (dot two):* In many countries, migrant workers are unable to freely choose employers; instead, their visa is tied to the continued employment with an employer. In some countries, workers may apply to switch employers in certain circumstances when their rights have been violated, though this is often difficult to do in practice. In other countries, workers are in practice essentially prohibited from switching employers, leading to conditions of forced labour. Trade unions should describe any limitations in law on the choice of employment, and the impact of those limitations in practice.

*Question 6:* In many countries, employers take advantage of the irregular status of migrant workers to avoid their obligations under law and to depress conditions for workers generally. Trade unions, where applicable, should underline their role in promoting the regularisation of undocumented migrant workers. The (quite flexible) provisions on this issue in Convention n° 143 constitute an opportunity for engaging in social dialogue on such sensitive questions while ensuring support of the society at large. In addition, it would be important to highlight the existing mechanisms that undocumented migrant workers may use in order to seek regularisation.

*Question 8 (dot one):* Trade unions should raise concerns about abuses committed by private employment agencies in the recruitment process. It is important to highlight how migrant workers are protected when the conditions they meet at the destination country are not those specified in the employment contract; or any gaps in such protection.

Many workers take out loans in order to pay fees to recruitment agencies. The fees are often paid for by loans from private money lenders, often at exorbitant rates of interest. This debt leaves many desperate to keep their jobs regardless of the conditions. In some cases where the sponsor paid the fees, the sponsor then recoups the fees through illegal deductions or withholding of workers' wages. In some countries, the law prohibits recruitment agencies from charging workers fees or costs for their recruitment, but such provisions are not strictly enforced. It is important for trade unions to highlight cases of fees being charged by recruitment agencies to migrant workers; of unlawful deductions of wages by employers in order to recoup recruitment fees; and of non-enforcement of bans on fees being charged to migrant workers.

Trade unions should also highlight cases of identity documents being confiscated by recruitment intermediaries.

*Question 8 (dot two):* Trade unions could indicate if the information is available in a language understood by the migrant worker. It would be important to report cases in which incomplete, wrong or false information has been provided to migrant workers.

*Question 8 (dot three):* Often workers receive little information on the migration process, or are provided misleading information which places workers at risk of labour exploitation. It would be important to note the extent to which laws are in place to prevent deceptive recruitment practices, or which affirmatively require recruiters to provide accurate information on their rights at work. Further, information as to the effective application of those laws in practice would be important to include if available.

### **Part III**

*Question 9 (b):* Trade unions could document, where applicable, the support undocumented workers can get from trade unions to present their cases to a competent body. They may also indicate the obstacles they have faced in the process of supporting migrant workers in general in the event of a dispute.

### **Part IV**

*Question 13:* ILO Conventions provide for social dialogue in elaborating and implementing labour migration policies. Trade unions (and employers) have a vital role to play to ensure the design of sound policies and their implementation. Trade unions could, where applicable, underline the role they play in labour migration consultative bodies or express concern where they are excluded from participation in such bodies or in the elaboration of labour migration policies. It is important to indicate if migrant workers themselves are associated to this work.

*Question 14:* Trade unions could indicate if they have participated in decision making processes for adopting legislation or policies to ensure equality of treatment and opportunity to migrant workers and their families.

**Part V**

*Question 15:* Trade unions should express concern at the low ratification of Convention n° 143 (and to a lesser extent of Convention n° 97), as this both deprives migrant workers from their rights as workers and undermines the rights of all workers. The absence of a rights-based framework (based on ILO Conventions) also weakens the capacity of states (both origin and destination) to maximise the benefits of labour migration. Trade unions could also indicate which actions they have undertaken to promote the ratification of the conventions and the government reaction to those efforts.

*Question 16:* In cases where trade unions have knowledge of the obstacles to ratification raised by their government, they should use the question to dispel the unfounded concerns of their governments, insisting that ILO Conventions are minimum standards. They should provide additional reasons here for encouraging ratification.

*Question 20:* **The trade union movement should call for a fully-fledged ILO campaign to promote the ratification of the two ILO Conventions and provide support and technical cooperation to this effect.** It is also important to acknowledge the need, in a rapidly changing world of work where situations of abuse of migrant workers are widespread, to strengthen the level of protection through a fair recruitment process. The issue of fair recruitment, though regulated by international labour standards, in particular Conventions n° 97 and 181, could be the subject of a discussion aimed at strengthening the protection of migrant workers.

\*\*\*\*\*