



International
Labour
Organization

► **Protecting the rights of migrant workers in irregular situations and addressing irregular labour migration: A compendium**



▶ Protecting the rights of migrant workers in irregular situations and addressing irregular labour migration: A compendium

Labour Migration Branch (MIGRANT)

Conditions of Work and Equality Department (WORKQUALITY)

Cover photo: Migrant worker, youth employment - Portrait of a young woman waiting in the crowd at the Migration Resource Center (MRC) in Kathmandu, wishing to receive a visa in order to go abroad for work. Nepal, 2016-12-12, photographer: Crozet M., © ILO.

Copyright © International Labour Organization 2021
First published 2021, new impression 2022

Publications of the International Labour Office enjoy copyright under Protocol 2 of the Universal Copyright Convention. Nevertheless, short excerpts from them may be reproduced without authorization, on condition that the source is indicated. For rights of reproduction or translation, application should be made to ILO Publishing (Rights and Licensing), International Labour Office, CH-1211 Geneva 22, Switzerland, or by email: rights@ilo.org. The International Labour Office welcomes such applications.

Libraries, institutions and other users registered with a reproduction rights organization may make copies in accordance with the licences issued to them for this purpose. Visit www.ifrro.org to find the reproduction rights organization in your country.

*Protecting the rights of migrant workers in irregular situations
and addressing irregular labour migration: A compendium*

ISBN: 978-92-2-036198-6 (WEB PDF)

The designations employed in ILO publications, which are in conformity with United Nations practice, and the presentation of material therein do not imply the expression of any opinion whatsoever on the part of the International Labour Office concerning the legal status of any country, area or territory or of its authorities, or concerning the delimitation of its frontiers.

The responsibility for opinions expressed in signed articles, studies and other contributions rests solely with their authors, and publication does not constitute an endorsement by the International Labour Office of the opinions expressed in them.

Reference to names of firms and commercial products and processes does not imply their endorsement by the International Labour Office, and any failure to mention a particular firm, commercial product or process is not a sign of disapproval.

Information on ILO publications and digital products can be found at: www.ilo.org/publns.

Produced by the Document and Publications Production,
Printing and Distribution Unit (PRODOC) of the ILO.

*Graphic and typographic design, layout and composition,
printing, electronic publishing and distribution.*

PRODOC endeavours to use paper sourced from forests managed
in an environmentally sustainable and socially responsible manner.

Code: MAS-REP

► Foreword

People have migrated across borders and regions for centuries. There is a plethora of reasons why people leave their own countries. One reason is the search of decent work.

Despite the positive and empowering experiences of migrant workers and their communities, many among them move outside regular migration channels. Data are scarce, but available evidence suggests that such migration is significant, and the drivers of irregular migration multiple as are its consequences.

Irregularity leaves migrant workers vulnerable to exclusion and exploitation. Images all too often capturing migrant workers dying during their journey or while at work bear witness of this. Irregularity disrupts labour markets and undercuts wages. It also leads to negative public perception of migrant workers, if left unaddressed.

The COVID-19 pandemic, that is continuing to strike the world at the time of finalizing this report, has only exacerbated the vulnerable and insecure conditions of migrant workers in irregular situations. As borders reopen and countries reemerge from the crisis, human mobility will continue apace, including through irregular channels.

But irregularity does not mean that migrant workers have no rights or that their rights should not be respected. Ensuring respect of human rights, including labour rights, of all migrant workers, is critical to tackling irregular labour migration, and must be a basis for effective management and cooperation at all levels. Social partners play an essential role in designing and implementing measures relating to the prevention of abusive conditions associated with irregular labour migration.

In the past decades irregular labour migration has gained increased relevance in national and international fora, as reflected in the Global Compact for safe, Orderly and Regular Migration. Tackling it more decisively has become a matter of urgency. ILO brings to this debate its rights-based approach grounded in international labour standards, principles and guidelines on fair recruitment, and universal values of equal treatment and non-discrimination for all.

The ILO Centenary Declaration on the Future of Work provides further avenues for ILO to support constituents in their efforts to protect the rights of all workers, including migrant workers in irregular situations, and address migration in abusive conditions. The ILO Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient, recognizes that the crisis has affected the most disadvantaged and vulnerable disproportionately, including migrants.

This ILO Compendium on Protecting the Rights of Migrant Workers in Irregular Situations and Addressing Irregular Labour Migration explains the various situations that can lead migrant workers into irregular status; the rights of migrant workers in irregular situations; and the relevant international legal frameworks and guidance. It further identifies practices of States, employers' and workers' organizations that facilitate respect and promotion of the human rights of all migrant workers, regardless of status. The compendium presents practices that can help prevent irregular labour migration, including through pathways out of irregularity, and facilitate improvements in labour migration processes, increasing benefits for migrant workers and their families, nationals and countries of origin and destination.

The Compendium is not meant to be exhaustive. It aims to inspire innovative practices that help reduce migrant workers' vulnerability to exploitation and human rights violations, including violations of fundamental principles and rights at work. We hope that it will help inform the adoption of rights-based responses and strategies for pathways out of irregular labour migration, and to promote dialogue and multilateral cooperation in this domain. The compendium is a living document which, over time, will be enriched and updated with new practices that seek to ensure safe, orderly and regular migration. We hope that it will contribute to building forward better towards a diverse and inclusive society.

Michelle Leighton
Chief
Labour Migration Branch

Manuela Tomei
Director
Conditions of Work and Equality Department

► Executive summary

- **Irregular migration has gained increased relevance over the past few decades.** Tackling it has become a matter of urgency, as reflected in the Global Compact on Safe, Orderly and Regular Migration (2018) through which the international community committed to minimize the adverse drivers and structural factors that compel people to leave their country of origin, and to address and reduce situations of vulnerability in migration. There is no universally accepted definition of irregular labour migration. However, international human rights law defines a migrant worker who is undocumented or in an irregular situation as someone who is not authorized to enter, to stay or to work in the country of destination (ICRMW, Article 5). Providing a statistical picture of irregular migration is challenging, but a cautious estimate points to about 58 million migrants who are in an irregular situation (IOM, 2018). The ILO addresses this phenomenon from the perspective of the world of work. International labour standards, principles and guidelines on fair recruitment, and universal values of equal treatment and non-discrimination are central to ILO's approach.
- **Context of irregular migration for employment.** International migration has become an integral part of the global economy, affecting nearly all countries. Together with their families, migrant workers represent most of the international migrants living outside their country of origin today. Migration can bring positive and empowering experiences to migrant workers and their families, and to communities in origin and destination countries. Yet, many people continue to move without access to regular migration options. The ways through which migrants may end up in irregular situation are many. They may cross borders through regular channels but overstay their visas and thus become irregular and end up in illegal employment in the formal or informal economy. They may enter without valid documentation or may lose their regular migrant status due to unemployment or non-compliance with permit requirements. Their requests for asylum may be rejected, or they may find themselves in an irregular situation due to bureaucratic failure to process visa applications or permits in a timely manner. Irregular labour migration varies among regions, and in some countries, populations of migrant workers in an irregular situation are more significant than others. Border closures and movement restrictions due to the COVID-19 pandemic may have affected irregular migration stocks and flows.
- **Drivers of irregular labour migration are complex and multifaceted.** Labour market dynamics and asymmetries in the demand for labour and the supply in countries of destination and origin, respectively, are among them. When options for safe and regular pathways are lacking, some people may be forced to leave for reasons of health or survival. The adverse effects of climate change and environmental degradation; unequal access to economic and social rights, including health care and decent work, food, land, or water; unequal opportunities, as well as gender inequality and gender-based violence, can all be compelling reasons for people to move through irregular migration channels. Other drivers or structural factors include gender-based migration bans, recruitment costs and dishonest labour recruiters, misleading or false information, or lack of understanding of complex immigration rules.
- **A contentious issue.** The debate on irregular migration, including for employment, is often highly contentious and polarized. Opinions on how to address it vary considerably, reflecting contrasting social and economic interests and public perceptions. While there is some evidence that irregular migration is significant, data are scarce and incomplete, and data collection relies on indirect methods and proxies. Collecting evidence in a more systematic manner is therefore crucial. Not only for designing and implementing sound and rights-based labour migration policies, but also for countering perceptions that migrant workers in irregular situations are criminals and unfair competitors for jobs or social benefits. Such perceptions fuel anti-immigration discourses, discrimination, and xenophobia.
- **The present Compendium.** The ILO's Governing Body has asked the Office to develop a compendium of practices on reducing irregular labour migration and promoting the rights of migrant workers in an irregular situation, as part of a broader five-year ILO plan of action to follow-up to the Conference resolution concerning fair and effective labour migration governance (2018-2022) (ILO 2017b). The

Compendium presents situations that can lead migrant workers into irregularity, the rights of migrant workers in irregular situations, and the relevant international standards, good practice and guidance. It also highlights State laws and policies, as well as practices within and among countries, often adopted in consultation with workers' and employer's organizations, that can help prevent irregular labour migration in abusive conditions, and facilitate respect and promotion of the human rights of all migrant workers, regardless of status. The practices that feature in this compendium are all in line with ILO instruments and other relevant international norms. The Compendium is not intended to be exhaustive but is instead a living document that will be regularly updated with new examples and experiences. It seeks to encourage the sharing of good practices by states, social partners, and other actors concerned and to contribute to the attainment of the objectives of the Global Compact for Safe, Orderly and Regular migration.

- **Irregularity increases vulnerability to violations of human rights, including labour rights.** Reports on migrant workers in irregular situations who die or injure themselves during their journey, or while at work, tend to attract most public attention. However, other factors or situations of irregularity, such as exclusion from access to the labour market, detention, or risk of deportation, combined often with personal characteristics, can also give rise to vulnerability of migrant workers in irregular situations. Factors may intersect, exacerbate each other, or change over time (UNMN 2021). Irregularity tends to increase vulnerability to trafficking and exploitation, discrimination, and other violations of human rights, including labour rights. It can undercut wages for all workers and disrupt labour markets. Irregularity may push migrant workers into informal employment where they face higher risk of exploitation, lack of social protection, and suffer from a deficit of skills and jobs matching. Those who are in low-skilled or in insecure forms of work face additional barriers and are particularly vulnerable to non-respect of labour rights. Some sectors are also highly gendered, reflecting and reinforcing existing gender stereotypes and gender inequalities in the labour market. Women migrants in an irregular situation may be more exposed to exploitative working conditions or gender-based violence and harassment, or intersecting forms of discrimination. The COVID-19 pandemic that is continuing to strike the world at the time of finalizing this report has only exacerbated these vulnerable and insecure conditions of migrant workers in irregular situations.
- **Irregularity does not mean that migrant workers have no rights or that these rights should not be respected.** All migrants retain their human rights regardless of migration status. Respect of their human rights, including labour rights, is critical to tackling irregular labour migration and must be the basis for effective management and cooperation at all levels. A range of international human rights and labour standards and instruments are relevant to this end (see also Annex II). Together with the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), the ILO Centenary Declaration on the Future of Work (2019) and the ILO Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable, and resilient (2021) provide critical guidance for policy makers and workers', and employers' organizations. Exemplary practices facilitate respect and promotion of the human rights of all migrant workers in an irregular situation, with special attention to equality of access to rights for migrant women and members of disadvantaged groups in irregular situations. They include action to respect and realize the fundamental principles and rights at work and the rights recognized in the core UN human rights instruments, while ensuring equality of treatment in respect of remuneration and certain social security benefits arising from past employment. To mitigate the impact of the COVID 19 pandemic, several countries have adopted ad hoc or temporary measures to regularize migrant workers in irregular situations and grant them access to certain basic rights, including health care. Countries are also seeking durable solutions that promote permanent mechanisms for admission and stay and grant in-country regular status, to migrant workers in vulnerable situations. Such mechanisms can bring economic and labour market benefits to countries of destination as well as stability and security for migrant workers in an irregular situation.
- **Effective access to justice is key.** Rights are without meaning if migrant workers cannot enjoy them. The right to effective remedies applies to all persons, whether nationals or migrants, irrespective of migrant status. Due process to claim rights needs to be afforded to all, without fear of the enforcement of immigration law. Labour inspection has a key role to play in this respect but institutional "firewalls"

between immigration law enforcement and labour inspection are to be set to protect migrant workers' rights in practice. Similar arrangements are pursued by state and local governments to ensure access to public services necessary for health care and other basic needs. Specific measures are needed to encourage equal access to justice for members of vulnerable groups of migrant workers in an irregular situation. They may lack awareness of their rights or the means for claiming them. They may face linguistic barriers or live or work in remote or closed environments. Women migrants often find themselves in informal or isolated types of employment, making it even more difficult to voice their grievances. Governments collaborating with social partners and migrant workers' organizations and other civil society organizations can ensure greater protection and can help address the urgent need of migrant workers in irregular situations to claim their rights, both in countries of origin and abroad.

► **Strategies that help prevent irregular labour migration in abusive conditions.** Drawing on international standards and guidance, governments have begun to develop effective strategies and policies to protect migrant workers' rights and address irregular labour migration. A variety of actions and practices already exist. These include:

- *Practices to enhance data collection and exchange of information* on irregular labour migration and related abusive conditions, including in collaboration with the social partners. Such practices demonstrate the potential for better alignment of admissions policies with labour market needs and migration flows to bring socio-economic benefits to sectors, communities, and national and migrant workers. They also help counter prejudice and stereotyped perceptions of migrant workers in irregular situations.
- *Steps to provide accurate information and assistance to migrant workers in irregular situation:* States, social partners and civil society organizations have developed a wide range of measures and programs to provide these migrant workers with the knowledge, and legal and other assistance and protection to pursue their claims. Practices involve legislative and regulatory tools, institutional partnerships, and direct services before departure and upon arrival. Organizing migrant workers in countries of destination, including through cross-border coordination among existing trade unions, brings collective support mechanisms.
- *Practices within and between states to ensure fair recruitment* in line with internationally recognized human rights and ILO guidance on fair recruitment can also help prevent irregular migration pathways. Such action also includes establishing national, bilateral, and cross border-mechanisms for regulating fair recruitment, prosecuting, and eliminating exploitative and abusive practices, such as forced labour and trafficking in persons, and sanctioning employers for unauthorized employment. Workers' and employers' organizations are key actors to combat unfair recruitment and its linkages with forced labour and trafficking.
- *Cooperation and social dialogue.* Social partners play an essential role in consultation and voluntary coordination with governments, within and across States, on measures relating to prevention of irregular migration for employment and remedies for associated abusive conditions. Policy coherence and whole of government-approach that respects human rights is critical to rights-based governance of irregular labour migration at national level. It is also an indispensable basis for effectiveness in related cooperation at international, regional, and bilateral levels.
- *Safeguards to prevent irregularity upon loss of employment.* Measures, aimed at preventing migrant workers from falling into irregular status upon loss of employment and allowing flexibility for them to change employment, are crucial to prevent irregular labour migration. In the context of the COVID 19 pandemic, measures to facilitate extension of visas, amnesties, or the renewal of work or residence permits have ensured migrant workers continued access to both essential services and regular work, while avoiding an increase in irregularity.

A set of good practices is emerging, but they must be scaled up and duplicated, where appropriate. It is hoped that this Compendium will not only help inform appropriate responses and rights-based strategies, but also encourage the identification and dissemination of further good practices that may emerge including through dialogue and cross-border cooperation.

► Acknowledgements

This compendium of practices was developed by the Labour Migration Branch (MIGRANT) of the Conditions of Work and Equality Department (WORKQUALITY) of the ILO, as part of a broader five-year ILO plan of action to follow-up to the Conference resolution concerning fair and effective labour migration governance (2018-2022) (ILO 2017b).

Katerine Landuyt provided the overall coordination of the Compendium, which built on the original draft report developed by Janelle Diller and additional research on the impact of the COVID pandemic produced by Stefania Errico, both consultants to the ILO. Inputs, comments and feedback from the following colleagues (including one intern) of a range of Departments at ILO Headquarters and from ILO Offices in the regions are also gratefully acknowledged: Beate Andrees, Nilim Baruah, Julie Bastien, Deepa Bharati, Francesco Carella, Ryszard Cholewinski, Kenza Dimechkie, Maria Gallotti, Nick Grisewood, Sophia Kagan, Samia Kazi-Aoul, Heike Lautenschlager, Kroum Markov, Fabiola Mieres, Mahanam Mithun, Henrik Moller, Alix Nasri, Victor Hugo Ricco, Heloise Ruaudel, Aurelia Segatti, Theo Sparreboom, Maya Stern-Plaza, Valerie Van Gothem, and Clara Van Panhuys. Valuable comments were also received from the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) and the International Trade Union Confederation (ITUC). Special thanks go to Manuela Tomei, Director of WORKQUALITY and Michelle Leighton, Chief of MIGRANT, for their support and guidance.

The document was copy-edited by Jane Neubecker. The layout and web publication were completed by Françoise Masson and PRODOC (Document and Publications Production, Printing and Distribution Branch), with funding from the Priority Implementation Actions of the AU-ILO-IOM-ECA Joint Programme on Labour Migration Governance for Development and Integration in Africa (JLMP Priority).

► Table of contents

Foreword.....	iii
Executive Summary.....	iv
Acknowledgements.....	vii
Acronyms and Abbreviations.....	xi
Introduction	1
<hr/>	
Part 1 — Context in which irregular labour migration occurs	5
<hr/>	
1.1. How do migrant workers come to be in an irregular situation ?	6
1.2. What pathways lead to irregularity?	8
1.3. What drives irregular migration?	9
1.4. Vulnerability and abusive conditions	10
<i>The COVID-19 pandemic</i>	11
Part 2 — What rights for migrant workers in irregular situations?	13
<hr/>	
2.1. Fundamental rights at work and equality of treatment.....	16
<i>Migrant workers in irregular situations are more susceptible to forced labour and trafficking</i>	17
<i>Giving a voice to migrant workers in an irregular situation</i>	19
<i>Ensuring equality of treatment and protection against discrimination</i>	21
<i>Migrant workers in an irregular situation face critical wage issues, including inequality and non-payment of wages</i>	23
<i>Extending social protection to migrant workers in an irregular situation</i>	24
2.2. Rights in situations of crisis – COVID-19 pandemic	29
2.3. Protection in case of expulsion	31
<i>Measures to avoid detention</i>	32
2.4. Regularization programmes and other mechanisms	34
<i>Special protection for groups in vulnerable situations</i>	38
Part 3 — Access to justice and remedies	41
<hr/>	
3.1. Judicial and quasi-judicial mechanisms.....	48
<i>Special measures to ensure equal access to justice and remedies</i>	48
3.2. Monitoring mechanisms and collaboration	49
<i>Collaboration with social partners and other stakeholders</i>	49
<i>The role of enforcement authorities</i>	51
<i>Bilateral cooperation on enforcement</i>	54
3.3. Dispute resolution mechanisms at workplace and sectoral levels	55

Part 4 — Strategies aimed at preventing irregular labour migration in abusive conditions	57
4.1. Collecting evidence	59
<i>Methods used in collecting data</i>	60
4.2. Exchanging information on irregular labour migration	62
<i>Exchange of information between States</i>	62
<i>Exchange of information among and with social partners</i>	63
<i>Data exchange to cover special situations</i>	64
4.3. Social dialogue and consultation on questions of irregular labour migration	65
<i>Social partners initiatives to prevent and detect irregular labour migration in abusive conditions</i>	66
4.4. Information and assistance to prevent labour migration in abusive conditions	68
<i>Providing free and accurate information to migrant workers</i>	68
<i>and preventing misleading information</i>	69
<i>Services to migrant workers</i>	72
4.5. Promoting fair recruitment to prevent irregular labour migration	75
<i>Role of national and cross border mechanisms for regulating of fair recruitment</i>	77
<i>Cross-border mechanisms for recruitment regulation at bilateral and (inter)regional level</i>	80
<i>Initiatives by trade unions to promote fair recruitment</i>	82
<i>Initiatives by employers' organisations and business</i>	83
<i>Recruitment monitoring and enforcement mechanisms</i>	84
<i>The value of model employment contracts and their supervision</i>	85
4.6. Imposing effective and dissuasive sanctions	87
<i>Targeted sanctions against trafficking and forced labour</i>	87
<i>Employer sanctions for unauthorized employment</i>	88
4.7. Preventing workers from falling into irregular status	90
<i>Protection in case of loss of employment</i>	90
<i>Facilitating change of employment and labour mobility</i>	92
Bibliography & annexes	94
Bibliography	95
Annex I Terms and definitions	112
Annex II International and regional law and policy	116

List of Figures

Box 1. Asylum and migration in the EU: Facts and figures.....	7
Box 2. Drivers of irregular migration for women.....	9
Box 3. ILO standards on irregular migration for employment in abusive conditions	15
Box 4. Ending forced labour	18
Box 5. Global Compact on safe, orderly and regular migration (2019) – Objective 22 – Establish mechanisms for the portability of social security entitlements and earned benefits	28
Box 6. COVID-19 and Migration: Resilience and recovery through protection of rights and an integrated approach to migration.....	30
Box 7. Access to justice for migrant workers in an irregular situation under the Protocol 29 of 2014 to the Forced Labour Convention, 1930 and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)	43
Box 8. The contribution of Migrant Resource Centers in Asia	44
Box 9. Measures to facilitate access to justice for migrant workers in irregular situations	45
Box 10. The General Principles and Operational Guidelines for Fair Recruitment, and the Definition for Recruitment Fees and Related Costs	77
Box 11. Regulating recruitment fees and related costs	79
Box 12. EU and OECD Member States responses to managing residence permits and migrant unemployment during the COVID-19 pandemic.....	91
Box 13. Human rights of migrants and the COVID-19 Pandemic	123
Box 14. Objective 5: Enhance availability and flexibility of pathways for regular migration	128
Box 15. Elements of good practice in relation to BLMAs and irregular labour migration.....	138

List of Tables

Table 1. Paths toward irregularity.....	8
Table 2. ILO Conventions and Recommendations directly or indirectly relevant to migrant workers in irregular or abusive situations	120
Table 3. Critical issues for migrant workers in irregular situations addressed by ILO standards	121
Table 4. UN human rights instruments related to irregular labour migration	122

► Acronyms and Abbreviations

AAICJ	American Association for the International Commission of Jurists
ACHPR	African Commission on Human and Peoples' Rights
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AFML	ASEAN Forum on Migrant Labour
AI	Amnesty International
ASEAN	Association of Southeast Asian Nations
AU	African Union
AUC	African Union Commission
CCMA	Commission for Conciliation, Mediation and Arbitration [South Africa]
CCPR	International Covenant on Civil and Political Rights
CEACR	Committee of Experts on the Application of Conventions and Recommendations [ILO]
CEDAW	Committee on the Elimination of Discrimination Against Women [UN-OCHCR]
CGT	Confédération Générale du Travail
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
COVID-19	Corona virus disease of 2019
CRC	Convention on the Rights of the Child
EAM	European Agenda on Migration
EC	European Commission
EC-EMN	European Commission, European Migration Network
ECOWAS	Economic Community of West African States
ECtHR	European Court of Human Rights
EU	European Union
EU-FRA	European Union. Agency for Fundamental Rights
FAO	Food and Agricultural Organization
FEP	Fédération de l'Entraide Protestante
FNARS	Fédération nationale des association d'accueil et de réadaptation sociale [France]
FES	Friedrich Ebert Stiftung
GAMM	Global Approach to Migration and Mobility [of the European Union]
GCM	Global Compact for Safe, Orderly and Regular Migration
IAHCR	Inter-American Commission/Court of Human Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICMPD	International Centre for Migration Policy Development
ICRMW	International Convention on the Protection of the Rights of Migrant Workers and Members of their Families
IDWF	International Domestic Workers Federation
IGAD	Inter-Governmental Authority on Development [of the African Union]
ILC	International Labour Conference

ILO	International Labour Office
IMISCOE	International Migration, Integration and Social Cohesion in Europe [the International Migration Research Network, Erasmus University, Rotterdam]
IOE	International Organisation of Employers
IOM	International Organization for Migration
IPU	Inter-Parliamentary Union
ITUC	International Trade Union Confederation
MERCOSUR	Mercado Común del Sur
MFA	Migrant Forum Asia
MFE	Malaysian Federation of Employers
MoU	Memorandum of Understanding
ODI	Overseas Development Institute
OECD	Organisation for Economic Cooperation and Development
OSCE	Organization for Security and Co-operation in Europe
OWWA	Overseas Workers Welfare Administration
PICUM	Platform for International Cooperation on Undocumented Migration [European Commission]
SAARC	South Asian Association for Regional Cooperation
SARTUC	South Asian Regional Trade Union Council
UN	United Nations
UNAOC	UN Alliance of Civilizations
UN-CMW	UN. Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families
UNDESA	UN. Department of Economic and Social Affairs
UNDP	United Nations Development Programme
UNESC	UN. Economic and Social Council
UNESCAP	UN. Economic and Social Commission for Asia and the Pacific
UNHCR	UN High Commissioner for Refugees
UN-HRC	UN. Human Rights Council
UN-ODC	UN. Office on Drugs and Crime
UN-OHCHR	UN. Office of the High Commissioner of Human Rights
WIEGO	Women in Informal Employment: Globalizing and Organizing [NGO]

Introduction

International migration is increasingly important in the global economy, affecting nearly all countries. There are about 169 million migrant workers, living and working across the globe. Seventy million of them are women, increasingly seeking opportunities abroad (ILO 2021a). Together with their families, they represent most of the international migrants estimated at 281 million people living outside their country of origin in 2020.¹ Three out of four of them are of working age (age 20 and over). While the COVID 19 pandemic, that is continuing to strike the world at the time of finalizing this report, has likely affected these numbers (OECD 2021), workers will continue to leave their countries in search of decent work.

¹ See the Migration Data Portal at: <https://www.migrationdataportal.org/themes/international-migrant-stocks> (accessed 20 December 2021). UNDESA 2020.

Despite the positive and empowering experiences of migrant workers and their communities, many migrants are compelled to move without access to regular migration options. Irregularity considerably increases the risk of entering in situations of vulnerability and violations of human rights, including labour rights. Irregular migration also exposes migrant workers to extreme forms of abuse associated with trafficking in persons (ILO 2004 a,b,c). Irregular migration tends to undermine development benefits of migration for workers, their families and communities, disrupts labour markets, including unfair competition, and undercuts wages, especially for low-paid workers.

Irregular labour migration is multifaceted, and its extent and impact are difficult to track due to its hidden nature and to efforts by those concerned to avoid detection (OECD and ILO 2018, 26–27). A cautious global estimate points to about 58 million migrant workers in irregular situations in 2017 (IOM 2018, 30). The continuing refugee and migrant crises combined with different practices and policies adopted by countries regarding entry and stay, is likely to lead to a further increase in irregular pathways (Spencer and Triandafyllidou 2021). The growing number of displaced people (now over 84 million according to the newest reports of UNHCR) will undoubtedly impact irregular migration, as returning to a home country becomes more difficult with growing conflicts, the COVID-19 pandemic and weather-related disasters (IDMC 2020). Migrant workers who disproportionately work in sectors negatively affected by the COVID-19 pandemic may have lost their employment and fallen into irregularity with little or no protection. In this context, national policy coherence and international collaboration and partnerships have become more important than ever to ensure that irregularity in the context of migration is being tackled and the human and labour rights of migrant workers in an irregular situation guaranteed.

ILO mandate, standards and policy

The founding documents of the International Labour Organization recognize that the protection of migrant workers, regardless of status, is an imperative part of the response to international labour migration. From the beginning ILO has been cognisant of the complexity of irregular migration and the need to protect the rights of migrant workers especially those in situations of vulnerability. The Preamble of the ILO Constitution considers exploitative labour conditions as a threat to world peace and calls for an improvement in these conditions, including ‘protection of the interests of workers when employed in countries other than their own’. The Declaration of Philadelphia (1944) annexed to the Constitution, also reaffirms the fundamental principle that ‘labour is not a commodity’. Irregularity should not mean that migrant workers have no rights. Regardless of nationality, residence or migrant status, the fundamental principles and rights outlined in the eight ILO fundamental Conventions addressing forced labour, child labour, trade union rights and non-discrimination in employment and occupation apply to all workers. The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, affirms the universal application of ILO’s fundamental principles and rights and calls for special attention to vulnerable groups, including migrant workers.

Very early on the ILO Conference has addressed abusive conditions associated with irregular labour migration. Initially this took shape through the struggle against the “white slave trade” and collaboration with the League of Nations on trafficking in women and children², but then received broader attention with the adoption of the Forced Labour Convention, 1930 (No. 29). In 1949, the revised ILO standards on migration for employment emphasized the importance of regulating the recruitment of migrant workers,

² In 1922, the ILO Conference instructed the Office to make every effort to facilitate the international co-ordination of migration statistics and considered the “collaboration with the League of Nations on the traffic in women and children” desirable in this regard; see Resolutions concerning migration statistics and concerning the traffic in women and children submitted by the Commission on Migration Statistics, adopted on 28 October 1922 (4th session).

considered that promoting irregular migration should be subject to appropriate penalties, and requested ILO member States to take steps against misleading information regarding the migration process. In 1975, growing concern among constituents at the increase in irregular labour migration flows and the high number of migrant workers in abusive conditions, culminated in the adoption of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Migrant Workers Recommendation, 1975 (No. 151).

In the last few decades, and aware of this growing phenomenon, the ILO has addressed the issue from different angles through policy guidance on fair recruitment, labour migration governance, equality of treatment, trafficking in persons and forced labour, and child labour, for example. ILO constituents also saw the need to strengthen the protection of migrant workers' rights, regardless of status, through the adoption of new standards on private recruitment agencies, domestic workers, forced labour, informal economy, decent work and employment for peace and resilience, and violence and harassment.

Several discussions at the International Labour Conference, whether in the Committee on the Application of Standards (1999 and 2016) or in technical Committees on general discussions on labour migration (2004 and 2017) also reflect the increased recognition by constituents that decent work deficits related to irregular migration needed to be addressed. In 2014, the ILO Director-General in his Report on the Fair Migration Agenda observed that the existence of high volumes of irregular migration or undocumented migration was an inevitable consequence of the fact that governments exercised the prerogative of national sovereignty to restrict migration. International migration continued, in too many cases, to be associated with unacceptable treatment and abuse of those women and men who are the most vulnerable in our labour markets (ILO 2014a). Subsequent tripartite meetings on labour migration, fair recruitment or migrant fishers have consistently raised the topic. The ILO's Fair Recruitment Initiative has also been instrumental in promoting pathways out of irregularity. The ILO Centenary Declaration on the Future of Work (ILO 2019a), in calling upon the ILO to direct efforts to "deepening and scaling up its work on international labour migration in response to constituents' needs and taking a leadership role

in decent work in labour migration", provides an avenue for ILO to support constituents in their efforts to irregularity in the context of labour migration and protect migrant workers' rights. The ILO Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient recognizes that the crisis has affected the most disadvantaged and vulnerable disproportionately, including migrants. To build forward better, ILO constituents commit to execute a transformative agenda for equality, diversity and inclusion aimed at eliminating violence and harassment in the world of work and discrimination on all grounds, including race, colour, sex, religion, political opinion, national extraction and social origin, and taking into account the specific circumstances and vulnerabilities of particular groups, including migrants (ILO 2021b) paras 3 and 11(b-h)). For further information on the relevance and contents of ILO standards and ILO policy, please see Annex II.

There is consensus that migration should be safe, orderly and regular. Governments have sought to address irregular labour migration through many different means, including unilateral measures or bilateral cooperation, but generally these responses have been inconsistent, lack global coherence and are not well-linked to human rights, including those embedded in international labour standards. In some cases the responses have been criticized as leading to further human and labour rights violations of migrant workers, or to increases in the use of irregular pathways.

The complexity of the problem and increasing rights violations, the myriad approaches to prevention, and the lack of guidance and documentation of good practices were some of the issues that led the ILO constituents in 2017 to adopt a Conference resolution on fair and effective labour migration governance (ILO 2017a). The resolution is given effect via a five-year plan of action (2018-2022) adopted by the Governing Body at its 331st Session, in November 2017, which called for the Office to develop this compendium of practices (ILO 2017b).

The Compendium explains the differing situations that can lead migrant workers to irregular status, the rights of these migrants and the international standards and related by guidance that apply. It also reviews the experiences and practices of states and employer's and workers' organizations

to prevent irregular labour migration in abusive conditions, and to protect migrant workers in irregular situations. It is hoped that this report will help inform more widely the adoption of appropriate responses and rights-based strategies as well as promote informed dialogue and multilateral cooperation.

The Compendium is intended to serve as a reference guide for use by:

- governments
- inter-governmental organizations
- employers' and workers' organizations
- civil society organizations
- enterprises/business organizations
- academia
- international NGOs
- migrants

The Compendium identifies practices of States, social partners, and others that have the potential to facilitate improvements in labour migration processes, increasing the benefits of migration for countries of origin and destination, their nationals, and migrant workers and their families (ILO 2006, 2014b, 2015a).³ To qualify for selection as an emerging good practice the action must:

- align with, and contribute to the implementation of, ILO instruments and other international norms, including those for protection of migrant workers in an irregular situation (See Part II, and Annex I).
- be sustainable over time;
- have applicability and scalability to wider contexts; and
- demonstrate cooperation and cross-border engagements amongst different public and private stakeholders.

The practices are not intended to be exhaustive but rather provide insights on how constituents have responded to the challenges relating to irregular migration. They map the experiences and means

used by governments and other stakeholders to address irregular labour migration and the abusive conditions involved. These are accompanied by examples that promote regular migration processes.

The Compendium further draws on information from other UN agencies and programmes and multilateral systems, including, as well as relevant United Nations human rights mechanisms. Good practices associated with regional human rights mechanisms are also included, and the cited publications of well-reputed research institutions and scholars.

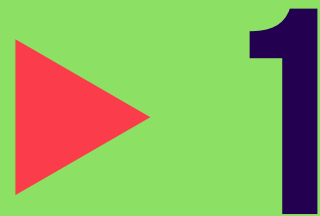
Part 1 of this Compendium explains the context in which irregular labour migration occurs, including the drivers of such migration and the diverse pathways leading to irregularity.

Part 2 of this Compendium elaborates on the rights of migrant workers in irregular situations and the policy and practices adopted by States in this regard. More detailed information on the specific rights concerned can be found in Annex II. It also comprises a wide range of practices which States are utilizing to promote regularization of migrant workers.

Part 3 focuses on the means for migrant workers in an irregular situation to access justice in case of rights' violations, and to obtain redress through a variety of mechanisms.

Part 4 focuses on policies and practices aimed at detecting and preventing labour migration in abusive conditions. This includes a global look at methods for data collection, cross-border mechanisms, tripartite efforts and a range of other measures taken to promote fair recruitment and sanction recruiting parties (when necessary) and monitor and protect migrants who find themselves in irregular situations. Policy frameworks and rights-based approaches are presented which are being undertaken by the social partners as bilateral, sectoral or transnational initiatives. Part 4 also addresses measures aimed at protecting migrant workers in case of loss of employment and promoting employment mobility.

³ With some exceptions, most of the models are recent and their impact and replicability have not yet been tested in a rigorous process of research, evaluation and peer review. Good practices represent successful and sustainable strategies or interventions with measurable results that may be replicated in different settings to produce similarly positive results.



Part 1 – Context in which irregular labour migration occurs

► 1.1. How do migrant workers come to be in an irregular situation ?

Irregular migration is broadly defined as the movement of persons taking place outside of laws, regulations or international agreements which otherwise govern the entry into or exit from states or origin, transit or destination. A universally accepted definition of irregular migration does not exist across the spectrum of UN agencies and international stakeholders working with these issues. However, as the IOM has noted, it is the “term generally used to identify persons moving outside regular migration channels” (IOM 2019a).

In 1975, the same year when the ILO adopted its migrant workers instruments addressing also migration in abusive conditions, the UN General Assembly called on all United Nations organs and specialised agencies to “utilize in all official documents the term “non-documented or irregular migrant workers” to define those workers that illegally and/or surreptitiously enter another country to obtain work” (UN General Assembly resolution 3449 (1975)). According to the International Convention on the Protection of the Rights of all Migrant Workers and members of their families (ICRMW, 1990) a migrant worker who is undocumented or in an irregular situation is someone who is not authorized to enter, to stay or to work in the country of destination. ILO standards do not provide a specific definition of migrant worker in an irregular situation,⁴ though they address the topic of irregular labour migration and related rights of migrant workers. For further detail, see Annex II.

Providing a statistical picture of irregular migration is challenging. No one really knows exactly how many migrant men and women enter countries through irregular channels or stay in the country irregularly. Most direct data collection methods used to assess international migration tend to underestimate or exclude irregular labour migration, or do not specify the global share of the migrant workers in an irregular situation and among the total population of international migrants (ILO 2018a, 20; UNDESA 2020, ILO

ICRMW, Article 5

For the purposes of the present Convention, migrant workers and members of their families:

- a.** Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;
- b.** Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

2021a). Moreover, the COVID 19 pandemic has impacted data collection globally, likely increasing the challenges for including migrant workers in an irregular situation in direct data gathering from household surveys and population censuses. Estimates of stocks and flows of irregular labour migration and employment tend to rely on indirect methods and proxies (Fargues and Shah 2017, 35–36 (stocks), 43–44 (flows)). Countries may infer indirect estimates on irregular migration from a variety of sources including restrictive visa regimes, reports of numbers from amnesty and regularization programmes, deportations, administrative and judicial cases of disputes and claims for wages and other rights related to employment, sanctions on employers for illegal employment, and programmes to counter trafficking and forced labour, exploitation, debt bondage and contract substitution and smuggling. This includes administrative data collected through labour inspections or public security investigations (IOM 2018, 13). See also part 4 of this report, section 1.

⁴ The ILO supervisory bodies are applying the same terminology

According to the United Nations Development Programme (UNDP) irregular migration is more prevalent across developing countries. It is estimated to be about one-third of all migration to developing countries, on average (UNDP 2009 and 2019). In Africa, for example, significant intra-continental irregular migration is reported within West Africa, to Northern Africa (mainly in Libya) in the Horn of Africa and, in a flow including migrants who have been smuggled from Ethiopia and Somalia, toward South Africa (ICMPD and IOM 2015; IOM 2019b, ILO 2019b). Sub-Saharan Africans in mixed migration flows, with migrants seeking work and others fleeing persecution, have attempted irregular migration through North Africa and across the Mediterranean Sea. Their reliance on informal recruitment and smuggling has resulted in death or forced and slave labour, either in North Africa or in transit to Europe IOM 2017a.

The IOM Flow Monitoring Survey found that about 75 per cent of respondents on the Central Mediterranean route to Europe from North Africa reported direct experiences of abuse, exploitation, coercion and practices that may amount to human trafficking (IOM 2017a, pp-3-4). The European Union reported an estimated 600,000 migrants in an irregular situation in 2018. Flows from Africa to Europe diminished from more than one million in 2015 to less than 150,000 in 2018 (EP 2019, see also Box 1). In 2015, most travelled from Turkey to Greece; almost all of those in the 2018 figures travelled from North Africa to Italy (IOM 2015a, 2020a). In the Russian Federation, approximately 60 per cent of migrant workers, primarily from Central Asia, are reported to be in irregular situations (UN-ESCAP, 2015, 24). In the United States, two-thirds of the 10.5 million migrants who were in an irregular situation in 2017 were are estimated to be employed, amounting to some 7.6 million workers, about 4.6 per cent of the US labour force (Passel et. al, 2019 and Lopez et. al, 20).

A number of East Asian countries have significant populations of migrant workers in an irregular status; among them, marked irregular migration flows are reported within South-East Asia where Malaysia and Thailand serve as major destination countries. For example, Thailand receives annually more than 660,000 migrants from Cambodia, Myanmar and Lao PDR (IOM 2015a). An estimated

► Box 1. Asylum and migration in the EU: Facts and figures

The number of migrants in an irregular situation reported in 2018, dropped from 2.2 million people present in an irregular situation in 2015, as noted by the European Parliament. The Pew Research Center which conducts analysis on “unauthorized” immigration also has reported that, based on European data sources and estimates, in 2015 at least 3.3 million unauthorized immigrants (including those with a pending asylum claim) – and possibly as many as 4.9 million – lived in Europe (the 28 Members of the EU, including the UK, and the European Free Trade Association (EFTA)). The numbers peaked in 2016 counting at least 4.1 million and possibly 5.3 million, unauthorized immigrants, after which numbers declined to at least 3.9 million and possibly 4.8 million unauthorized immigrants in 2017).

Source: EP 2019; and the Pew Research Center 2019.

one-third of the migrant workers in South East Asia are reported to be in an irregular situation, and nearly one-half the total number of migrants reported by the UN in 2015 were in South East Asia that year (UNDESA 2015a).

Data appear to indicate that border closures and movement restrictions due to the COVID-19 pandemic have affected irregular migration stocks and flows. For example, for the EU, data for 2020 represented a 13 per cent drop compared to the 2019, counting 124,000 crossing attempts; men represented 80 per cent, with Syrians the most frequently reported nationality, followed by Moroccans, Tunisians and Algerians (Frontex 2021). In terms of irregular migration to OECD countries, arrivals shifted away from the Eastern Mediterranean Route (–75 per cent) to the Central Mediterranean (155 per cent increase) and the Western Balkans Routes (105 per cent increase), due to border closures and suspension of asylum applications. The Western African Route (to the Canary Islands) increased by almost 900 per cent in comparison to 2019 (ICMPD 2021).

► 1.2. What pathways lead to irregularity?

How does irregular labour migration happen? According to some, the main cause of irregular migration is “less a disregard of regulations by migrants than a continuing inequality within and between countries, and the failure of states to create adequate migration regimes to meet economic demand” (Castles et al. 2012). As there are often mismatches between entry rules and demand for labour, bureaucratic complexities exacerbate the difficulties that migrants must navigate to stay in a regular situation.

Pathways towards irregularity are varied. Migrants may have crossed borders through regular channels but overstayed their visas; ended up in unauthorized employment in the formal

or informal economy; entered without valid documentation; or may have lost their regular status due to unemployment or non-compliance with certain permit requirements (Spencer and Triandafyllidou 2021, 16). Migrants may also find themselves in an irregular situation due to rejection of a request for asylum, violation of the obligation to leave the territory, ineffective deportation or bureaucratic failures to process visa applications or permits in a timely manner (see table 1). However, while some migrants may willingly choose to move irregularly, most have often little control over the complex factors that determine their migration status. In most cases they end up in an irregular situation through no fault of their own (ILO 2021c).

► Table 1. Paths toward irregularity

Type of irregularity	Context
Irregular entry and stay	Migrant workers who have crossed borders in breach of immigration laws and policies. This may also include persons, including children, who have been trafficked and deceived about the purpose or regularity of their migration.
Irregular (entry and) stay	Children of irregular-status migrants
Regular entry and irregular stay	Migrant workers who have crossed borders through regular channels (including with a non-work visa) but have overstayed the period of validity of their visa or permit in breach of immigration laws and policies. This may include situations where migrant workers are encouraged by fraudulent recruiters to enter on a non-work visa and work outside regular channels; or situations in which a migrant worker's residence or work permit is expiring during the period while she or he is awaiting the outcome of a legal decision (for example regarding a complaint for abusive conditions); or persons who have been trafficked for labour exploitation but entered the country with proper legal documents.
	Migrant workers who have crossed borders through regular channels but are engaged in unauthorized employment or have moved into the informal economy. This can be due to situations in which the employer fails to renew work and residency permits, and the worker continues to work for that employer; or situations in which the worker is working for another employer or sector than the one listed on the visa or work permit (which is tied to one employer or sector).
	Migrant workers who have entered and stayed on the territory in line with immigration laws but who have lost their employment and find themselves in an irregular situation because the loss of employment results in the work permit becoming invalid, or the residence permit revoked or cancelled (work and residence permits are inked and tied to once employer). This could include situations in which a worker with a valid work permit is leaving the employer because of abuse and reported as having absconded by the employer.
	Rejected asylum seekers or those migrants who might well be eligible for refugee status but who fail to lodge any application for asylum and therefore are not in any asylum procedure.
	Migrant workers who are not complying with the obligation to leave the territory, or due to ineffective deportation and bureaucratic failure. This may also be due to actions by the employer refusing to pay the return airfare or the worker's passport, resulting in the migrant worker not being able to leave despite cancellation or expiry of visas.
Irregular entry and regular stay	Migrant workers who have entered through irregular channels and who have benefitted from regularization or amnesty programmes.

► 1.3. What drives irregular migration?

Drivers for regular and irregular migration overlap and may include political insecurity and civil unrest, economic motivations, family reunification, or climate change and natural disasters, among others. Like regular labour migration, irregular labour migration is driven by asymmetries between the demand for labour and the supply in countries of destination and origin, resulting from a tension between economics and politics. Yet, while drivers may clearly overlap, limited options for regular migration lead people to move through irregular channels (UN 2017). People may be compelled to leave their countries for several reasons and drivers of irregular migration are multifaceted combining structural and individual factors. Economic motivations may be a major factor, but often not the only one (UNDP 2019). Complex underlying causes and drivers of irregular labour migration

include: unequal access to economic and social rights, including health care, social protection or decent work, lack of equal opportunities, gender norms-based violence, abrupt cessation or lack of livelihoods, including due to adverse effect of climate changes and environment degradation or disasters and crisis, dishonest labour recruiters, misleading information or lack of understanding of visa and complex immigration rules (UNMN 2021).

The ILO has summarized several drivers of irregularity that have been caused by the COVID-19 pandemic, citing workplace closures and working-hour losses, and calls for global policymakers to “support a recovery that is robust and broad-based, focusing on employment, income, workers’ rights and social dialogue: a human-centred recovery” (ILO 2021b, 3; ILO 2021c).

► Box 2. Drivers of irregular migration for women

In South-East Asia, drivers of migration (or displacement) of women includes internal/civil armed conflict, climate-induced disasters, poverty, lack of regulation of domestic labour across the region, family expectations, increasingly repressive social mores, gender-based violence, sex trafficking and labour trafficking. Women, who may be either pregnant or travelling with children, experience heightened health and safety risks. The lack of regular pathways, or easy asylum pathways, contributes to the level of risk of irregular migration channels.

Restrictions on women’s employment abroad can be an important driver of irregular labour migration. As a response to abuse and exploitation of women migrant workers in certain countries of destination, some countries of origin in Asia and Africa have adopted total or conditional migration bans, particularly for domestic work. Entrenched gender norms generally inform policy making on such restrictions. However, these bans affect women migrants disproportionately. Evidence suggests that closing regular migration channels without providing viable alternative local income opportunities, pushes women to use more risky and dangerous irregular migration routes.

Source: UN Women 2017a. Napier-Moore, 2017; Shivakoti, et al, 2021.

The drivers of irregular migration also depend on broader migration flows and must be understood as “trajectories which may cover many years as migrants settle in a country but later move on to another or return to their home country as conditions change” (Cummings et al. 2015, 6). Studies on irregular migration, for instance from other parts of the world to Europe, indicate that

irregular migration is in constant flux, making it extremely difficult to accurately monitor the various conditions, transits and general statistical data available in this constantly shifting situation.

The emerging practices included in this Compendium cover a diversity of geographical contexts, legal cultures, economic systems, and

levels of development, as well as relevant sectors, including hospitality, construction, agriculture, care work including domestic work, and fisheries. With regard to trafficking in persons both as a driver and manifestation of irregular migration, this Compendium has primarily restricted

its review to situations distinctive to migrant workers with irregular status, and not to border and in-country practices involving immigration enforcement, except where closely associated with irregularity leading to abusive conditions of migrant workers.

► 1.4. Vulnerability and abusive conditions

A range of personal or situational factors can give rise to vulnerability of migrant workers. These can include health, gender and gender identity, race, ethnicity, religion, nationality, disability, or migration status. Situations of exclusion, detention or risk of deportation also generate situations of vulnerability. Factors may intersect, influence or exacerbate each other, and evolve or change over time (UNMN 2021). Whatever the path taken, migrant workers in an irregular situation are at greater risk of a range of human rights abuses than those with regular status. Migrants in an irregular situation face challenges in the exercise of human rights, including accessing labour rights, social protection, health and education systems, essential services and adequate housing. Irregularity increases vulnerability to trafficking, forced labour, and exploitation, debt bondage and contract substitution, as well as discrimination particularly with regard to wages and conditions of work, and gender-based violence and harassment, with migrants often unable to access services or justice and effective remedies to obtain redress. Young migrant workers in an irregular situation, or members of ethnic, religious and linguistic minorities, or indigenous and tribal peoples, are vulnerable to multiple grounds of discrimination in employment (ILO 2017c, para. 39). Women among them are even more disadvantaged.

Women migrants may begin their journey by agreeing to be guided by a smuggler and then become trafficked, or subjected to kidnap and ransom demands, extortion, physical violence or sexual abuse or forced marriage (ILO 2017d). According to the most recent statistics, the ILO estimates that there are 11.5 million migrant domestic workers, 8.5 of whom are women (ILO2015a). Many women migrant workers in irregular domestic or other forms of care work

in the private sphere are more likely than men to face exploitative working conditions with very little or no access to basic economic and social rights, as well as being exposed to sexual and gender-based violence and harassment in the workplace (ILO 2017c, para 40). This is further exacerbated if they are trapped in a destination country with no recourse to legal protection (Migrant Rights, 2020; Jones et.al, 2021). Gender-responsive and other laws, policies, and programmes to meet their needs vary depending on the specific circumstances of the case, including with regard to the factors that led women into irregular migration (UN Women 2017a). Providing equal and non-discriminatory access to migration opportunities, and removing bans or restrictions on women's migration, including those based on sectors of work and marriage status, are key components of good practice aimed at discouraging women turning to irregular migration channels.

In countries of origin, labour recruiters, agencies and other intermediaries are reported to charge exorbitant fees, increasing the economic vulnerability of workers who borrow money at high interest rates or mortgage their land or home, in violation of fair recruitment practices (ILO 2016b; ILO 2018b; ILO 2020a, ILO2020b). In countries of destination, migrants in irregular situations, as well as certain groups of regular status migrant workers in insecure conditions, such as informal economy workers and temporary low-skilled migrant workers, face linguistic, legal, administrative, cultural and information barriers and are particularly vulnerable to abusive practices and non-respect of labour rights (Costello and Freedland 2014). The risk of forced labour and other abusive practices is particularly pronounced for irregular-status migrant workers in the informal economy and in certain sectors,

such as agriculture, basic metal production, domestic work, construction, electronics, fisheries, hospitality, mining, and the textiles and clothing sector (IPU and ILO 2019, sec. 4.2; see also ILO 2016a, para. 539). Abusive conditions include substandard working conditions and wages, contract substitution after recruitment, difficulties in changing employers due to restrictive visa rules, confiscation by the employer of identity documents, or withholding of salary combined with the migrant's fear of detention or summary deportation (ILO 2017c, para. 187). Migrant workers in an irregular situation are often forced into the informal economy where they face a higher risk of exploitation, lack social protection, and suffer from a deficit of skills and jobs matching. Some sectors are highly gendered – with men mostly working in building and construction and women domestic

workers. This reflects and reinforces existing stereotypes and gender inequalities in the labour market.

As indicted earlier, irregular migration is often seen as a security issue, and migrants in an irregular situations as criminals. International human rights mechanisms emphasize that migrant workers in an irregular situation should not be treated as such (CMW, general comment No.2). States should protect migrants at all stages of the migratory process and guarantee access to justice to remedy any discriminatory treatment or human rights violations that they experience. The Special Rapporteur has provided guidance to States on providing effective access to justice for all migrants at every stage of the migration process (UN-HRC 2017, paras 63–65) (see Part 2 and Annex II).

Being in an irregular situation does not make migrant workers criminals

Migrants in an irregular situation are frequently referred to as “illegals” or “illegal migrants” and associated with criminality, and irregular migration considered a security issue. In a number of countries, irregular entry and stay is considered a criminal offence, resulting in migrant workers being treated as criminals. Such criminalizing creates increased vulnerability and stereotyping resulting in discrimination and xenophobia, and the removal of migrants contrary to human rights obligations (UN-CMW 2013, paras 2 and 24; UN-HRC 2012 para. 13). Pushbacks of migrants further exacerbate situations of vulnerability, including those based on intersecting and multiple forms of discrimination, such as on the basis of gender, migration status, nationality, ethnicity (UN-HRC 2017, paras 63–65). Exceptional challenges, such as a health emergency like the COVID-19 pandemic, are often invoked to justify actions (UN-HRC 2021, para. 49).

Migrants, regardless of how they have travelled and whether they are part or not of mixed migration movements, should have effective access to their human rights. While acknowledging the sovereign right of all States to develop their own migration and labour policies, international human rights mechanisms emphasize that irregular entry or stay should not be considered a criminal offence, and that migrants in an irregular situation should not be treated as such (UN-CMW 2013, paras 2 and 24; ILO2016a). States should ensure respect for the human rights of migrants while enacting and implementing national immigration laws (A/HRC/17/33). While actions in breach of certain residency or work authorizations may be considered illegal, a human being cannot. Designating certain groups of people as ‘illegal’ has important implications for the overall public perception of migrant workers and their families. Criminalization fosters public perceptions and prejudice that migrant workers in an irregular situation are unfair competitors for jobs and social benefits, thereby fuelling discrimination and xenophobia.

The COVID-19 pandemic

Situations of crisis, including the COVID-19 pandemic, have a particularly harsh impact on migrant workers in an irregular situation, exposing and amplifying pre-existing vulnerabilities and inequalities which are often embedded in the lack of respect, protection and fulfilment of their basic human rights. The pandemic has substantially affected cross-border movements, which are predicted not to revert in the near future to pre-crisis levels.⁵ The pandemic has put a break on labour demand in a number of sectors where migrant labour is common (Sanchez and Achilli 2020).

The experience of COVID-19 has underscored that, when situations of crisis arise, migrant workers in an irregular situation are disproportionately affected by layoffs, worsening working conditions, including reduction or non-payment of wages, poverty, food insecurity and rising levels of discrimination and violence, particularly in domestic work where many migrant women are employed. These factors play against a backdrop of existing vulnerabilities that are due, for example, to the lack of access to health care and social security, precarious jobs, often in the informal economy, situations of labour exploitation, inadequate housing, lack of protection from occupational safety and health hazards, limited access to support services and shelter in case of violence and limited access to justice (2020c, d, e).

For those in sectors characterized by temporary, unprotected work – such as domestic and agricultural workers in the informal economy and in health care – there is often no social safety net or legal protections (Benton et al. 2021). Migrants and refugees who are undocumented or in a situation of irregularity may be excluded from the relief measures that States adopt to recover from the crisis. Where covered, migrants may be reluctant to access available services for fear of being reported to immigration authorities. Yet, their inclusion in recovery measures is crucial to the resilience of the societies affected by the crisis. Equally essential is that their basic rights are respected and ensured.


Border closures and movement restrictions to curb the spread of COVID-19 also severely impact the rights and protection of those who are most at risk (ILO 2020c). Concerns continue to exist about

the spread of the virus in crowded immigration detention centres and in migrant workers' housing. Redundancies in the tourism, hospitality and construction sectors left many migrants jobless and stranded in destination countries and facing economic hardship (ILO 2020c). Losing their job may, therefore have an effect on their migratory status (such as withdrawal of work and resident permits), forcing migrant workers into irregularity and informality. Evidence shows that many migrant workers, regardless of status, face difficulties to claim unpaid wages and outstanding benefits, but for migrants in an irregular situation, those obstacles are amplified by fear of being reported to the authorities and having to face deportation or reprisals. The situation of women migrant workers deserves particular attention. They are over-represented in the informal economy and among undocumented workers, and subject multiple discrimination due to prevailing social norms and gender stereotypes compounded by their irregular status. Returnees are facing increasing discrimination and are being stigmatized as carriers of COVID-19 (ILO 2020d, e, f) (See below Box 6 on COVID-19 and Migration.)

Bilateral and international coordination and the involvement of social partners remains crucial to respond effectively to these migration issues. International labour standards and fundamental principles and rights at work will continue to offer guidance governments and other stakeholders as the world tackles the socio-economic impact of migration and the additional impact of the COVID-19 pandemic.

Throughout the Compendium, information and reports addressing the (potential) impact of the COVID-19 pandemic on irregular labour migration or the rights of migrant workers in an irregular situation come from a range of government and non-state sources. The appropriate actions related to the challenges of the COVID-19 pandemic are also highlighted and have been drawn from States' and stakeholder's examples of legal and policy initiatives and frameworks. Further information on international standards offering protection to migrants can be found in Part 2 and Annex II. Specific forms of application of ILO standards in times of COVID-19 pandemic are set out in a number of policy briefs referenced throughout the Compendium.

⁵ See migration data relevant for the COVID-19 pandemic on the Migration Data Portal at: <https://migrationdataportal.org/themes/migration-data-relevant-covid-19-pandemic> (hosted through IOM, and with the collaboration of the Economist Intelligence Unit and the Governments of Germany and the United Kingdom).



2

Part 2 – What rights for migrant workers in irregular situations?

While it is a sovereign right of all states to regulate labour migration, the exercise of this right is guided by States' international human rights and labour rights commitments. Irregularity of status of people who cross borders and enter the labour market in conditions of irregularity should not mean they have no rights and should not enjoy the protections guaranteed under international, regional and national human rights laws. Irregular labour migration frequently results in situations of vulnerability, leads to labour market disruptions and undercuts wages, especially for low-paid workers. Improving labour standards and promoting rights for migrant workers in an irregular situation will lift the floor for all workers.

The human rights of all workers, including fundamental rights at work, must be protected in adherence of international law. A broad range of international human rights and labour instruments of both specific and general application provide key normative foundations for addressing irregular labour migration and protecting the rights of migrant workers, regardless of status (see for more detail in Annex II). The human rights of all migrant workers and members of their families are protected by core UN human rights treaties.⁶ These treaties are highly ratified and make few distinctions between citizens and non-citizens, including those in an irregular situation (*UN Special Rapporteur on the Human Rights of Non-Citizens*). Explicit recognition of the specific rights and freedoms of migrant workers in an irregular situation can be found in Chapter III of the International Convention on the Rights of Migrant Workers and Members of Their Families (ICRMW).⁷ These rights include, among others:

- freedom of expression and of association and freedom to leave the country;
- equality before the law and security of person and property;

- rights in context of detention;
- rights relating to employment that are not less favourable than nationals;
- the right to social security under the same treatment as nationals in so far as they fulfil the requirements by law or treaty;
- the right to receive any medical care urgently required for preservation of life and avoidance of irreparable harm on the basis of equality of treatment with nationals;
- the right of children migrants to a name, to registration of birth and to a nationality, and to education; and
- rights in the event of departure or expulsion .

The primary ILO Convention and Recommendation that address irregular labour migration in abusive conditions, and associated rights are the Migrant Workers (Supplementary Provisions) Convention (No. 143) and the Migrant Workers Recommendation (No. 151), 1975. (See box 3 for a brief summary.)

⁶ International Covenant on Civil and Political Rights (ICCPR) (1966), International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984), Convention on the Rights of the Child (CRC) (1989), International Convention on the Rights of persons with Disabilities (ICRPD)(2006).

⁷ See Part II, Article 7 and Part III.

► **Box 3. ILO standards on irregular migration for employment in abusive conditions**

Convention No. 143 and Recommendation No. 151 aim to guide member States in their efforts to address irregular migration for employment in abusive conditions while at the same time protecting the rights of migrant workers in irregular situations.

RIGHTS OF MIGRANT WORKERS IN AN IRREGULAR SITUATION

Respect for “**basic human rights** of all migrant workers” including those in irregular situations (Convention No. 143, Article 1)

Equal treatment of irregular-status migrant workers with those in a regular situation or with nationals, as applicable under the law of the country, for purposes of rights arising out of past employment in respect of remuneration, social security and other benefits, trade union membership and exercise of trade union rights, as well as access to justice to claim those rights (Convention No.143, Article 9(1) and (2), Recommendation No.151, para. 8(3) and (4), and para. 34).

Waiver of cost of expulsion, and right of appeal before an administrative or judicial instance, which should stay the execution of the expulsion order; equality of treatment with regard right to legal assistance (Convention No.143, Article9 (3), Recommendation No.151, para. 8(5) and para. 33).

Speedy decisions in cases in which migration and related employment laws and regulations have not been respected so that migrant workers should know whether their position can be regularized or not (Recommendation No. 151, para. 8(1)).

Consideration of temporary or permanent regularization for migrant workers in irregular situations as means of promoting their rights and contributions to the host economy (Convention No. 143, Article 9(4)). Migrant workers whose position has been regularized should benefit from all rights which, are provided for migrant workers lawfully within the territory of a Member (Recommendation No.151, para. 8(2)).

ADDRESSING IRREGULAR MIGRATION FOR EMPLOYMENT IN ABUSIVE CONDITIONS

Identification of irregular movements of migrant in which there are abusive conditions, and **unauthorized employment** of migrant workers in the territory (Convention No.143, Articles 2 and 3).

Consultation with social partners on exchange of information and on laws and measures to prevent and eliminate such abuses, and recognition of their initiatives for this purpose (Convention No. 143, Articles 4 and 7)

Action within and between Members to suppress irregular movements of migrants for employment and unauthorized employment of migrants, to act against the organizers and employers concerned, and to exchange relevant information (Convention No. 143, Articles 2–3).

Imposition of administrative, civil and penal sanctions against unauthorized employment and organization of irregular migration in abusive conditions (Convention No. Article 6)

Coordination of enforcement jurisdiction to **prosecute organizers of trafficking in persons regardless of their country of operation** (Convention No.143, Articles 5–6).

Protection of migrant workers from automatic withdrawal of authorization to reside or work solely due to loss of employment, and related right to appeal against termination of employment, and compensation in case of unjustified termination (Convention No. 143, Article 8; Recommendation No. 151, paras. 30–32).

Source: Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Migrant Workers Recommendation, 1975 (No. 151).

► 2.1. Fundamental rights at work and equality of treatment

Already in 1975, there was consensus that irregular migration for employment creates high levels of vulnerability to violations of fundamental rights, including including abuse and exploitation, often of the extreme type. States of both countries of origin and destination should ensure respect for the “basic human rights of all migrant workers”, irrespective of migration status (Convention No. 143, Art.1). These include the fundamental rights contained in the UN international instruments, some of which include the fundamental rights of workers, and which apply to all persons without discrimination (ILO 2016a, paras 276 and 297). Measures taken to combat specific situations of abuse of migrant workers in irregular situations therefore involve addressing violations of their fundamental principles and rights at work.

These rights, which are considered both enabling rights and ends of their own, consist of 1) the elimination of forced and compulsory labour, 2) the abolition of child labour, 3) freedom of association and effective recognition of the right to collective bargaining, and 4) the elimination of discrimination in respect of employment and occupation with equality of opportunity (ILO 2010a). Gender equality and non-discrimination is an integral aspect of the enjoyment of each of these rights (ILO 2008). The full array of ILO legal instruments related to the challenges of irregular migration for employment can be found in Annex II. This section will touch upon some basic human rights protections, as well as some other rights of migrant workers in irregular situations.

Developing and implementing laws, policies, and measures to fulfil the “obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status” is an overarching principle of good practice in the governance of migration, including irregular labour migration (UN 2019). States should develop their diverse national policies and cooperation agreements based on human rights, international labour standards, and particularly in policies

relating to migration and employment. In the Global Compact for Migration, UN Member States “acknowledge ... an overarching obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status, while promoting the security and prosperity of all our communities” (UN 2019). This principle to respect the rights of migrant workers in an irregular situation, including their due process guarantees, is essential to good practice and, while “firmly based in national circumstances”, applies to national action of countries of origin, transit, or destination (Convention 143, Article 1). It also applies to States acting in regional, subregional, and bilateral governance structures. The state should ensure that in practice this principle is supported with guidance to authorities that a) conduct direct or indirect enforcement methods, including identification checks; and b) are obligated to report migrant workers to criminal enforcement authorities (EU-FRA 2011). Part 3 on access to justice and enforcement mechanisms provide examples of legal and policy frameworks that demonstrate how this is done in practice.

►► In the Global Compact for Migration, UN Member States “acknowledge ... an overarching obligation to respect, protect and fulfil the human rights of all migrants, regardless of their migration status, while promoting the security and prosperity of all our communities”

(UN 2019).

- In **Tajikistan**, the national strategy on international labour migration has aimed to develop effective forms and methods of migration based on broadening economic freedom, respect for human rights and developing bilateral and multilateral international relations, and to establish mutually acceptable relations on these issues with employers of host countries.⁸
- The national migration policies of **Azerbaijan, Bangladesh, Plurinational State of Bolivia, Mexico, Morocco, Nigeria, Philippines, Serbia and Uganda** include the protection of the basic human rights of their nationals seeking employment abroad (ILO 2016a, para. 182).⁹
- In **South Africa**, the 2008 decision by the Labour Court of Johannesburg highlighted that irregular-status migrant workers enjoy the right to fair labour practices in Article 23 of the Constitution and the protections enshrined in the Labour Relations Act.¹⁰
- The legislation in **Argentina** and **Uruguay** refers to the right to migrate as an inalienable right.¹¹

Migrant workers in irregular situations are more susceptible to forced labour and trafficking

Irregular migration can result in migrants being put in danger and exposed to different forms of exploitation, forced labour and trafficking in persons. Undocumented status is even considered a major factor in determining coercion and potential forced labour and trafficking, with the

risk of denunciation and deportation playing a role (PICUM 2020; ECtHR 2017). Article 11 of the ICRMW (1990) requires States parties to take effective measures against all forms of forced or compulsory labour by migrant workers. The ILO Protocol of 2014 to the Forced Labour Convention, 1930 recognizes that migrants have a higher risk of becoming victims of forced or compulsory labour (preamble). Measures for the prevention of forced and compulsory labour shall therefore also include protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process (Article 2(d)). For further information on emerging practices, see Part 4 section 5 on promoting fair recruitment.

Implementation of the obligation to respect and ensure the rights of migrants who are victims of forced labour and who are in an irregular situation includes a range of measures; 1) action to ensure the non-penalization of irregular migration status for forced labour victims; 2) awareness raising and prevention through training, organizing the workers and providing them necessary assistance to assert their rights and denounce abuses; and 3) protective measures, including a period of reflection and recovery, short or long-term residence permits, and facilitation of repatriation if desired. In practice, repatriation assistance is the measure most used by States, followed by, consecutively, short- or long-term residence permits such as in Bosnia-Herzegovina, Canada, and Italy; work authorization to freed migrants; and recovery and reflection periods (to determine repatriation) (ILO 2018c). See also box 4 and Parts 3 and 4.

8 CEACR, Tajikistan, direct request 2018 Convention 143 at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>. See also Comments on the National Strategy on International Labour Migration of Tajikistan Citizens for 2011–15, at: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3186827.

9 The National labour migration policy of Nigeria aims to promote decent work and ensure non-discrimination and equality of treatment for all workers, among others, see Nigeria – CEACR, Observation, published in 2018.

10 CEACR, South Africa, direct request 2010, Convention No.111 at <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

11 See Argentina (section 4 of Law No. 25.871 of 2004 on the Argentinian Migration Policy); and Uruguay (section 1) of the Migration Law No. 18.250).

► Box 4. Ending forced labour

The EU Council Directive 2004/81/EC of 29 April 2004 issued OJ L/261/19, 6.8.2004 on the *Residence Permit Issued to Third-Country Nationals Who are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate With the Competent Authorities*. The Directive provides for the issuance of residence permits of temporary duration to non-EU nationals who are victims of trafficking, subject to a period of reflection on a decision whether to cooperate, as a “sufficient incentive to cooperate with the competent authorities while including certain conditions to safeguard against abuse”. Protective measures including medical care, authorization to work and vocational training are also provided.

The ILO's report *Ending Forced Labour by 2030* reported 122 countries practicing repatriation assistance (but this figure includes involuntary repatriation programmes); 103 countries granting short- or long-term residence permits (but this figure includes those conditioned upon testifying or successful conviction of perpetrator); 60 countries affording work authorization to freed migrants; and 35 countries, mostly in the EU, providing recovery and reflection periods (to determine repatriation). Another 35 countries have no special protection measures.

Source: ILO 2018c.

As a trend in state practice, several countries combine these measures. Argentina, for example, amended its Human Trafficking Law in 2012 to include a provision granting repatriation services to trafficked persons if they wish to return to their home country or a non-conditional residency permit to stay in Argentina. For those choosing to stay, the amended law also provides guarantees of psychological support, medical care, housing benefits, and the option of education (2018c, 101). In Guinea-Bissau, legislation provides that the victim's safety, as well as the absence of a risk of re-trafficking, needs to be assured prior to repatriation (ibid.). Among the ASEAN countries, a yearly forum on Migrant Labour (AFML) seeks to advance implementation of the commitments in the Declaration on the Protection and Promotion of the Rights of Migrant Workers for countries of origin and destination to ensure the dignity of migrant workers by outlining their obligations in areas including protection from exploitation, discrimination, and violence; and the fight against trafficking in persons (ASEAN 2012).

As a basic principle of good practice, assistance to victims of forced labour, including in the context of trafficking in persons, should be open to all migrants in an irregular situation who have been subjected to forced labour, not only to those identified as having been trafficked. In addition, good practice requires that services should not be conditioned on willingness to cooperate with

law enforcement as this directly contradicts the principles of the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) (Para. 5(2)). Depending on the needs of victims, assistance should include provision of accommodation, medical and psychological health care, special rehabilitative measures as needed, material assistance, protection of privacy and identity, and social and economic assistance including access to educational and training opportunities and to decent work (Para. 9). Services to victims of forced labour are provided by state authorities or non-state actors or a combination and, in some cases, NGOs pay for or organize assistance to persons freed from forced labour.

►► Migrant children, especially unaccompanied minors, face the highest risk of being exposed to the worst forms of child labour.

Where migrant children victims of sale and trafficking for sexual or labour exploitation are found to be undocumented, States need to take “immediate and effective measures for the prevention of child trafficking and/or the removal and rehabilitation of former child

victims of trafficking through such measures as repatriation, family reunification and appropriate support, in cooperation with the child's country of origin" (ILO 2016a, note 106). As a basic principle of good practice, laws and regulations that assist in realizing these measures should be clear about protecting migrant workers from worst forms of child labour, including trafficking in persons.

- In **Thailand**, the Good Labour Practice (GLP) Guidelines developed on a tripartite basis provide background information, guidance based on the applicable laws and regulations, and a good practice checklist that inform industry and civil society organizations on the rights and responsibilities involved in the detection and remediation of migrant child labourers in an irregular situation, among other aims (ILO 2019c).

Giving a voice to migrant workers in an irregular situation

One of most effective ways to protect migrant workers' rights in an irregular situation is to give them voice. Freedom of association and collective bargaining are important means for obtaining improved conditions of work and wages, and all migrant workers must be able to enjoy their trade union rights without threats of harassment. In reality, migrant workers in an irregular situation are often not allowed by law or in practice to join or form trade unions, are being barred from holding leadership positions in trade unions, or lack protection against discrimination on the grounds of their trade union activities (ILO 2022 (forthcoming)). Women migrant workers are the least represented, and often face additional barriers to organizing because of the type of sectors in which they are employed (ILO 2021d). In line with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98), States should make clear, in law and practice, that the right to organize and bargain collectively is guaranteed to migrant workers in an irregular situation,

without distinction or discrimination of any kind. Eliminating barriers to unionization, such as the fear of retaliation that some workers on temporary contracts, including migrant workers, may have about joining a union, is essential. In France, for example, protection against discriminatory dismissal has been extended to non-renewal of temporary contracts.

- The Supreme Court of the Republic of Korea has affirmed these rights explicitly. As a result of the Supreme Court determination that all workers are entitled to basic workers' rights, including the right to join and set up a trade union, regardless of their immigration status, the Migrants' Trade Union in the country has been able to officially represent the rights of more than 500,000 registered migrant workers and more than 200,000 undocumented migrant workers, including through advocacy to change public labour policies that may create risks of abuse or forced labour of migrant workers (See Republic of Korea Supreme Court, Decision 2007 Du4995, 25 June 2015, regarding the Trade Union and Labour Relations Adjustment Act (IPU and ILO 2019; and ILO 2022 forthcoming)). In April, 2021, the Republic of Korea ratified Conventions Nos 87 and 98.
- The Constitutional Court of Spain has approved the right of irregular-status migrant workers to freedom of association by striking down a law requiring lawful residence for the exercise of such right. In a petition by an irregular-status claimant, the Court found unconstitutional a requirement imposed by Basic Act No. 4/2000 on foreign nationals to be legally resident in Spain to exercise the fundamental rights of assembly, association, and trade union membership. As a result, a revised law grants equal treatment with nationals in the exercise of freedom of association.¹²

The efforts of trade unions, individually and through cross-border arrangements, have in several countries contributed significantly to migrant workers' exercise of their freedom of association by joining the existing trade unions or organizing their own workers' organizations.

¹² Constitutional Court of Spain, Rulings Nos 236/2007 of 7 November and 259/2007 of 19 December 2007, see <https://www.tribunalconstitucional.es/ResolucionesTraducidas/236-2007,%20of%20November%207.pdf>.

Along with advocacy and help to migrant workers in an irregular situation to claim their rights, an increasing number of trade unions integrate migrant workers into their union membership.

Trade unions can promote labour rights of undocumented workers in several ways. The European Trade Union Confederation & Union Migrant Net and PICUM jointly proposed some actions that trade unions could take to organize undocumented migrant workers. For example, trade unions could draw up specific policies to enable undocumented workers to join the union; make it a specific goal to organize and recruit undocumented workers; offer information and services to migrant workers, regardless of status; pursue mediation, or collective actions; ensure the unions' education programme includes information on undocumented workers' rights; include undocumented workers' rights in the union's collective bargaining agenda to ensure equal treatment and prevent abusive practices; build common messages with employers; and work in partnerships with migrant rights' NGOs and community organisers to exchange resources, develop joint programmes, training and advocacy, and help with outreach (ETUC, UnionMigrantNet and PICUM).

► **The Reseau Syndical Migrations Mediterraennes Subsahariennes (RSMMS)** [Trade Union Network on Mediterranean and Sub-Saharan Migration] includes 24 trade union members covering 14 countries of origin and countries of destination across three regions. The RSMMS brings together unions to develop joint and coordinated approaches in the countries of origin and destination, including on their mutual agenda for the protection of the fundamental rights of migrants and their families as well as the protection of the rights of those workers who transit or settle in their country (ILO 2016a, para. 629; FES 2017).

► In the Netherlands, the **Federatie Nederlandse Vakbeweging (FNV)** has been helping to organize undocumented migrant domestic workers by reaching out to their self-help community organizations, including in countries of origin, such as the Indonesian Migrant Workers Union – Netherlands (IMWU-NL), which was based on a similar model in China, Hong Kong (SAR). Domestic workers are now given

official membership cards, which is important for the recognition of undocumented workers (WIEGO-IDWF 2021). In 2012, the FNV had already managed to include domestic workers in the collective agreement for the industrial cleaning sector. Many of these workers are migrants in an irregular situation and the union hopes that this recognition by an employer's organization will help efforts to regularize these workers (ILO 2012a).

► **Madagascar**, with the support of the International Domestic Workers Federation, the domestic workers organization **SENAMAMA** was established and registered as a trade union in September 2019. SENAMAMA interim union leaders have also participated in the national dialogue supporting the review of existing legislation to ensure its alignment with the Conventions ratified in July 2019, including the Domestic Workers Convention No. 189 (ILO Infostories on Fair Recruitment, April 2021).

► In an electronics factory in **Malaysia**, after seven Myanmar migrants were deported at the company's insistence for voting in a secret election which resulted in recognition of the union. The electronics union decided to waive membership fees until a collective agreement was concluded to encourage migrant workers to join the union in the face of deportation risks (ILO 2014c, Annex 4, case 3).

► Trade unions run Migrant Workers Resource Centers (MRCs) are an essential hub to support organizing and collective action among migrant workers. MRCs have been established in several countries in Asia, and Jordan, and are essential for organizing and collective action among migrant workers. The Malaysian Trade Union Congress (MTUC) runs four MRCs some of which provide gender-responsive support services covering issues such as violence and harassment and trafficking in persons (See also Box 8 below).

Cooperation between trade unions in countries of origin and destination can be useful in addressing protection gaps. ILO has supported the conclusion of such agreements which are based on [a model agreement for trade unions](#). The model agreement proposes joint action to promote "tripartite consultation and decision-making mechanisms

to address situations related to the status of migrant workers, social protection aspects and possibly encourage measures facilitating the regularization of the status of migrant workers trapped in irregular situations". For other cross-border agreements, see also Part 4.

Ensuring equality of treatment and protection against discrimination

Existing inequalities and discriminatory practices, including on racial, gender or religious grounds, in countries of origin can be a compelling reason for people to leave. At the same time intolerance and xenophobia can lead to discrimination against migrant workers in countries of destination. Migrants in an irregular situation are at an even higher risk of exclusion and discriminatory treatment, especially when perceived or treated as criminals, because of the situation of vulnerability and fear of deportation or retaliation by their employer. Furthermore, criminalization of irregular migration status can lead to discrimination and is not compatible with good practice to enhance tolerance (UN-HRC 2009, para. 13) The COVID-19 crisis has also reinforced the multiple forms of discrimination to which migrant workers are subjected. Migrant workers have been affected most by the stigmatization and intolerance associated with the virus. In many countries, policy measures designed to help workers to cope with the pandemic have excluded migrant workers, in particular those with irregular status (ILO 2020f, 21).

Equality and non-discrimination are core principles enshrined in international human rights and various labour standards, fundamental to ILO established standards on rights at work, and guaranteed in the Equal Remuneration Convention, 1951 (No. 100) and Discrimination (Employment and Occupation) Convention, 1958 (No. 111). States should promote and ensure the application of the principle of equal remuneration for men and women workers for work of equal value" (C100, (Art. 2(1)). The principle is to apply to all workers, including domestic workers, whether nationals or non-nationals, irrespective of their migration status. States should also take policy and practical initiatives to facilitate the right for all

migrant workers, including those in an irregular situation, to be protected from discrimination on the grounds of race, colour, sex, religion, national extraction, political opinion and social origin. The UN Convention (ICRMW, Article 7) reaffirms the principle of non-discrimination with respect to rights and specifically requires that migrant workers, regardless of status, shall enjoy no less favourable treatment than nationals in respect of remuneration and a range of other conditions of work, including overtime, hours of work, weekly rest, holidays with pay, safety, health, termination of the employment relationship and any other conditions of work which, according to national law and practice, are covered by these terms; or other terms of employment such as minimum age of employment or restriction on employment. Employers are not allowed to derogate from this principle in employment contracts and States must ensure that migrant workers are not deprived of any rights derived from this principle by reason of any irregularity in their stay or employment. Irregularity can also not be a reason for employers not to fulfil their legal or contractual obligations (ICRMW, Article 25).

Implementing these standards calls for specific steps against social and cultural stereotypes that create an atmosphere of intolerance and xenophobia, including by inaccurate media reporting which can lead to discrimination against migrant workers in an irregular situation. Countries use various measures to give effect to this principle, including laws, action plans and strategies, public awareness-raising, and integration campaigns. It is important to ensure the coherence of these measures with other national policies, including employment and immigration policies (see for example, para. 15(e) of the Transition from the Informal to the Formal Economy, 2015 (No. 204). Decriminalizing irregular migration status counters xenophobia and discrimination and the public perception that migrant workers and their family members in irregular situation are "illegals" or unfair competitors for jobs and social benefits.¹³

► In **Spain**, in a combination of measures that aims at equality in practice, national law and policy explicitly recognize the rights of migrants in an irregular situation to freedom of association, assembly, education and vocational training and grants undocumented workers equal access to

¹³ See UN-OHCHR: (n.d.); *The Criminalisation of Irregular Migration in the European Union* (Provera 2015); *Criminalisation of migrants in an irregular situation and of persons engaging with them* (EU-FRA 2014); and *Criminalising irregular migration: the failure of the deterrence model and the need for a human rights-based framework*, Hastie and Crépeau (2014).

post-compulsory education and training on the reasoning that improving skills, qualifications and languages allows integration into host society and discourages irregular work.¹⁴

- In **Portugal**, the Constitution provides that foreigners and stateless persons who are in the country, as residents or otherwise, enjoy the same rights as Portuguese citizens, and the immigration policy recognizes the right to health and education for all migrants, regardless of status, as well as the right to ensure access to justice in particular for domestic workers, victims of human trafficking and in the case of serious abuses in employment of migrants in an irregular situation.¹⁵
- Many governments and social partners report use awareness-raising campaigns and media information sessions in their efforts to enhance tolerance in countries of destination, such as **Cyprus, Italy, Kenya, Norway, and Slovenia** (ILO 2016a, para. 624). In addition, combatting multiple discrimination involving migrant workers can prove effective in fighting its consequences such as forced labour. **Australia's** National Anti-Racism Partnership and the **Czech** Government campaigns both represent efforts to encourage public awareness of migration and tolerance (ILO 2016a, para. 293).
- In the **United States**, the Equal Employment Opportunity Commission, recognizing the link between discrimination and forced labour, concentrates on enforcing federal laws on non-discrimination as an integral part of the fight against trafficking (ibid. 299).

Clarity in the legal protections afforded to migrant workers in an irregular situation

is essential to effective recognition of their internationally recognized rights in practice, without discrimination. While many countries have general non-discrimination provisions in their constitutions and laws, good practice calls for the adoption of specific legislative provisions to ensure application to all migrant workers, including those in an irregular situation (ILO 2016a, paras 281–284, 301).¹⁶ This includes clarifying any exclusions in law and regulations for certain types of migrant workers or sectors of work activity so that they do not operate to limit the enjoyment of the rights of migrant workers in an irregular situation, including rights to safety and health at work and other essential terms and conditions of decent work. For example, under the ILO Violence and Harassment Convention, 2019 (No. 190), ratifying States “adopt laws, regulations and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers” and, in a reference that covers migrant workers in an irregular situation, “groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work”.¹⁷

- In **Chile**, the obligations of the employer to domestic migrant workers in an irregular situation include the requirement to comply with the provisions arising out of the foreign nationality of migrant workers. In the absence of compliance, migrant domestic workers still enjoy all labour rights.¹⁸
- In **South Africa**, the 2008 decision by the Labour Court of Johannesburg highlighted that irregular-status migrant workers enjoy the right to fair labour practices in Article 23 of the Constitution and the protections enshrined in the Labour Relations Act.¹⁹

14 See Spain's Immigration Law 2009, referenced in ILO 2019c, para. 141. In Spain, foreign nationals have the right to basic social services, irrespective of their administrative situation.

15 CEACR. Portugal, direct requests 2013, 2014, Migration for Employment Convention (Revised), 1949 (No. 97), referencing Portugal's Second Plan for Immigrant Integration (2010–13) at <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

16 For example, in an historic move to abolish the kafala system, the Government of Qatar has endorsed a new law to establish non-discriminatory minimum wage, with freedom of migrant workers to change jobs, and to exit the country without permission of their employer. See *Landmark labour reforms signal end of kafala system in Qatar*, ILO Press release, 16 October 2019, available at: https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_724052/lang--en/index.htm.

17 Convention 190, Article 6.

18 CEACR. Chile, direct request 2019, Convention No.189, at <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

19 CEACR. South Africa, direct request 2010, Convention No.111 at <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

Migrant workers in an irregular situation face critical wage issues, including inequality and non-payment of wages

Wage gaps between national and migrant workers remain significant across all regions and in most sectors, especially in those where migrant workers are primarily employed (ILO 2020g). Ensuring decent wages for all including through the application of the principle of equality of treatment between migrant workers and nationals, is therefore critical. Effective anti-discrimination policies alongside other policies that address the underlying causes of wage inequalities should cover migrant workers in an irregular situation who may be disproportionately affected by wage differences with both regular-status migrant workers and nationals. Linking migration policies to decent work policies is critical as is the equal application of wages and labour laws to migrant workers and nationals, to avoid unfair competition and labour market disruptions.

While many migrant workers across the globe face critical wage-related issues, these are often more prevalent among migrant workers in irregular situations. Non-payment or delayed payment of wages may in some instances give rise to forced labour practices and a breach of fundamental principles and rights at work (ILO2018c). Irregularity of status should not be a reason for non-payment, underpayment, or delayed payment of wages. All migrant workers, including those in an irregular situation should receive their wages due for the work they have performed. This is a basic principle of Convention 143, Article 9(1) and also in line with international labour and human rights law,²⁰ including the ILO standards on the protection of wages. States should adopt and implement legal frameworks to ensure, as regards rights arising out of past employment periods, that migrant workers in an irregular situation enjoy equality of treatment in respect of remuneration, social security, and other benefits due in respect of employment injury and compensation in lieu

of leave, or reimbursement of social security not given²¹ (see also Box 6 *COVID 19 and Migration*).

However, there is evidence that COVID 19 pandemic has led to major increases in non-payment of wages, drastic wage reductions and unlawful deductions of wages of migrant workers (MFA2021; Foley and Piper, 2021). Where the rate of job loss was already higher for migrant than nationals, this was especially the case for migrant workers in an irregular situation (ILO 2021e). The Protection of Wages Convention, 1949 (No. 95) and Recommendation (No. 85), 1949 are two key international labour instruments that seek to ensure the fullest possible protection for workers' remuneration. Specifically, these instruments identify issues to ensure that wages are paid to all workers, including migrant workers, irrespective of their migration status, in a predictable, timely and complete manner. This includes the regular payment of wages and the full and swift final settlement of all wages within a reasonable time, upon termination of employment. The ILO Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011, provide specific guidance regarding payment of the wages of domestic workers, regardless of status. Minimum wages should extend to domestic workers, and rates of remuneration should be paid without discrimination based on sex. Yet, redress for disputes arising out of problems with wage payments continues to be a challenge for many migrant workers, especially when they are in an irregular situation. Many migrants have been pushed to leave their countries of employment before being able to file a claim (ILO 2021c; Farbenblum and Bassina, 2021). In order to ensure equality of treatment, migrant workers should be able to make claims against their employer for compensation of unpaid wages, if needed after return to their country of origin. See Parts 3 and 4.

The ILO supervisory bodies have noted that in cases where migrant workers are deported or have to leave the country rapidly – regardless of the reasons for the departure – the government of the country of destination is responsible for ensuring

20 The International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 7 (UN-OHCHR, 1976), applies without discrimination as to migration status (Sec. 4).

21 Convention 143, Article 9. and Migrant Workers Recommendation, 1975 (No. 151), para. 30. Social Protection Floors Recommendation, 2012 (No. 202).

that wages are paid regularly and in full and that any claims in respect of existing wage debts are promptly settled.²²

- In addition to employers, direct contractors and other immediate subcontractors in the **EU** can be liable and obliged to pay any outstanding taxes to the state and remuneration due to the third-country national, irrespective of irregular status (EC-EMN 2017)).
- In the **United States**, judicial application of the Fair Labor Standards Act has affirmed the right of migrant workers in an irregular situation to receive a minimum wage and overtime pay for work performed.²³
- In bilateral cooperation, **Myanmar** and **Thailand** have sought to ensure equal remuneration between the nationals of both countries including in context of undocumented workers.²⁴

Extending social protection to migrant workers in an irregular situation...

The principle of equality of treatment (enshrined in ILO's migration and social security standards)²⁵ implies the abolition of discrimination based on a person's nationality. Consequently, a requirement of lawful residence in the country or of lawful authorization to be in employment does not appear *per se* to be contrary to this principle,²⁶ in order to benefit from the entire range of social security benefits. In many countries, migrants in

an irregular situation, even when they have lived and worked in the country for many years, are excluded or can become excluded from the social protection system, including access to health care, as a result of a change affecting the regularity of their residence in the country. Obstacles to access social security rights often include: lack of proper legal documentation necessary to access benefits, eligibility requirements relating to employment and residence, conditions of work that may not be known to the authorities, and lack of awareness of their rights combined with fear of detention and deportation (ILO 2021f, 4).

Notwithstanding this, social security is a human right, recognized in international human rights instruments, ratified by most countries worldwide (UN-OCHR 1976, Articles 2 and 9; UN 1948, Article 22). International human rights instruments have focused on ensuring, at a minimum, access to primary and emergency medical care irrespective of a person's nationality, residency, or immigration status, and to their social security contributions, if any, as well as to access to non-contributory schemes for income support and affordable and available access to health care and family support, for disadvantaged and marginalized individuals and groups (UN-ESC, 2008). In the same vein, ILO Social Protection Floors Recommendation, 2012 (No. 202) provides that, subject to a country's international obligations (which includes obligations assumed under the human rights framework), at least all residents and children as defined nationally should have access to a social protection floor guaranteeing, essential health care and basic income security.

22 Libya – CEACR – Observation published in 2013; See also Iraq – CEACR, observation published in 1992 and Iraq- CEACR - Observation published in 1992, Publication: 79th ILC session (1992). ILO. [Protection of Wages, Standards and safeguards relating to the payment of labour remuneration](#). General Survey of the Reports Concerning the Protection of Wages Convention (No. 95) and the Protection of Wages Recommendation (No. 85), 1949, paras 391-398.

23 See US Law: *Lucas v. Jerusalem Café, LLC*, No. 12-2170 (8th Cir. 2013) at: <https://law.justia.com/cases/federal/appellate-courts/ca8/12-2170/12-2170-2013-07-29.html>.

24 CEACR, Myanmar, Direct request, 2013, Convention 19 at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

25 See Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) and Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); Social Security (Minimum Standards) Convention, 1952 (No. 102) and Equality of Treatment (Social Security) Convention, 1962 (No. 118).

26 The ILO supervisory bodies have considered that where such conditions are imposed, the difference in treatment does not appear to be motivated by the foreign status of the persons concerned but rather by their legal position under regulations governing entry into and residence in the country, or access to employment (See Universal Declaration of Human Rights (UN 1948, Article 22)) See also Convention 102, Article 68; Convention 130, Article 32; Convention 168, Art.6; Convention 183, Article 1, see Equality of Treatment (Social Security), General Survey by the CEACR, ILC, 63rd Session, 1977, para. 57.

Thus, migrant workers in an irregular situation, as well as children, should be entitled to at least certain basic social security guarantees and/or other social benefits, notably those related to past employment periods, and those provided through national social protection floors (ILO 2019d).

Convention No. 143 grants migrant workers in an irregular situation and their families equality of treatment in respect of rights arising out of past employment, notably as regards social security and other benefits (Article 9(1)).²⁷ However, migrants in an irregular situation shall be entitled to a specific right only if, according to the legislation of the country of destination, such right is granted to lawfully employed migrants (ILO2016, para. 303). As a consequence social security rights should normally arise from all past employment equally, whether authorized or non-authorized. However, this is not without posing important problems in practice, in particular as regards accessing benefits which in many cases requires the person to legally reside in the national territory (ILO2016, paras 304 and 307). In cases in which the migrant worker does leave the national territory, mechanisms should be in place to allow for acquired rights and rights in the course of acquisition to follow them upon their return to their country of origin. Herein lies the importance and value of establishing bilateral or multilateral social security agreements that can address such situations. Should there be no such agreement in place, the Migrant Workers Recommendation, 1975 (No. 151) encourages the

... reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangements: Provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants

► In 2004, **Argentina** signed a new migration law (No. 25871/2004), which not only recognized

that migration is a human right, but also eased regularisation, provided for equality of treatment, as well as guaranteed family reunification and migrant access to social assistance, health, and education – irrespective of migration status. In 2005, the “Patria Grande” Programme was implemented with the aim to promote the regularisation of migrants in an irregular situation originating from MERCOSUR and its associated countries.

In relation to employment injury benefits, ILO standards require States to ensure that all “non-nationals” enjoy equality of treatment with their own nationals. The Employment Injury Convention No.121 requires equality of treatment as regards employment injury benefits without referring to the person’s residence status (Article 27).²⁸ The Migrant Workers Recommendation, 1975 (No. 151) provides equality of treatment for “migrant workers whose position has not been or could not be regularized” (Para 8(3)); and migrant workers who leave the country of employment should be entitled to work injury benefits, regardless of their migration status (para 34(1b)).

Recognizing this right, several countries grant such benefits regardless of the migration status of the workers concerned or the payments made by the worker or employer into the social security system.

► In **Japan**, the Labour Standards Act provides for unemployment injury benefits regardless of migration status of the workers, and regardless of whether such workers or employer had paid contributions to the social security system, and the obligation of the employer to pay remains in effect and enforceable after departure of worker from country. (See Japan (1947): Labour Standards Act, Law No. 49 chap. VIII).

► In the **Republic of Korea**, the Industrial Accident Compensation Act provides that all workers are eligible to receive industrial accident compensation.²⁹

27 See also Recommendation 151, paras 8(3) ad 34(1)b.

28 See also Convention on Equality of Treatment (Accident Compensation), 1925 (No. 19), Article (2). Convention 19 covers medical care and cash benefits in case of an industrial accident leading to total or partial temporary or permanent inability to work, or death of the breadwinner.

29 Republic of Korea: Industrial Accident Compensation Insurance Act of 1963 (as amended) secs 5(2) and 6, cited in ILO 2016a, para. 310 at note 75.

- In **Belgium**, employers are required to take out insurance against accidents at work, including for non-documented workers, and migrants in an irregular situation benefit from the right to compensation in the event of an accident (ILO 2019d, para. 141). Migrant workers in an irregular situation are entitled to benefit from the workplace accident fund FEDRIS if the employer does not have the obligatory insurance. In practice however, the support from third party organisations such as lawyers, trade unions and civil society organisations which have practical knowledge on the processes required is essential for victims in an irregular situation to succeed to access FEDRIS. In case of employer bankruptcy potential victims can claim back parts of their wages under state insolvency schemes. Support organisations have experience with the procedure and have successfully supported potential victims (Wintermayr and Weatherburn, 2021).
- In the **United States**, judicial awards of compensation for injuries to migrants in an irregular situation owing to an unsafe environment ranged up to US\$2,85 million (EU-FRA 2011, chapter 4).
- In **South Africa**, the Compensation for Injury and Occupational Diseases Act explicitly includes migrant workers regardless of their migratory status (South Africa 1997).

The ILO Committee of Experts has observed, in the context of the application of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), that the principle of equal treatment in social security would lose all meaning if access to social security benefits were made subject to such conditions, the fulfilment of which for migrant workers becomes either particularly difficult or depends on the actions of the employers or of the authorities of the receiving country. To prevent and remedy such situations, the international standards on social security have put in place a number of safeguards, which offer guidance to governments wishing to apply the

principle of equality of treatment in good faith. In particular, eligibility for workers' compensation shall not be made conditional upon the payment of contributions by the employer in respect of the worker concerned. Governments shall assume the general responsibility for the proper administration of the social security institutions, ensuring their close cooperation with other agencies ... with a view, inter alia, to facilitating social security coverage of migrants.³⁰

In addition, trends increasingly recognize basic social protection to migrant workers in an irregular situation in the context of national social protection floors (ILO 2019d).

- In **Germany**, for example, persons in an irregular situation and their children receive social benefits, and the Government of **Honduras** reports that its law recognizes the right to health and social security without considering migration status (ILO 2016a, para. 309 and ILO 2019d, para. 141).
- In **Cyprus**, in cases where unregistered or irregularly employed workers are found, the inspectors require their employer to duly register such employed persons in the Social Insurance Scheme, which covers every person gainfully employed in Cyprus.³¹
- In **Argentina** and **Costa Rica**, everyone – regardless of immigration status – is offered equal access to education, social protection, and health services; the challenge remains to ensure this equality in practice (OECD and ILO 2018).

In relation to health care, while some countries provide urgent medical and health care (ILO 2019d, para. 140), trends of exemplary practice in a number of countries recognize that granting access to preventive, curative and palliative health care serves the public health interest as well as the interests of the migrant workers and families concerned. Some countries include the right of equal access to health care as part of a general grant of social protection to migrant workers in irregular situations.

30 See the entry under NORMLEX on the CEACR Observation for Thailand: https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO::P13100_COMMENT_ID,P13100_LANG_CODE:2307583,fr:NO.

31 See the entry under NORMLEX on the CEACR Observation for Cyprus: http://ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13200:0::NO::P13200_COUNTRY_ID:103070.

- **Mexico's** 2014 Migration Act (sect. 8) and **Uruguay's** 2007 Migration Act (Act No. 18.250, sect. 9) guarantee access to healthcare for all persons within their territory, irrespective of migration status.
- In **Germany**, migrant workers in an irregular situation have access to emergency medical care and can request reimbursement of costs without fear of denunciation or deportation since the procedure is confidential (OHCHR 2014). Furthermore, 18 **EU countries** provide emergency healthcare to migrants in an irregular situation as well as **Switzerland and the United Kingdom** and some countries provide higher levels of protection.
- **Sweden** has extended access to health care to undocumented workers. The Swedish Act on health and medical care for persons staying in Sweden without necessary permits, entered into force on 1 July 2013.
- **Thailand** has developed a compulsory Migrant Health Insurance Scheme that covers both regular and irregular-status immigrants, including their dependents, and allows them to benefit from health-care services on payment of an annual fee; migrant workers from **Cambodia, Lao People's Democratic Republic, and Myanmar** benefit from the scheme (OECD and ILO 2018, 38).
- Emerging innovative practices by a substantial number of cities and subregions of **Europe** have delivered access to extended health care, including Athens, Barcelona, Dusseldorf, Frankfurt, Madrid, Munich, Vienna, and Warsaw, as well as the Italian regions of Puglia and Tuscany, and all the Autonomous Communities of Spain.
- In the **Southern African Development Community**, the 2007 Code on Social Security states, that "Illegal residents and migrants in an

irregular situation should be provided with basic minimum protection and should enjoy coverage according to the laws of the host country".

In relation to income security, the ILO Committee of Experts has noted the importance of States exploring:

- ... all possible approaches to facilitating the access of migrant workers and their families to basic income protection in accordance with national laws and regulations and their international obligations, and to creating a level playing field for national and migrant workers. The Committee recalls the importance of concluding multilateral and bilateral agreements on the portability of benefits and of clarifying the situation of migrant workers originating from countries that are not covered by such agreements.

To do so, further exchange of good practice in countries recognizing their rights to income support, including those mentioned above, would be helpful. For migrants in an irregular situation who are working in the informal economy, measures could include removing obstacles that prevent such persons from accessing informal social security schemes such as community-based insurance.³²

Measures to facilitate transition from informal to formal economy include the establishment of social protection floors, where they do not exist, and the extension of social security coverage. As one possible approach applicable to residents and migrant workers alike, cash transfer schemes could extend social security and "ensure at least a basic level of income security for migrant workers in irregular situations especially in the informal economy (by) schemes (that) are non-contributory" financed by taxes or other state revenues (ILO 2018c, 2019d). Within the Global Compact for Safe, Orderly and Regular Migration, there are also objectives and commitments on social security entitlement under Objective 22. See box 5.

32 See UN-OCHR, ICESCR, General Comment 19, para. 34. See also Recommendation 204, para. 1.

► **Box 5. Global Compact on safe, orderly and regular migration (2019)**
 – Objective 22 – Establish mechanisms for the portability of social security entitlements and earned benefits

To realize this commitment, we will draw from the following actions:

- (a) Establish or maintain non-discriminatory national social protection systems, including social protection floors for nationals and migrants, in line with the ILO Social Protection Floors Recommendation, 2012 (No. 202).
- (b) Conclude reciprocal bilateral, regional, or multilateral social security agreements on the portability of earned benefits for migrant workers at all skills levels, which refer to applicable social protection floors in the respective States and applicable social security entitlements and provisions, such as pensions, health care or other earned benefits, or integrate such provisions into other relevant agreements, such as those on long-term and temporary labour migration;
- (c) Integrate provisions on the portability of entitlements and earned benefits into national social security frameworks, designate focal points in countries of origin, transit and destination that facilitate portability requests from migrants, address the difficulties women and older persons can face in accessing social protection, and establish dedicated instruments, such as migrant welfare funds in countries of origin, which support migrant workers and their families.

Source: UN. Global Compact for Safe, Orderly and Regular Migration, 2019.

Extending social protection to migrants in an irregular situation has many advantages: It provides protection against economic and social risks, reducing their vulnerability and enhancing their resilience, employability and productivity. It contributes to improving their health status and reducing public health risks (including the transmission of communicable diseases) as well as lowering infant and child mortality rates. It contributes to the integration or re-integration of migrant workers in society and can be part of a regularization or formalization process. It contributes to stronger and financially healthier social security systems by spreading risk across a larger pool of members and enhancing the financial sustainability of these schemes since

migrant workers are often net contributors over their lifetime, and tend to be younger workers. Their integration in contributory mechanisms also reduces pressure on tax-funded social protection mechanisms in countries of destination, or in countries of origin (ILO 2021f). The ILO Guide on Extending social protection to migrant workers offers specific policy options to ensure the right to social security to migrant workers in an irregular situation, ranging from regularization, unilateral extension of basic social protection, conclusion of bilateral or multilateral social security agreements, or complementary measures to address administrative practical and organizational obstacles faced by migrants in an irregular situation. (ILO 2021g; ILO 2021f, 5).

► 2.2. Rights in situations of crisis – COVID-19 pandemic

The COVID-19 pandemic has put a spotlight on the social protection and other needs of all workers. Given the community-based nature of many migration facilitation practices, COVID-19 responses are also likely to impact the livelihoods of the communities that, by virtue of being located on the migration pathway, benefit from the presence of migrants, such as shopkeepers, food vendors, renters of informal accommodation, etc. (Sanchez and Achilli 2020). (See also box 6 on COVID-19 and Migration).

As outlined in the present report, measures directed at ensuring the rights of migrants should be part of an integrated approach to migration that also encompasses a set of coordinated policies in the areas of detection and prevention of irregular labour migration situations and cooperation to ensure a safe, orderly and regular migration, including return and reintegration in the labour market. This is particularly relevant to situations of crisis. For example, as experience with the COVID-19 pandemic demonstrates, the risks of exploitation, ending up in an irregular situation, forced labour, and trafficking are heightened in situations of crisis (ILO 2020f).

Migrant workers are more vulnerable to the effects of the crisis. Despite some country practices that exclude migrant workers in irregular situations from equality of treatment, access to social protection measures and other measures aimed at coping with the pandemic (ILO 2020d, e, f), policies in a number of countries, aimed at extending visa and stay permits of migrant workers, have helped mitigate the impact of the pandemic on migrant workers in an irregular situation, especially in terms of access to healthcare or income earnings activities, for example. They have also prevented migrant workers who faced job losses to fall into irregularity (see also Part 4- section on protection against loss of employment).

- **Brazil** has responded with a monthly emergency basic income, to be paid for up to three months to the unemployed, self-employed and those working in the informal economy, including migrant workers with irregular status (ILO 2020d).
- The **Portuguese** government announced that all migrants and asylum seekers with pending residence applications will be treated as permanent residents until 30 June 2020. This measure will grant migrants full access to public social security systems, including health care, social support, employment, and housing (ibid.).
- **Ecuador** has extended the deadline for Venezuelan migrants on its territory to apply for a humanitarian visa until the end of the state of emergency.
- Immigration and international protection permissions issued by the Government of **Ireland** due to expire before 20 May 2020 are automatically renewed for a period of two months on the same conditions as the existing permission.
- **Chile** has set up an online system through which visas and stay permits are automatically extended for six months, upon request.
- **Uganda** has waived the usual fines applied to visa overstayers for permits expiring during the lockdown period.
- **Australia** took measures to regularize the visa status of migrant workers in critical sectors, such as the care sector, agriculture and food processing, thus allowing them to continue working during the lockdown (OECD 2021).
- Government of **Estonia** decided to extend work permits of foreign workers in agriculture until two months after the end of the emergency situation.³³

³³ See Schengen Visa Info news from 10 April 2020, available at: <https://www.schengenvisainfo.com/news/estonia-extends-work-permits-for-aliens-working-in-agriculture/>.

► **Box 6. COVID-19 and Migration: Resilience and recovery through protection of rights and an integrated approach to migration**

During the COVID pandemic, States adopted a range of exemplary measures to ensure the respect for the basic human rights of migrant workers in an irregular situation and to avoid that other migrants could fall in situations of irregularity. These measures included:

- The extension of visa and work permits (for example, Ireland, Chile, New Zealand, Estonia, Belgium, Thailand, Kuwait, France, and Spain).
- The suspension of deadlines for migration applications (for example, Panama, Argentina); the temporary extension of health coverage (for example, Peru).
- The provision of free medical consultations (Colombia) or the provision of free-of-charge diagnosis and treatment of COVID to all migrants, irrespective of their migration status (for example, Panama and the United Kingdom).
- Inclusion of irregular status migrants in the vaccination programmes (for example, Bahrain)
- The suspension of immigration law controls within or near health (for example, the United States).
- Regularization or amnesty measures (for example, Ecuador, Italy, Kuwait, Portugal, Spain, Thailand).
- The inclusion of migrants in an irregular situation in policy responses to the crisis, including income support measures (for example, California (USA), Brazil, Philippines); and
- Coordinated action to support stranded migrants and ensure their return home (for example in India, Myanmar, Pakistan, Panama, and Sri Lanka).

Protection in case of loss of employment has become particularly acute in the context of the mitigating the effects of the COVID-19 pandemic. Specific measures to facilitate extension of visas, amnesties, work or residence permit renewals can contribute to ensuring both access to essential services for migrant workers and continuity in their contributions to the workforce in regular status, avoiding an increase in irregularity (ILO 2020d; IAHCR 2020a, 2020b).

In **Kenya**, for example, a tripartite memorandum of understanding, signed on 20 April 2020, includes a measure that maintains the residency status and work permits of migrant workers who have lost their jobs.

El Salvador adopted measures prohibiting the dismissal of workers who, due to COVID, find themselves in quarantine, or for whom it is impossible to return to work due to migration or health restrictions imposed in El Salvador or abroad. It is also prohibited to make any deductions of their salary for this reason.

The COVID-19 pandemic has also spotlighted the importance of making explicit provisions in future bilateral agreements for situations of crisis, laying down expressly, for example, the responsibilities of governments, employers, employment agencies and other stakeholders regarding support for migrants temporarily laid off due to economic crisis, pandemics, natural disasters or other situations of crisis, the portability of social security and cost of journeys home, at end of contracts and in emergency situation. The guidance on bilateral labour migration agreements developed by the UN Network on Migration emphasizes the importance of integrating provisions in such agreements that specifically address rights of migrant workers in situations of crisis (UNMN 2022).

*Source: Drawn from a range of ILO Briefs on the COVID-19 pandemic, and individual country responses, available at: <https://www.ilo.org/global/topics/coronavirus/regional-country/country-responses/lang--en/index.htm>. See also WHO, 2021. Refugees and migrants in times of COVID-19: Mapping trends of public health and migration policies and practices; OECD, *International Migration Outlook 2021**

- The **Belgian** Government adopted measures that will temporarily allow for the two-fold extension of the number of days a seasonal migrant worker can be employed in the agricultural and horticultural sectors.
- **Ireland** introduced a COVID-19 pandemic unemployment payment, which is a new social protection benefit of €350 per week for employees and self-employed workers for a maximum of 12 weeks. The benefit is available to students, non-European Economic Area nationals and part-time workers aged 18–66 who have lost their employment due to the pandemic and have not been diagnosed with COVID-19. Those diagnosed with COVID-19 will receive a sickness benefit.
- **Luxembourg** granted an automatic extension and an extension (from three to six months) for the issuance of a residence permit. A few EU Member States and the United Kingdom introduced specific extension measures for some essential categories in the health and/or social care sectors in urgent cases (EC-EMN 2020).
- Several **EU Member States, Norway** and the **United Kingdom** granted extensions of authorizations to stay, residence permits and short- and long-term visas, or to persons who were not subject to visas, as a safeguard to prevent migrants who were lawfully present in the territory from falling into an irregular situation because of the COVID-19 pandemic or due to travel restrictions (Ibid.)
- **The African Union Labour Migration Advisory Committee** has called on African governments in the post-COVID-19 era “to carefully look at and renegotiate the different Labour Migration Agreements that they may have signed with the view of ensuring the enjoyment by migrant workers of adequate health and safety, social protection and portability, and other human and labour rights protections” (ILO 2020d, 10).

► 2.3. Protection in case of expulsion

International human rights law requires that refugees and migrant workers and members of their families are afforded specific protections with regard to expulsion. First of all, when found in an irregular situation they should not pay for the costs of their expulsion, including costs for legal proceedings or administrative detention (ICRMW, Art 22(8); General Comment No. 2, ICRMW; Convention No. 143, Article 9(3)). Moreover, in cases where the irregular situation cannot be attributed to them, for example, because of redundancy or expiry of a contract or where the employer failed to complete the necessary formalities, migrant workers should not be responsible for any costs related to expulsion, including travel costs (ICRMW, General Comment No. 2, ILO 2016a, Para. 318).

Migrant workers in an irregular situation who are detained and threatened with expulsion should be informed of the reasons and allowed to challenge them. They should enjoy equal and effective access to justice to appeal against the deportation or

expulsion order, and the appeal should stay the order of expulsion. This also implies access to legal assistance and assistance with interpretation, if necessary, and be allowed to remain in the country while the merits of these claims are being resolved (ICRMW, Art. 22 (4); R151, Para. 33). A decision on expulsion should be communicated in a language he or she understands and, in writing and with reasons. These rights are important to ensure due process (ICRMW, Article 22 (3)). A person concerned by an expulsion decision should also have a reasonable opportunity before or after departure to settle any claims for wages and other entitlements due to him or her and any pending liabilities. This is especially important in situations where migrant workers fall into irregular situations for reasons that cannot be attributed to them, such as redundancy before the expected end of their contract, or failure of the employer to fulfil the necessary immigration formalities, in which the worker may have claims arising from the past or promised employment. This right is echoed in both the ICRMW and Convention No. 143 (Article 9(1)).

The opportunity to settle claims, wages and other benefits must however be effective in practice. See Part 2 – section on equality of treatment, and Part 3 on access to justice.

- In **Armenia**, a migrant who is subject to expulsion can stay in the country while proceedings are ongoing, if his or her presence is necessary for further investigation of the process, as well as for the protection of his or her rights.³⁴
- Under the **EU Sanctions Directive**, the employer is required to pay, including under the law of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, Greece, Lithuania, Luxembourg, Netherlands, Sweden, Slovakia, and Slovenia (EP 2009; EC-EMN 2017).
- In **Kenya**, for example, the law provides for the protection of victims of trafficking, including their repatriation, immunity from prosecution, the possibility to remain in the country until legal proceedings are concluded and the eligibility to work for the duration of their necessary presence in the country.³⁵

Although beyond the scope of this Compendium, the issue of collective expulsions merits some discussion given reports regarding forced returns of large groups of migrant workers during the COVID 19 pandemic. Collective expulsions are contrary to international human rights law. Expulsions require an individual case-by-case determination of the protection needs, taking into account humanitarian considerations, social ties or other considerations. In the context of the COVID-19 pandemic, the Special Rapporteur on the Human Rights of Migrant Workers and the UN Committee on Migrant Workers have called on States to consider a temporary suspension of deportations or forced returns of migrants, fearing that without proper health and safety precautions, they may be exposed to dangerous conditions (UN-CMW 2020). The UN Network on Migration has

called on States to suspend forced returns during the pandemic, in order to protect the health of migrants and communities, and uphold the human rights of all migrants, regardless of status. For examples regarding good practice, see box 6 and other examples above.

Forced returns of migrants must be suspended in times of COVID-19 – UN Network on Migration statement

Many governments have set positive examples to ensure that migrants are included as part of their comprehensive response to COVID-19. These include temporarily suspending forced returns and providing visa and work permit extensions, temporary residence or other forms of regular status; as well as releasing people from immigration detention and finding safe, non-custodial alternative accommodations for them in the community rather than seeking their deportation (UNMN 2020).

Measures to avoid detention

Specific measures are required to avoid the detention of migrant workers solely on the basis of their irregular migration status, a phenomenon which constitutes the deprivation of their right to liberty and other rights. As a basic principle of good practice, the state should facilitate the freedom of migrant workers who are detected in an irregular situation, and recognize the legal obligation that detention must be prescribed by law or will otherwise constitute arbitrary detention.³⁶ Good practice in addressing this vulnerability involves taking steps to ensure that the law treats irregular entry and stay as an administrative offence, not an offence under criminal law and that any sanctions for entry should be appropriate, equitable, non-discriminatory and consistent with international

34 See the entry on the CEACR Observation for Armenia, direct request, 2014, Convention 143, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>.

35 CEACR, Kenya, direct request, 2019, Convention 143 at <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>.

36 This means that it is based on a legitimate objective, justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. Revised Deliberation No. 5, Arb Det WG: paras 20, 25–27. See also Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, UN Doc. A/HRC/30/37. Rights during detention paras 31–36.

law (UN-CMW 2013; UN 2019, para. 27(f)). The obligation to provide alternative measures to detention in the course of migration proceedings involves consideration of the use of registration and documentation and reporting requirements, bail, bond and surety, open and semi-open centres, directed residence, and electronic monitoring (Amnesty International 2009; EC-EMN 2017, sec. 6). The detention of children based on their own irregular status or that of their parents' irregular migration status should be avoided altogether (UN-CMW 2017b).

- **Mexico** has faced challenges in reducing the use of immigration detention despite pilot programmes focusing on alternatives. During the COVID-19 pandemic Mexico did not introduce a moratorium on new immigration detention orders, but the response to the crisis did result in releases. Following a court decision prompted by strategic litigation led by civil society actors, the government released a substantial number of migrants and there was a decrease in the total number of individuals placed in immigration detention (UNMN 2021).
- Opportunities exist in **Malaysia** to explore community-based approaches that will allow effective tracking of COVID-19 risks without mass detention, which has proven to be costly and ineffective in stopping the spread of the virus. Furthermore, a pilot project on alternatives to immigration detention for unaccompanied and separated children was launched in Malaysia, with civil society putting forward further options for community-based alternatives to detention (ibid.).

The COVID-19 pandemic has also shown that the risk of infection is significant in immigration detention centres and shelters where there is a high concentration of migrant domestic workers and where few protective measures appear to have been put in place. During this public health crisis, governments are encouraged to refrain from deporting, detaining or arresting migrants with irregular migration status. Measures may include suspension of detention for deportation, or non-custodial alternatives to migrant detention and ensuring basic human rights in immigration detention centres (and quarantine facilities). In case of confirmed or suspected infections, migrant workers should have access to quarantine facilities that permit social distancing, where such facilities are available for other groups. Facilities should include safe spaces for women migrant workers, and privacy, hygiene and sanitation provisions (see IAHR 2020a; UN Women 2020; ILO 2020i).

- **Peru**, among other countries, suspended or reduced the application of deportation measures;
- **Dominican Republic** suspended detention for deportation. The use of immigration detention measures must be applied in accordance with due legal process, and performed in adequate sanitary conditions, for a limited and determined time. Detention is never in line with the best interests of migrant children and adolescents (IACHR 2020a, 2020b; UN Women 2020).

► 2.4. Regularization programmes and other mechanisms

The migration status of migrant workers depends on State policies aimed at keeping foreign workers at the borders, but also on labour market dynamics and employment situations (Spencer and Triandafyllidou 2021, 95). When the demand for migrant workers by business is far greater than quotas or numbers allotted by government policies, or immigration is restricted to levels significantly below the numbers of migrant workers who wish to move to that country, there is the real risk that significant numbers are likely to work in various conditions of irregularity. The fact that a country prohibits entry or participation in its labour market, does not mean it will not happen. When borders are permeable, the distinction between regular and irregular becomes blurred. This is often the case where movement tends to be from informality in one country to informality in another (ILO 2014, 12). The ILO migrant workers Conventions and the ICRMW suggest that measures addressing irregular migration shall not prevent Members from giving persons who are unlawfully residing or working within the country the right to stay and to take up authorized employment. States are encouraged to ensure that the irregular situation of a migrant worker on its territory does not persist and that the migrant worker concerned knows as soon as possible whether their situation can be regularised or not (Convention No. 143, Article 9(d) and Recommendation No. 151, paragraph 8(1); ICRMW, Article 69). The importance of mechanisms allowing migrant workers in an irregular situation to seek to regularize their status is also recognized under the Global Compact on Fair, Orderly and Regular Migration (Objective 7(h)). Pathways to regularity can be applied in different situations, including humanitarian and human rights situations, public health crisis such as the COVID 19 pandemic, or movement due to disasters and adverse effects of climate change and environmental degradation (UNMN, 2021).

ICRMW, Article 69

1. States Parties shall, when there are migrant workers and members of their families within their territory in an irregular situation, take appropriate measures to ensure that such a situation does not persist.
2. Whenever States Parties concerned consider the possibility of regularizing the situation of such persons in accordance with applicable national legislation and bilateral or multilateral agreements, appropriate account shall be taken of the circumstances of their entry, the duration of their stay in the States of employment and other relevant considerations, in particular those relating to their family situation.

Regularization programmes are generally used by States for migrants in an irregular situation already on the territory. Such programmes usually provide migrants with or extend work and residency permits, and may be put in place for a variety of reasons: to respond to emergency situations, provide access to health care, tackle undeclared work and labour exploitation, address and reduce the situations of vulnerability faced by irregular-status migrants in destination countries, provide residence status based on time spent or integration in the country or in order to maintain family unity (ibid). While these programmes may be effective in the short-term, durable solutions need to be found to provide in-country access to regular status, which respond to the need of migrants in vulnerable situations.³⁷ In some situations, durable solutions in the form of programmes for regularization for migrant workers in irregular situations can bring economic and labour market benefits to countries of destination (Wright et

³⁷ The guidance by the UN Network on Migration points to a number of situations in which admission and stay based on human rights, humanitarian or considerations may be relevant for migrants who find themselves in situations of vulnerability. These include children and young people who have lived in the country of residence since childhood and would otherwise risk becoming undocumented at 18 years of age; migrants whose return may be impossible for practical reasons, such as lack of documents; migrants suffering from serious or chronic health conditions; survivors of trafficking or gender-based violence and harassment; or migrants who have developed enduring emotional, personal, economic or social ties to the destination country, see UNMN, 2021.

al. 2017). The design and implementation of the regularization programme is however important to its results, both economically and in terms of integration and well-being of migrant and national workers. Regularization migration programmes

may not solve the underlying problems leading to irregular migration and the presence of irregular-status migrants cannot be tackled only through enforcement and short-term policies, including mass regularization programmes.

UN Network on Migration: Moving Forward on Regular pathways

The UN Network on Migration has developed guidance that contains important elements to be considered when designing programmes to provide regular pathways for admission and stay for migrants in situations of vulnerability, including irregular status migrants. Such programmes should: (i) be based on a number of guidance principles (child sensitive, gender responsible, trauma-informed, and uphold international human rights and labour standards, including non-discrimination); (ii) have clear and transparent criteria, defined by laws and regulations or case law; (iii) address issues of accessibility (regarding language, decent work, complaints mechanisms and redress, gender equality); (iv) include affordable and free of charge application procedures; (v) avoid automatic withdrawal of work and residence permits due to loss of employment; (vi) include procedural safeguards (including access to information, and firewall with immigration enforcement purposes in case of unsuccessful applications); (vii) allow for independent monitoring and review including by civil society organizations, and workers' and employers' organizations; (viii) provide provisional documentation, that may be needed to be able to work, or have access to adequate means of subsistence; (ix) ensure that documents resulting from the admission and stay procedure accredits identity before public officials of all state entities; (x) provide access to rights and services after grant of regular status; and (xi) in case of temporary residence, provide for avenues to transition to other status, including long-term residence, based on clear, accessible and affordable procedures.

Source: UNMN 2021

There appears to be a shift at least in Europe, away from regularization programmes which run for a limited time or are ad hoc, towards other regularization modalities or mechanisms established in law (OSCE-ODIHR, 2021). These are regular procedures which have become an integral part of the longer-term migration policy framework and allow regularization for migrants who "earn" it because of pre-defined conditions, such as a long-term residence, humanitarian considerations, non-deportability, health conditions, or family ties (Spencer and Triandafyllidou 2021, 95). Other mechanisms allow for regularization based on social integration, education or employment, such as in Belgium, France, Greece, Italy, Kazakhstan, Spain and Switzerland (OSCE-ODIHR, 2021). Research has correlated positive job creation outcomes with regularization programmes implemented in the absence of restrictive immigration enforcement (Chassamboulli and Peri 2015).

- In **Spain**, significantly higher public revenues resulted from regularization, even where social security benefits were already granted to migrant workers in an irregular status; positive labour market impact was reported in association with mobility of migrant workers from areas of high immigrant populations to low immigrant population localities (Monras et al. 2018).
- In **Italy**, high mobility of migrant workers to other firms, provinces and industries was an important driver in positive and neutral outcomes of regularization on labour markets and firm employment.

The reasons for regularization and the means used can vary depending on the situation and may involve a special permit regime or other temporary regularization, or a permanent adjustment to regular status. Other programmes grant amnesties for purposes of departure from the country without penalization. Additionally, a

number of programmes or mechanisms are based on humanitarian considerations or human rights commitments, with national legislation granting residence for humanitarian reasons on a case-by-case basis.

- Exceptional circumstances can justify the grant of temporary residence, as under the laws of **France and New Zealand**; in France, additional conditions include existing employment contract or job offer, work experience and minimum period of residence, typically five years, in the country (ILO 2016a, notes 111 and 112).
- In **Brazil**, Law No. 11.324 enacted in 2006 established incentives for the regularization of undeclared domestic workers whereby employers are eligible for tax benefits, if they prove that their workers are registered in the social security system. In-payment procedures have also been simplified.

Some countries have established mechanisms that allow for regularization based on social integration, education or employment, such as in Belgium, France, Greece, Italy, Kazakhstan, Spain and Switzerland (OSCE-ODIHR, 2021).

- In **Spain**, the Arraigo-system allows the regularization of persons who have developed lasting social, labour or family roots. The system provides for a temporary residence and work permit to persons meet certain criteria, including among other factors, a certain period of residence (2 or 3 years) and past labour relations of not less than 10 months or an employment contract proposal for not less than a year, among other factors. The systems resulted in the regularization of residence status of over 40,000 persons in 2019 (Ibid).

A number of countries grant residence and work permits as a result of crises in neighbouring countries that lead to exodus, as with Haiti, Venezuela, and countries of sub-Saharan Africa.

- The **Dominican Republic** has taken steps under its National Plan for the regularization of foreign nationals to regularize the situation

of Dominicans of Haitian descent and **Haitian** migrant workers in an irregular status.³⁸

- In **Panama**, the Government issued Decrees 167 and 168 of 2016 for the general regularization of migrants with undocumented status. Panama established some 15 processes for the regularization of migrants since 2008.³⁹
- After stopping applications for a two-year special permit in 2017 for **Venezuelans** to work and live in the country, **Colombia's** 2019 proposal for a temporary special work permit aims in principle at the more than half million Venezuelans which the Government reports live irregularly in the country. The proposal reportedly allows any foreign to legally integrate into the labour market (Reuters 2019). On 1 March 2021, the president of Colombia signed a decree to create a 10-year Temporary Protection Permit for Venezuelan migrants resident in Colombia on 31 January 2021. Implementation consists of an online registration phase, followed by the issuance of a regularization and identification document (OECD, 2021).
- In April 2021, **Chile** launched a regularization process to benefit migrants who entered Chile through authorized crossing points before 18 March 2020. Migrants who entered Chile unlawfully may leave the country to apply for a consular visa without sanctions for the unlawful entry (Ibid).
- **Morocco** has approved mass regularization in two campaigns ordered in 2014 resulting in 23,056 approvals and another between 2016 and 2017 for which more than 26,000 requests were registered and are still being processed (Alami 2016; IOM 2017b). Morocco is the only North African country to have taken such a decision, vis-à-vis sub-Saharan African migrants.
- **Japan** encouraged ad hoc residence status applications through the public employment service, especially for students and intern trainees dismissed by their employers (OECD, 2021).

38 CEACR, Dominican Republic, Observations 2016 and 2017, Discrimination, Occupation and Employment Convention, 1958 (No. 111), at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:0:0::0>.

39 For further detail see IOM.2021, pp.52-53.

During the COVID 19 pandemic, regularization programmes to address the negative consequences of the crisis on migrant workers in an irregular situation have led to better protection of these workers. In a joint guidance note, the UN Committee on Migrant Workers and the Special Rapporteur on the Human Rights of Migrants encouraged States to promote regularization of migrants in an irregular situation or undocumented migrants, including the adopting of regular pathways for migrants in a vulnerable situation, measures to allow extensions of work visas, as a way to facilitate migrants' access to rights and protect public health (UN-CMW 2020; UN-OHCHR 2020).

- According to UNHCR, far-reaching regularization schemes in certain Latin American countries are providing a lifeline to Venezuelan refugees and migrants who long to become self-sufficient. For example, in **Ecuador**, the Government reportedly announced a plan in 2021 to extend regular status to the nearly 50 per cent of the 430,000 Venezuelan refugees and migrants in the country who currently do not have it. The plan will not only remove practical barriers to access basic services like health care and education, which are already granted regardless of status, it will also remove barriers to entrepreneurship and provide a doorway to full inclusion (UNHCR 2021).
- **Peru and Argentina** have been developing expedited procedures for the recognition of the professional qualifications of Venezuelan migrants in the country of destination, at least for the duration of the response to the COVID-19 pandemic (ILO 2020e).

A number of countries have adopted programmes or allowed for regularization as a part of the overall set of measures to fight against the spread of the COVID-19 pandemic. For example, over 20 countries, have automatically extended the validity of temporary visas in order to avoid stranded migrants due to COVID-19 restrictions, and to prevent irregularity (EC-EMN 2020). Other countries have implemented measures to regularize migrants in order to meeting specific labour market demands during the pandemic. In some countries, labelling of food-related and agriculture workers as 'essential' has allowed governments to take short-term measures,

including regularizing migrants present in the territory and granting them temporary work permits, and resorting to asylum seekers despite the fact that in certain countries this status did not allow them to work, to mitigate the impact of COVID (ILO 2020h). See also Part 4 – measures to prevent migrant workers from fallen into irregularity.

- In **Australia**, the Seasonal Worker Programme and the Pacific Labour Scheme have allowed extension of stay for up to 12 months to work for approved employers, who should also provide care and accommodation taking into account COVID-19-related measures to mitigate risk of contagion. Working Holiday Makers who work in agriculture and food processing will be exempted from the six-month work limitation and are eligible for further visas to keep working in these sectors considered 'critical', if their visas expire in the next six months (ibid).
- In **Germany**, an agreement between the Ministry of Agriculture and the Federal Employment Agency allowed specific groups of asylum seekers without a work permit to take up agricultural jobs in the period 1 April - 1 October 2020. Additionally, non-EU-migrant workers ("third country nationals") in the hotel and gastronomy sectors, where businesses had completely shut down, were granted the right to work in agriculture without having to apply for a change in their permit (ibid.).
- In **New Zealand**, temporary work visas of seasonal workers in horticultural and viticulture, that were due to from 2 April to 9 July 2020 were automatically extended until 25 September 2020, during the COVID 19 Alert period. Workers were also entitled to government funding if they fell sick, had to isolate themselves while working in New Zealand (from the start date of their contracts) or if they could not work because of the business affected by the lockdown. Employers could apply for wage subsidies to pay their foreign seasonal workers, and workers had access to the Essential Workers Leave Support (ibid).
- In **Thailand**, a national temporary amnesty programme was adopted early 2021 to curb the spread of COVID 19. Irregular-status migrant workers from Cambodia, Laos and Myanmar could register to regularize their stay and work

in the country until February 13, 2023, without facing any penalties. The amnesty programme was designed to allow the government to monitor the welfare of migrant workers in Thailand and help fill labour shortages due to border closures. In total, about 596,500 workers out of the 654,860 migrant workers who had registered with authorities, were employed. In the period July-September 2021, migrant workers whose regular migration status was at risk due to constraints to renew their documents or complete required processes in the face of the impacts of COVID-19 were granted a stay extension and some were allowed to regularize their status (ILO TRIANGLE in ASEAN Quarterly Briefing Note (July-Sep.2021); Phuket News, 15 February 2021).

In some countries, regularization related to specific areas, such as access to health-care services, for irregular staying workers who contracted COVID-19. See also section 2.3 on rights in times of COVID 19.

► In late March 2020, the **Portuguese** government regularized all migrant workers and asylum seekers in all sectors of the economy in providing them with a temporary residency permit so that they could have access to health care services. Similarly, on 20 May 2020 Spain introduced an extension of residency and work permits for foreigners in the context of the declared COVID-19 Emergency, which could lead to regularization pathways (ILO 2020d).

At local level, municipalities can play an essential role in extending rights to migrant workers in an irregular situation. Some larger cities are increasingly seeking recognition in this regard and have adopted policies to mitigate the impact of restrictions imposed at the national level to curb irregular situation. Municipalities are confronted on a daily basis with the situation of migrant workers in an irregular situation, especially when these are prevented from accessing support and welfare services or being excluded from work.

Some municipalities have adopted inclusive approaches in relation to the provision of certain services (Spencer and Triandafyllidou 2021; OSCE-ODIHR 2021).

► **Barcelona** funded 55 non-profit 'social entities' to provide free legal support on how to obtain a regular status or renewal of expiring residence permits and to make representations on the migrants' behalf. The whole thrust of Barcelona's strategy on irregular-status migrants is to promote regularization and prevent falling into irregularity (Spencer and Triandafyllidou 2021, 196).⁴⁰

Special protection for groups in vulnerable situations

Regularization may involve groups that require special protection, such as children, people with disabilities, and victims of trafficking or exploitation.⁴¹ Some efforts emphasize certain sectors of activity. In some cases, amnesty policies are used to integrate migrant workers in an irregular situation into the formal labour market to avoid cheaper informal labour.

► **Algeria** reports that it takes account of exceptional humanitarian situations in countries of origin, such as the Syrian Arab Republic, and in sub-Saharan Africa, in particular Mali and Nigeria (ILO 2016a, note 10).

► **Argentina** pioneered a Patria Grande Plan to regularize nearly a million migrants in irregular situations, many of whom came from Paraguay and Bolivia including a significant number of domestic migrant workers who are mainly women.⁴²

► Regularization programmes have been implemented in **Italy** for the care sector, with the Italian government reporting that in its 2009 and 2012 programmes, domestic workers represented 73 per cent of the applications. In 2020, a decree with urgent measures to support

40 For further information on the role of municipalities in relation to the inclusion of irregular-status migrants, see Spencer and Triandafyllidou 2021)

41 See, e.g., Ecuador, Finland, and the United States (ILO 2016a, para. 321, notes 107 and 108 (temporary permits). In the United States, certain victims of human trafficking or of crimes with severe mental or physical abuse, are eligible for work authorization and may be eligible to apply for permanent residence after a fixed period (ibid., note 108). In its regularization programme, Morocco takes special account of those suffering from a serious disease (ibid., para. 321).

42 CEACR, Argentina, observations, 2008–2010, Convention 111, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

workers and the economy during the COVID-19 crisis provided for the formalization of national and migrant informal economy workers in the agriculture and domestic work sectors. For migrant workers, who are over-represented in these two sectors, the decree foresees that those whose permit expired after the end of October 2019 can obtain an initial six-month renewal, which can be subsequently extended if they enter into a formal employment relationship. The same permit is granted to any migrant worker in these two economic sectors – including those who have never had any – upon the request of employers who commit to enter into a formal employment relationship with these migrant workers (Article 103 of decree no. 34 of 19 May 2020).

- In **Thailand**, the ILO provides technical assistance through the Ship to Shore programme that uses facial recognition to identify migrant workers in an irregular situation on fishing boats to register them (ILO 2014d)
- Members of the **Gulf Cooperation Council** (GCC) amnesty programmes offered migrant workers in irregular situations the option to regularize their status in the country (Migrant-Rights Organization 2019). For instance, in **Bahrain**, and the **United Arab Emirates** the opportunity to exit the country without a fee is offered. The freedom to leave any country is an internationally recognized human right.
- The **Malaysian** Government announced a 2019 amnesty programme for voluntary repatriation named “Back for Good”, although the programme did not involve private sector vendors or agents as in previous programmes. Improvements in emerging recruitment practices should demonstrate efficient coordination on regularization with respect for rights in national treatment (ILO 2020i).

Diverse factors contribute to making regularization campaigns effective. In compliance with international human rights and labour standards, good practice includes equal treatment of those newly regularized migrant workers with those migrants already in a regular situation, including the granting of social security benefits and access to education. This is the case in Argentina for compulsory social security, and in Colombia for health and pension

benefits. Applicants’ experiences in seeking regularization are often complicated by long wait periods, uncertain results, and poor access to translated information, all of which increase vulnerability. Decisions should be taken as soon as possible to clarify any compliance problems with relevant laws and regulations (see ILO’s Recommendation No. 151, para. 8(1)).

National services should aim to reduce the long time periods associated with applying for social protection and make procedures generally more accessible. This change would have an enabling effect for migrants in an irregular situation to come forward. Additionally, advance contact with consular missions could facilitate any translation and information dissemination needs. Results in numbers of migrant workers coming forward were reportedly higher when embassies were briefed before an amnesty was declared, thus permitting embassies to increase staff capacity, translate procedures, order official documents, strategize reintegration programmes and coordinate with migrant organizations (Migrant Rights Organization 2019). Regularization programmes that involved workers’ and employers’ organizations, whether targeted or mass programs could improve acceptance amongst the general public and be more rights-based.

- In an arrangement with tripartite consultation at local level and active participation of associations, **Operation Papyrus in Geneva, Switzerland** (February 2017 - December 2018) aimed to initiate a process of regularisation of undocumented migrants in Geneva and to address economic sectors affected by undeclared work and unfair remuneration. The programme had 3 components: 1) a process of regularizing the conditions of residence of several hundred undocumented migrant workers who had been residing in the Canton of Geneva for several years; 2) a system to monitor compliance with working conditions, wage obligations, payment of social security, and a system to address economic sectors particularly affected by undeclared work and unfair remuneration (in particular domestic work); and 3) an integration system (including job exchange in domestic work sector and an information campaign for employers). An evaluation of the programme by the authorities in 2019 found that the the project overall had

been positive not only for those involved, but also for the local labour market and social security.⁴³

- The **United Farm Workers (UFW) in the United States** has worked with the major growers' associations to introduce new bipartisan Federal legislation to create pathways for qualified undocumented farm workers to gain temporary regular migration status and a roadmap to citizenship (ILO 2021d, 55 (fn)105))

Finally, the use of cooperation clauses in BLAs has strengthened coordination between destination and origin countries in regularization contexts.

- In **Spain**, employers have participated in the design and implementation of past regularization programmes while trade unions have collaborated with employers by selecting and filtering applications in the name of both workers and employers (Spencer and Triandafyllidou 2021).

- **South Africa** has established special permit regimes with Lesotho (2016–2018) and Zimbabwe (2017–2021) for hundreds of thousands of migrants to regularize their status for fixed periods, and curb deportation (Bimha 2017), although results in integration and socio-economic terms were reportedly mixed (Ndlovu 2018).

⁴³ More details on the objective and criteria of the programme are available at: <https://www.ge.ch/document/19689/telecharger> and GFMD Papyrus project: <https://www.gfmd.org/pfp/ppd/11539>



Part 3 – Access to justice and remedies

Access to justice and equal protection of the law is a basic human right. The enforcement of legal rights is however often acutely difficult for migrant workers, especially when in an irregular situation. Barriers to access to justice may include lack of written evidence and documents, costly and slow legal proceedings, lack of coverage by labour law or access to wage recovery systems (Farbenblum and Berg, 2021), or discrimination and fear of retaliation leading to expulsion or deportation. Lack of awareness about rights and remedies, inadequate consular support or restrictions on joining trade unions, together with psychological, institutional and legal or political barriers also play a role (Ibid). Their irregular situation may also prevent them from accessing legal support and advice. Criminalization of irregular migration further increases vulnerability and reluctance among migrant workers to file complaints for rights' violations. Migrant workers who are in a regular situation may fear that lodging a complaint about their employer will lead to the termination of their employment which, in turn, could lead to a revocation of their residence and work permits, and consequently to deportation.

States should ensure that national and regional law explicitly establishes the right of migrant workers in an irregular situation to submit claims to competent bodies to ensure the application of the rights recognized to them and to receive effective remedy in cases of violation.⁴⁴ Claims by migrant workers in an irregular situation involve alleged violations of any of their recognized rights, including abusive conditions at work or claims arising from past, in particular non-payment or under payment of wages, deprivation of liberty; trafficking and sexual exploitation; abuse of rights in the recruitment process and, in the event of an expulsion order, a forced return. Remedies for such claims encompass compensation, moral damages, restitution and rehabilitation as well as injunctive or administrative relief in such form as orders of back pay, stays of execution of expulsion, grants of immunity from prosecution, and protective measures to ensure anonymity from immigration procedures.

“In order to ensure equal access to justice, temporary migrant workers, including irregular migrant workers, must be able to file grievances with the Ministry of Labour or other competent authorities, have access to the labour courts; be granted legal aid; and be eligible for compensation and redress in cases of violations of their labour rights and in abusive situations. In cases where temporary migrant workers leave the country while their case has not been resolved, they should be able to continue to pursue the case in the courts”.

Source: ILO 2021d

International and regional instruments provide guidance in relation to procedures and forms of relief relevant to specific situations and claims arising in the context of irregular labour migration.⁴⁵ The right of migrant workers in an irregular situation to submit claims to a competent body is explicitly referenced in ILO standards in relation to disputes concerning rights relating to past employment (remuneration, social security and other benefits, as well as trade union membership and exercise of trade union rights) (see Convention 143, Article 9(2) and Recommendation No. 151, Para. 8(4)). ILO standards on forced labour also require States to ensure that all victims of forced or compulsory labour, irrespective of their presence or regular migration status in the national territory, have access to justice and other appropriate and effective remedies (see box 7).

As a basic human right, the right to an effective remedy applies to all persons irrespective of immigration status.⁴⁶ In order to realize this right, it is important to strengthen and ensure the capacity of the judiciary, the labour inspectorate and other law enforcement authorities (ILO 2016a, para. 502). Good practice relies on mechanisms recognized under the law as authoritative, effective, affordable, and impartial, such as labour inspection authorities, industrial relations bodies, and the courts, as well as specialized bodies with advisory roles or with responsibility for examining complaints of migrant workers (Carrera and Stefan 2018).

It is equally essential to provide full protection to these workers to pursue their claim without facing consequences arising from their irregular status. Without such protection, the very limited number of cases where the worker receives due compensation for unpaid, delayed or underpayment of wages limits the possibilities and willingness for the migrant worker in an irregular situation to engage in the process (EC-EMN 2017, sec. 6). It also thwarts the public policy purposes of ensuring that there is no incentive to hire irregular-status workers and then not pay them, to undercut labour markets, or to contribute to forced labour and modern-day slavery (ILO 2017d).

44 “Migrants workers and members of their families shall have the right to equality with nationals of the State concerned before the courts and tribunals.” ICRMW, Arts. 18.1 and 83. On the right to an effective remedy without discrimination; also UN-OHCHR. International Covenant on Civil and Political Rights CCPR, Art. 2.3(a) and (b) (1976).

45 For abuse of rights in recruitment, see ILO 2019c, General Principle 13; for trafficking and forced labour, see ILO Rec. 203; and for forced return, see Council of Europe Committee of Ministers’ 20 Guidelines on Forced Returns, cited in Stefan and Carrera’s CEPS study on complaints mechanisms (Carrera and Stefan 2018, 45).

46 See UN-OHCHR. International Covenant on Civil and Political Rights, ICCPR, Article 2; UN Convention Against Torture, Art. 39; and the International Convention on the Elimination of all Forms of Racial Discrimination, Art. 6.

► **Box 7. Access to justice for migrant workers in an irregular situation under the Protocol 29 of 2014 to the Forced Labour Convention, 1930 and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)**

Protocol 29, Article 4(a) and Recommendation 203, para. 12

Members shall ensure that all victims of forced or compulsory labour, irrespective of their presence or legal status in the national territory, have access to justice and other appropriate and effective remedies, such as compensation, including by:

- ensuring, in accordance with national laws, regulations and practice, that all victims, either by themselves or through representatives, have effective access to courts, tribunals and other resolution mechanisms, to pursue remedies, such as compensation and damages;
- (b) providing that victims can pursue compensation and damages from perpetrators, including unpaid wages and statutory contributions for social security benefits;
- (c) ensuring access to appropriate existing compensation schemes;
- (d) providing information and advice regarding victims' legal rights and the services available, in a language that they can understand, as well as access to legal assistance, preferably free of charge; and
- (e) providing that all victims of forced or compulsory labour that occurred in the member State, both nationals and non-nationals, can pursue appropriate administrative, civil and criminal remedies in that State, irrespective of their presence or legal status in the State, under simplified procedural requirements, when appropriate.

Recommendation 203, para. 11

- Taking into account their national circumstances, members should take the most effective protective measures for migrants subjected to forced or compulsory labour, irrespective of their legal status in the national territory, including: (b) provision of temporary or permanent residence permits and access to the labour market; and (c) facilitation of safe and preferably voluntary repatriation.

The practices in Brazil, France, Germany, Greece, Mexico, New Zealand, Poland and South Africa are reported to guarantee that the worker submitting a claim will have full protection from adverse consequences arising from irregular status through courts' interpretation of existing labour legislation (Costello and Freedland 2014). Jordan legislation specifically provides that access to courts and labour protection mechanisms apply equally to migrant workers in an irregular situation (ILO 2016a, para. 491). Without the grant of such protection, the

right to enjoy equal treatment regarding remuneration is given in theory only and conditioned upon the migrant worker's acceptance of the immigration enforcement consequences of making a claim.

In the context of COVID-19, the efforts of the Migrant Resource Centers in Asia offer examples of provision of legal aid and assistance to access basic services and social protection. See boxes 8 and 9 below.

► **Box 8. The contribution of Migrant Resource Centers in Asia**

The ILO delivers assistance directly to migrant workers and their communities through Migrant Worker Resource Centres (MRCs) across the ASEAN region (Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam). The MRCs are managed in partnerships with government institutions, trade unions and civil society or MRCs provide a range of services in countries of origin and destination.

The MRCs work to ensure that workers seeking jobs overseas can get up-to-date information and counselling before making a decision about migrating. Counseling is provided at the MRCs through outreach activities, meetings, online and over the phone. Information is also disseminated through broadcasts on local radio and television, job fairs, and seminars on safe migration in schools, vocational training centres and in the community. Returning migrants can also get information about opportunities for vocational training, employment in their communities or possibilities of re-migrating. Through the MRCs, women and men migrant workers are able to lodge complaints in case where migrant workers' rights have been abused, or they have suffered exploitation as a result of their recruitment or migration experience. Some MRCs have particular provision for migrant women to receive immediate support and be referred to violence against women specialized service providers, including health, police/justice, and social services.

Source: Migrant Workers Resource centre (MRC) Mapping. As of 1 January 2022

The vulnerability of migrant workers in general means that “migrant workers may not always be in a position to take the initiative to secure respect for the relevant legislation due to lack of awareness or fear of reprisals” (ILO2016a, para 464). Independent institutionalized entities that take initiative to investigate violations and enforce legislation or mechanisms that accommodate specific situations of migrant workers in an irregular situation may therefore usefully supplement normal procedures.⁴⁷ Assessment of institutional and training needs across the mechanisms and in relation with each other is a recommended step toward building capacity to ensure claims are filed and effective remedies provided for violations.

► In **North Macedonia**, for example, the government has trained an array of first responders in relation to victims of forced labour, including police officers, labour inspectors, immigration officials, NGOs, and social workers. The training includes ways of identifying forced labour during initial screening procedures of migrants and unaccompanied children. Specialized training for different enforcement actors is underway in Mauritania and Peru (ILO 2018c, 111).

Even with the equal application of due process rights affirmed in law, good practice with regard to migrant workers in an irregular situation requires taking further steps to ensure that such workers can effectively enjoy these rights in practice and have access to courts and other bodies without consequences arising from their irregular status (ILO 2006). The fear of detection by enforcement agencies and consequential detention or expulsion is a primary factor that prevents such workers from reporting abuses (ILO 2017c and EU-FRA 2011). Others lack the awareness or ability to enforce their rights, such as those with language barriers or a live-in requirement (ILO 2016a, para. 466) or victims of forced labour (ILO 2018c,108). Designing “effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation” (ILO 2018c) requires identifying specific local obstacles faced by migrant workers in submitting claims and providing ancillary measures to ensure an environment which can preserve their rights, maintain anonymity in relation to immigration procedures, and offer assistance and support.

47 See the entry under NORMLEX on the CEACR Observation for the United Kingdom, direct request, 2015, Convention 97 at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

► **Box 9. Measures to facilitate access to justice for migrant workers in irregular situations**

Recognizing the legal validity of an employment relationship and/or employment contract with respect to the migrant worker in an irregular situation

- In **Spain**, for example, the situation of a foreign worker without a residence or work permit, without prejudice to the responsibilities of the employer, does not invalidate the employment contract with respect to the rights of the foreign worker, nor is it an obstacle to obtaining the benefits deriving from the provisions of international instruments for the protection of workers, and other benefits to which they may be entitled, on condition that they are compatible with the situation of the worker (CEACR, Convention No. 19, direct request 2017).

Adopting legal provisions that claims can be pursued regardless of whether the migrant worker leaves the country

- **EU** member States, for example, transpose into national legislation the provisions of the EC Employer Sanctions Directive (EP 2009) that provides for minimum standards on sanctions and measures against employers of irregularly staying third-country nationals. In line with the EU Sanctions Directive (EP 2009, para. 14),
- in most **EU countries**, migrant workers in an irregular situation can make claims against their employer for compensation of unpaid wages even after return to their country of origin. Twenty countries of the EU are reported to use such an approach (EC-EMN 2017, sec. 6).⁴⁸
- In **Greece**, legislation provides that, even if they have returned to their countries of origin, third-country nationals employed without authorization have recourse to courts and authorities to claim unpaid remuneration and other legal rights, and to have these decisions enforced against the employers concerned (EP 2021).
- During COVID 19, the Government of **Saudia Arabia** and the Government of the **Philippines** agreed to establish a labour attaché within the embassy of Saudi Arabia in Manila who could receive wages cases directly from repatriated

workers. No information is available yet on its implementation (Farbenblum and Berg, 2021).

Avoiding requirements for service providers to report offences of migration status, and even clarifying the duty not to report migrants in an irregular situation to ensure that migrants access basic social services

- In the **Czech Republic**, the Committee for the Rights of Foreigners of the Council for Human Rights, an advisory body to the Czech Government, concluded after a meeting with health professionals that reporting migrants in an irregular situation to the police when they seek health care is unlawful and should not occur. As a follow up the Czech Medical Chamber clarified the duty not to report in a newsletter sent to doctors (FRA 2011, p 44 at note 169).

Authorizing trade unions to represent claimants, and allowing civil society and human rights organizations to denounce violations and assist victims throughout judicial procedures

- In **France**, in a deliberate effort to enhance access to justice, the Labour Code was amended to provide that unions can seek legal redress on behalf of a migrant worker in an irregular situation without the need for a mandate, so long as there is no declaration of opposition (ILO 2016a, para. 491).
- Migrant Resource Centers across the **Asian region** have been instrumental in assisting migrant workers to navigate through the complex judicial proceedings and processes and to obtain remuneration for past employment, especially when they return home. MRCs have the responsibility to support all migrant workers, including those in an irregular situation, and are managed in partnership with government institutions, trade unions and civil society organisations (see Box 8; ILO 2017e).
- In most **EU** Member States, third parties with legitimate interest such as trade unions, or organizations of migrant workers, may act on behalf or in support of migrant workers in an irregular situation (EU-EMN, 2017, sec 6.7 and note 162).

⁴⁸ For explicit legal recognition in Bulgaria and Ireland, see Bulgaria, Employment Encouragement Act of 2001, Section 73(3); Ireland, Employment Permits (Amendment) Act 2015.

Ensuring that migrant workers in an irregular situation are aware of their rights and receive advice and legal aid, and assistance with interpretation, by public action or governments' engagement of social partners or NGOs to help ensure these rights.

- In **Slovenia**, the Ministry of Labour, Family, Social Affairs and Equal Opportunities has engaged the Slovenian Association of Free Trade Unions to distribute information about rights, conduct regular advocacy to protect the most vulnerable groups from abuse and in case of violations of their rights, cooperate with official agencies by reporting violations to them, and providing a free legal aid and other professional help to migrants in judicial, administrative and criminal procedures and constitutional court procedures (ILO 2016a, para 138 and 620).
- In **Austria**, a Drop-in Centre for Undocumented Workers provides information; the Centre notes that there is a general lack of knowledge and misinformation about the rights of foreigners in unauthorized employment, not only among the foreigners themselves but also among institutions, which causes difficulties (EU-EMN, 2017).
- The Government of **Belgium** worked closely with NGOs to represent migrant workers who have lost their employment in their claims for back pay (ILO 2016a, para 641).
- In **Cambodia**, the Migrant Resource Centre run by Cambodian and Laotian trade unions with NGOs delivered legal aid together with information and training services. In one year, the Centre serviced 1,030 migrants, including 491 women migrant workers, and resolved 31 complaints involving 261 people including 121 women through mediation and court procedures (ILO 2014d, annex 5).
- In the context of forced labour, paralegal support programmes in Mauritania, and Niger widen the victims' access to legal aid (ILO 2018c, 108).

Concluding cross-border trade union agreements to protect rights of migrant workers in irregular situation and assist in legal defence

- In a cross-border initiative, six trade unions from **Africa, South-East Asia, South Asia, the Americas, the Arab States and Asia and the Pacific** concluded a cross-border agreement to jointly provide measures to denounce abuses and provide remedies.⁴⁹
- An MoU between **Thai and Cambodian trade unions** provide for, among other services, legal counselling on safe migration and rights at work, and assistance in settling grievances for unpaid wages and accidents (ILO 2018c, 103).
- In five separate cross-border agreements, the Confederation of Independent Trade Unions in **Bulgaria** finds that coordination with other trade unions in Europe is crucial to migrant worker representation; agreements include such provisions as recognition of trade union membership to protect members working in either country (with **Romania**), mutual support and exchange of information, joint trade initiatives, and defense of the interests and rights of workers (ILO 2016a, CITUB response).⁵⁰
- In a notable cross-border coordination, the Governments of **Mexico** and the **United States** cooperated with Mexican migrant worker centers to ensure remedies for fraudulent recruitment practices (Gordon 2015; Howe and Owens 2016).

Providing gender-responsive counsel and complaints procedures in administrative, quasi-judicial and judicial forums

- In **Costa Rica**, the municipality of Upala developed an inter-institutional and inter-sectoral Action Mechanism to protect migrant women, together with state institutions and civil society organizations. It operates with the help of local volunteer women and provides a

49 These are: ASEAN Trade Union Council, South Asian Regional Trade Union Council, African Regional Organization of the ITUC, Trade Union Confederation of the Americas, Arab Trade Union Confederation, and ITUC-Asia Pacific.

50 See The Confederation of Independent Trade Unions in Bulgaria (CITUB) with the British Trade Union Council; Greek General Confederation of Labour, Confederation of German Trade Unions (DGB), Cyprus Workers Confederation (SEK) and the National Trade Union Confederation of Romania.

safe place for victims of violence to find lodging, assistance and legal protection.

Guaranteeing consular protection by notifying the consul of the country of the migrant worker concerned, thereby giving effect to a principle of due process under international and regional obligations and practice of many States

- In **North Macedonia**, for example, the law provides for consular notification in deportation proceedings.

Ensuring effective and speedy dispute resolution with ability to obtain redress:

- In **South Africa**, the establishment and use of the Commission for Conciliation, Mediation and Arbitration (CCMA) combined alternative dispute resolution with conciliation and arbitration techniques to build accessible, effective, and expedited means of dispute resolution for workers with limited resources, including migrant workers in an irregular situation (ILO, 2013). The jurisdiction of the CCMA extends to any person, including an irregular status migrant worker, where an employment relationship exists, regardless of the absence of a formal contract. *Discovery Health Ltd v CCMA & others (CLL Vol. 17, April 2008)*, discussed in *Ivan Israelstam, 'Recent Labour Court case shows general assumption's fallacy', in Your guide to labour law in South Africa*.
- In the Southern African region, **Botswana, Lesotho, Namibia, Eswatini and Tanzania** have adapted the South African CCMA model to establish specialist local labour dispute resolution institutions that promote mediation and arbitration as the primary mechanism for prevention and settlement of labour disputes (ibid.).

Affording victims of trafficking in persons and forced labour special protection and a temporary or other residence permit to stay in the country pending resolution of their claim

- A requirement on the victim to participate in prosecution of the organizer or perpetrator without sufficient time for recovery or reflection is however incompatible with internationally recognized good practice (see ILO's Recommendation 203, para. 11(a)). The Governments of **Belgium, Luxembourg and**

Portugal provide residence permits to victims of forced labour and trafficking, regardless of immigration status.

- In **Italy**, the Consolidated Immigration Law, amended by Law No. 132 of 2018, stipulates that a foreign worker who lodges a complaint against an employer for particularly exploitative working conditions" and cooperates in the related criminal proceeding, can be issued a special residence permit for a duration of six months, subject to the favourable opinion of the Public Prosecutor. Such special permit allows the possibility of taking up a job and can be converted, after its expiry, into a residence permit allowing wage-employment or self-employment.⁵¹

Establishing sanctions against authorities that do not follow up denunciations brought to their knowledge

- In **Mauritania**, local officials and criminal investigation police who do not follow up denunciations of slave-like practices brought to their knowledge are liable to imprisonment and a fine (Act No. 2007/48 criminalizing and repressing slave-like practices).

Making available services by the country of origin in the country of destination, including through bilateral arrangements

- In cooperation with the ILO, the **Philippines** Department of Labor and Employment (DOLE) developed an online learning system for overseas Filipino workers in destination countries and conducts post-arrival orientation seminars (PAOS) and other services to assist its migrant worker nationals regardless of migration status in overseas welfare offices (see [ILO Office Manila web page, fair recruitment](#)).
- In a bilateral arrangement between the Government of the Republic of **Moldova** and an **Italian trade union**, the Government agreed with the workers' organization to provide social and legal support to Moldovan migrants living in Italy irrespective of their migration status, upon joining the trade union (ILO 2016a, para 139).

► 3.1. Judicial and quasi-judicial mechanisms

A basic principle of good practice recognizes that States should take all necessary measures to ensure the access of migrant workers in an irregular situation to judicial and quasi-judicial/administrative complaints processes. For accessibility in practice, it is important to ensure that no fees or costs operate as conditions to access and to provide specific assistance by the courts in relation to interpretation services or legal representation. In addition, such bodies should ensure that expulsion orders do not de facto deny the right to appeal, either of the order of expulsion, or the right to file complaints regarding violations of other rights (ILO 2016a). See also Part 2.

Specialized bodies and mechanisms are used in a number of countries as quasi-judicial means for access to justice for the claims of specific groups of migrant workers in an irregular situation that tend to be marginalized, such as domestic workers, care workers, and agricultural workers (ILO 2016a). Institutional forms include labour migration and labour rights bodies in a number of reported countries (ibid. note 32, para. 484, note 29, para. 641). Specialized units in government departments or ministries are reported to operate in countries of origin to inform potential migrant workers and others operate in countries of destination to advise migrant workers of their rights (ibid., note 33, para. 485, note 30, para. 641). Still other mechanisms operate to address labour violations experienced by migrants.

- In **Spain**, NGOs and Lawyers Bar Organizations can receive complaints and can communicate them to the Prosecutors Office (Fiscalia) as well as Ombudsman and national and regional levels (Carrera and Stefan 2018).
- In **Cambodia**, the use of a complaints process for migrant workers, including with ILO support to design gender-responsive services, was linked to a government regulation of private recruitment agencies and reported positive results in number of submissions, cases resolved, and better access to regular migration for the claimants concerned (ILO 2017c, 67).
- In cases of forced labour, specialized complaints mechanisms have been set up to provide access to justice to forced labour victims, including migrant workers in an irregular situation, in

Myanmar, Nepal and Qatar (ILO 2018c). Reforms in Qatar also include a dispute settlement mechanism (ILO 2021d)

- Hotlines and text message services operate in **Argentina** and **Peru** to receive complaints of forced labour (ibid., 92).

Special measures to ensure equal access to justice and remedies

Specific measures are needed to encourage equal access to justice for specific groups of migrant workers in an irregular situation who may lack awareness of their rights or means for claiming them, and face linguistic barriers or live or work in remote or closed environments. Women migrant often find themselves in informal, isolated, or unrecognized types of employment making it even more difficult to voice their grievances. Women workers in an irregular situation who are employed in sectors excluded from the scope of protection of labour laws can face multiple and intersecting forms of discrimination, including violence and harassment at work. They face unique legal and structural barriers, including lack of independent status, that prevent them from accessing justice and equality before the law, including legal aid services. Child migrant workers in an irregular situation are particularly at risk of economic and sexual exploitation and other abuses of their rights. Certain ethnic groups, indigenous, rural, or young migrant workers in an irregular situation work in vulnerable and hazardous occupations and sectors, including domestic work, agriculture, fisheries, construction, manufacturing, and entertainment (ILO 2016a, paras 644–45). The Violence and Harassment Recommendation, 2019 (No. 206) explicitly calls on all Member States to “take legislative or other measures to protect migrant workers, particularly women migrant workers, regardless of migrant status, in origin, transit and destination countries as appropriate from violence and harassment in the world of work” (Paragraph 10).

Good practice relating to mechanisms for access to justice in such cases calls for special and

innovative procedures, and other measures that can gather information. Practical measures, such as staying of the expulsion decision, access to housing, shelter, and support services, as well as measures facilitating burden of proof, are all important to allow undocumented migrant women to obtain redress. Delinking access to justice from immigration control mechanisms may be needed to ensure that justice is made safe, accessible, and effective (see below on enforcement authorities). Ensuring equality of access requires raising awareness and building trust among the groups that will enable them to take advantage of the provision of free legal aid or other services (see also Part 4 - section on social partner services). Specific considerations for children are of paramount importance.

- **Mexican** mobile units go to remote rural areas to deliver legal advice and assistance to migrant workers in vulnerable circumstances (Carrera and Stefan 2018, 160).
- In the **Philippines**, the law recognizes the “contribution of overseas migrant women workers and their particular vulnerabilities” and requires the Government to “apply gender-sensitive criteria in the formulation and implementation of policies and programmes affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers” and recently institutionalized the government’s support to overseas Filipino workers, including migrant workers in an irregular situation.⁵²

► 3.2. Monitoring mechanisms and collaboration

Mechanisms to monitor and enforce the rights of migrant workers in an irregular situation typically engage bilateral cooperation, national and provincial agencies, consultation with employers’ and workers’ organizations, and their voluntary contributions as well as those of civil society organizations, including services to the migrant workers. Evidence indicates that coordination of these mechanisms, actors and measures works effectively when it gives priority to the rights of migrant workers in relation to other policies, while building capacity for long-term change to eliminate irregular migration for employment in abusive conditions.

Collaboration with social partners and other stakeholders

Governments collaborating with social partners can effectively address urgent needs and protect the rights of migrant workers in irregular situations, both in countries of origin and abroad, playing an essential role in prevention and detection.

In many cases, governments in countries of origin collaborate with social partners to deliver urgently needed social assistance and monitor and report abuses in the workplace or society. For additional information on the specific services provided by workers’ organisations and civil society organisations, see also Part 4.

The collaboration of governments also extends to migrant worker organizations, civil society organizations, and trade union-NGO partnerships across countries of origin and destination. As a result of national level restrictions particularly in Europe and the United States, local and provincial governments have engaged social partners and NGOs to deliver health care, legal aid and other services. Close association between government agencies and migrant worker centres or NGOs has proven notably effective in ensuring access to justice for migrant workers who have lost their employment or been victims of trafficking in persons or forced labour.

⁵² See Migrant Workers and Overseas Filipino Act, of 1995 (RA No. 8042) and UN Women 2017a, p. 4, referencing the Overseas Workers Welfare Administration (OWWA), Republic Act No. 10801, 10 May 2016.

- In the **United States**, the Department of Labor established the Inter-agency Working Group for the Consistent Enforcement of Federal Labor Employment and Immigration Laws. The Working Group aims to identify policies and procedures that promote effective enforcement of federal labour, employment, and immigration laws. The group included government departments overseeing labour, national security, and justice affairs, and administrative bodies for labour relations and equal employment opportunity (AFL-CIO response in ILO 2016a). The Working Group seeks to ensure agencies' immigration enforcement and worker protection policies and promote workers' cooperation with labour and employment law enforcement authorities without fear of retaliation. To achieve these objectives the Working Group will, among others: Provide greater clarity to workers, worker representatives, advocates, and employers regarding processes and procedures on the intersection between immigration law enforcement and labour and employment law enforcement; strengthen processes for staying the removal of, and providing temporary work authorization for, undocumented workers asserting workplace claims and for cases in which a workplace investigation or proceeding is ongoing; and provide stakeholders open and transparent modes of communication with enforcement authorities (United States, n.d.).

While most such cases involve government agencies and non-state actors in the country of destination, remedies for fraudulent recruitment have been obtained through coordinated efforts between countries of destination and of recruitment. Cross-border initiatives by organizations of employers and workers can also prompt consultation with governments at regional and bilateral levels on rights-based policy and other measures that can secure the rights of migrant workers in irregular situations.

- In a bilateral initiative, foreign workers' organizations from the countries of origin (**Thailand, Nepal, and Indonesia**) collaborated with the Hong Kong Federation of Asian Domestic Workers Unions and the International Domestic Workers Federation (IDWF) to prepare a comprehensive report on compliance with the Hong Kong Government's code on labour inspection and protection of migrant domestic workers in China, Hong Kong (Special

Administrative Region (SAR)). The report found widespread violations after one year of implementation of the Code and advocated for stricter enforcement and protection of the migrant domestic workers in an alliance combining the interests of local and foreign workers (IDWF 2018).

Trade unions confirm that it is unreasonable to expect migrant workers to enforce their rights through the court system without provision of specific assistance, especially because of the practical challenges these workers may face, such as limited language skills, inability to pay fees and lack of understanding of the legal system (ILO 2016a). The role of trade unions and NGOs as frontline actors in promoting the rights of migrant workers can therefore be key in taking on claims by migrant workers who have faced abuse. Article 13 (2) of the EU Employer Sanctions Directive obliges Member States to ensure that third parties with a legitimate interest in ensuring compliance with the directive can act on behalf of or in support of the third-country national in any administrative or civil proceedings to defend their rights. In several EU member States, trade unions are the most common party allowed to bring a complaint on behalf of workers or represent them in civil or administrative proceedings. In some countries, NGOs can also provide support.

- In **Portugal**, third parties promoting the rights and interests of immigrants can file a complaint to the Labour Inspectorate and the court.
- In **Greece**, the legislation establishes that those illegally employed can, on an equal basis with legally employed workers, submit in person or through third parties every complaint provided for in national legislation against their employer.
- In **Austria**, the NGO Association for Unionized Assistance for Undocumented Workers (Anlaufstelle zur gewerkschaftlichen Unterstützung UNDOkumentiert Arbeitende, UNDOk) is the main contact point for trade union support for undocumented workers. It provides information and counselling, and takes on complaints on behalf of workers, sometimes in cooperation with NGOs specialised in helping victims of trafficking in human beings, such as the Intervention Center for Trafficked Women (Interventionsstelle für Betroffene von Frauenhandel, LEFÖ-IBF) and Men VIA. UNDOk writes to employers on behalf of migrant

workers in an irregular situation, claiming back pay. If the employer does not react, UNDOK refers the person to the relevant trade union or the chamber of labour, which assists the worker in filing a complaint to the labour law court. The law provides the legal basis for representation (by trade unions) at labour courts (FRA 2014, box, page 15)

Advocacy for due process and access to justice for migrant workers in irregular situations is often the subject of efforts of workers' organizations, and NGOs in destination countries. They also contribute significantly to monitoring and ensuring the rights of migrant workers in an irregular situation.

- The **Austrian** Confederation of Trade Unions (OGB) operates a center for migrant workers in an irregular situation, including victims of trafficking in persons (ILO 2016a, para. 489).
- Ver.di of **Germany** offers legal advice and assistance to migrant workers (ILO 2016a, para. 489).
- The **Malaysian Trades Union Congress (MTUC)** has worked in cross-border exchanges with the **Viet Nam General Confederation of Labour (VGCL)** to assist in educating Vietnamese migrant workers and connect them with the Vietnamese Embassy in Malaysia and for collaborating on resolving disputes as well as building the capacity of the VGCL to participate in policy dialogue in Viet Nam (ILO 2014c).
- As a means of access to justice, an independent entity established by the Government of **Tunisia** to counter trafficking in persons has worked with a national trade union to ensure support to migrant worker victims of trafficking and forced labour.⁵³
- In **Malaysia**, a **UNI-established migrant worker hotline** refers victims of sexual harassment and other violence to Tenaganita, Malaysia's most prominent migrant worker NGO, which has expertise and capacity to provide services to abused workers (Ford 2013).

► The **Single Confederation of Workers of Colombia (CUT)** has helped to establish a specialized migration platform to defend the rights of migrant workers (ILO2016a, para 489).

The role of enforcement authorities

Institutional arrangements dealing with irregular labour migration and the rights of migrant workers in such situations involve a range of governmental and other institutions, including immigration enforcement, labour inspection, police and criminal prosecution authorities, and national security agencies. Information exchange and coordination among these agencies require inter-agency arrangements for effective administration of the policy aims, including prioritization of the rights migrant of workers in irregular situations.

In exercising the State's discretion over immigration matters, immigration law enforcement should be designed and implemented in ways that do not adversely affect the rights of migrant workers in an irregular situation. In practice, the fear of detection by enforcement agencies, and of the resulting deportation, make it difficult for migrant workers in an irregular situation to seek enforcement of their rights, even where legal coverage so provides. Evidence suggests that cooperation between the labour inspectorate and immigration authorities should be cautiously undertaken in order to achieve the different aims of ensuring decent conditions of work and detecting irregular migration (EU-FRA 2021; ILO 2016a, para 482; ILO 2018d, paras 847–849). Labour inspections should not result in the immediate expulsion of migrant workers in an irregular situation who are victims of serious violations of their labour rights.

Effective and adequate inspections are nonetheless indispensable to ensuring migrant workers in irregular situations can exercise their rights and to tackling unauthorized employment. Good practice recognizes that essential components must be present in a labour inspectorate in relation to enforcing employers' obligations and protecting migrant workers'

⁵³ See *Instance nationale de lutte contre la traite des personnes (INLTP)* of the Council of Europe at: <https://www.coe.int/fr/web/tunis/inltp>. The service has launched a national strategy for 2018–2023 and works in collaboration with the Council of Europe, receiving ILO assistance. [Drawn from interview with ILO official, September 2019].

statutory rights of employment.⁵⁴ First, the labour inspectorate should use its authority to enter establishments without prior authorization to realize its primary task of enforcing the law relating to conditions of work and protection of workers. Second, joint workplace inspections conducted with immigration authorities may discourage migrant workers in an irregular situation from reporting exploitative experiences (ILO 2017f).⁵⁵ Collaboration by the labour inspectorate in such joint operations compromises the ability of the inspectorate to monitor and ensure the rights of such workers under the law, impedes access to effective remedies, and is incompatible with the requirements of labour inspection.⁵⁶

Safe reporting by victims of labour exploitation and migrant workers in an irregular situation whose rights have been violated is key to ensuring access to justice. Good practice therefore requires establishing an institutional “firewall” between labour inspectors and immigration law enforcement to ensure access to remedy for abuses of rights of migrant workers, particularly those in an irregular situation (ILO 2016a, paras 480–482, and ITUC response). The labour inspectorate should ensure that any action to verify the legality of employment is done in a way that is compatible with its primary purpose of enforcing the law in relation to working conditions and worker protections. This involves discharging its functions separately from the policy or immigration authority concerned, and not conducting joint inspections. Good practice requires that other functions assigned to labour inspectors, such as sharing of information with other agencies, do not interfere with the primary worker protection mandate of labour inspection⁵⁷ (ILO 2017f, para. 452).

► In **Belgium**, sometimes joint inspections are carried out to detect victims of trafficking. The

“The objective of labour inspection “can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and the protection of workers. Workers in a vulnerable situation may not be willing to cooperate with the labour inspection services if they fear negative consequences as a result of inspection activities, such as the loss of their job or expulsion from the country”.

Source: CEACR, ILO 2017f, para 452.

specialised anti-trafficking teams of the National Office of Social Security (Office National de Sécurité Sociale) conduct inspections with the police anti-trafficking units, which are targeted at detecting potential situations of labour exploitation. According to the labour inspectorate, in these instances, exploited workers are more likely to be detected and referred to a specialised shelter. The risk of removal of potential victims of labour exploitation remains rather low, even when the Immigration Office takes part in the joint inspections. While during inspection visits evidence of workers’ undocumented status will be reported to the police, in practice workers may be dispensed from detention if they file a complaint (see Wintermayr and Weatherburn, 79; FRA-EU, 2021).

Specialized training of the inspectorate in situations involving migrant workers could be helpful to the

54 CEACR, Luxembourg, Direct request, Labour Inspection Convention, 1947 (No. 81) and the Labour Inspection (Agriculture) Convention, 1969 (No. 129); CEACR, Observation, Finland 2018, op. cit.. See also CEACR, New Zealand, Direct request 2018, Labour Inspection Convention, 1947 (No. 81) at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>.

55 According to research conducted by the European Agency for Fundamental Rights (FRA), 20 out of 25 EU member States bound by the Employers Sanctions Directive report migrants in an irregular situation identified during inspections to the immigration authorities, which discourages victims from reporting abuse and violations of labour law (FRA, *Protecting migrant workers in an irregular situation from labour exploitation. Role of the Employers Sanctions Directive*, Report, 2021, p. 7).

56 CEACR, Finland, Direct request, Labour Inspection Convention, 1947 (No. 81) and the Labour Inspection (Agriculture) Convention, 1969 (No. 129). See also CEACR, Saudi Arabia, Observation 2018, Labour Inspection Convention, 1947 (No. 81), at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>.

57 The primary objective of labour inspection is to ensure the protection of workers, as provided in Article 3(2) of C81.

extent the aim of the training is consistent with this approach. Similarly, training of employers by the inspectorate could contribute to ensuring compliance with their statutory obligations relating to employment of all workers, including migrant workers in an irregular situation. Further exchange on methods consistent with this approach are needed to identify emerging trends in inter-agency collaboration that ensures the labour inspectorate discharges its primary role of enforcing statutory rights and obligations of employment.

- In **Romania**, following a cooperation protocol between the National Anti-trafficking Agency (Agenția Națională Împotriva Traficului de Persoane, ANITP) and the Labour Inspectorate, ANITP conducted various training sessions for labour inspectors on how to detect and report cases of human trafficking in different cities (FRA-EU, 2021).
- In **Finland**, the Foreign Labour Inspector Unit aims to tackle and prevent undeclared work and labour exploitation (regarding wages, working time, subcontracting or housing) of third-country nationals and EU mobile workers by increasing the capacity of labour inspectors to carry out inspection (EPUW-ELA 2021).
- The **Latvian Free Trade Union Confederation (LBAS)** concluded a cooperation agreement with the labour inspectorate to exchange information and prevent and investigate violations of labour rights, including violations of migrant workers' labour rights (ILO 2016a, para 478).

A large majority of women migrant workers in an irregular situation work in domestic services, health care and social services, as well as in the hotel and restaurant sectors and are particularly prone to gender-based violence and workplace abuse (ILO 2016c and 2017c, para. 40).⁵⁸ However, monitoring of the workplace and/or working methods in these sectors of operation present difficulties due to employer resistance, fear of detection on the part of the worker or the employer (for tax purposes), and more limited visibility and access. Recognizing these difficulties with regard to domestic work, dedicated ILO standards in this domain require States to develop and implement measures for labour inspection, enforcement and penalties

with due regard for the special characteristics of this type of work, in accordance with national laws and regulations. Such measures shall also specify the conditions under labour inspectors or other officials entrusted with enforcing provisions applicable to domestic work, shall be allowed to enter household premises or other premises in which work is carried out, having due respect for privacy (Convention No. 189, Article 17(2) (3) and Recommendation No. 201, para 24).

Some countries have expanded the mandate of the labour inspection services to cover domestic work, though enforcement mechanisms and, in particular, labour inspections are heavily influenced by the specific characteristics of the sector and by constraints that are directly related to the invisibility of many labour arrangements (ILO 2016c, 16). In such situations, gender-responsive policies have been combined with training of officials to identify labour exploitation and trafficking situations and to respect the rights of the migrants concerned (OSCE 2009).

- In **Spain**, the Government is training officials to identify instances of labour exploitation amounting to forced labour, which also includes assuring that victims who are undocumented workers are able to assert their rights and not be expelled due to lack of temporary residence (ILO 2016a).
- Since 2008, the **Swedish Working Environment Authority**, which traditionally supervised compliance with occupational safety and health, leaving labour relations to be dealt with by social partners, has been mandated to promote private households' compliance not only with occupational safety and health legislation, but also with the rules governing working hours and daily and weekly rest (ILO 2015, 8).
- The **Irish National Employment Rights Agency** was established in 2007 to secure compliance with employment rights legislation, including in the domestic work sector (ibid.).

Labour inspectorates also play a useful role in delivering information on workers' rights, as much as possible in a language they understand.

⁵⁸ Convention No. 189 explicitly recognize that domestic workers are more vulnerable to abuse, harassment and violence (article 5).

- In **Italy**, if the National Labour Inspectorate detects third-country nationals working and staying irregularly in the country during an inspection, it gives the workers a form with information on their rights, their employer's obligation to pay outstanding wages, pension, and social insurance contributions, and how to enforce workers' rights against the employer. The workers are also informed of how to report to the police and seek redress (FRA-EU, 2021).
- The Strategic Plan for Migration for 2015–2020 of **Portugal** envisaged measures for preventing and tackling labour exploitation of foreign workers who are not authorized to work, including by reinforcing inspections of employment entities, and disseminating information on the rights and obligations of immigrant workers.
- In **Slovenia**, when migrants in an irregular situation are found during an inspection, they are informed about their rights through the record of the inspection, through a document that includes information on claiming back pay. If necessary, interpreters may be involved (EU-FRA-2021)

Similarly, public service providers should be exempt from reporting the irregular status of migrant workers so as to allow irregular-status migrant workers, to the extent necessary to access health care, education, and other public services, without prejudicial consequences as a result of their irregular status (EU-FRA 2011). This policy should be applied to providers of information, legal aid and administrative or judicial protection that safeguard irregular status migrant workers from reprisals in the workplace for claiming their rights.

As stated earlier in this report, international human rights law recognizes that migrants in an irregular situation should not be treated as criminals or as national or public security threats based solely on their migration status (UN-CMW 2009 and 2012 and 2017b; UN-HRC 2012, para. 13). Such treatment can lead to other human rights violations, including arbitrary detention, discrimination, and ability to access critical health care, housing, education, or

other rights. In practice, certain forms of irregular migration are rectifiable, not through criminal enforcement, but through administrative actions on the part of relevant government ministries (ILO 2020i, 4–5).

Bilateral cooperation on enforcement

Bilateral labour migration arrangements (BLMAs) represent useful tools for cooperation on labour migration governance when they are aligned with internationally recognized principles on labour migration and actively implemented, as noted in the Global Compact for Safe, Orderly and Regular Migration (UN 2019, Objective 5).⁵⁹ They can be effective tools to address irregularity in the context of migration when the parties adopt aims that seek to create regular pathways and protect the rights of migrant workers in an irregular situation. Ensuring implementation of bilateral agreements in practice is equally critical to effectiveness and depends on a number of factors, including the BLMA's legal nature, its transparency, and its oversight mechanisms. In a multi-stakeholder working group of the UN Network on Migration co-led by ILO and IOM, with participation of the social partners as well as UN agencies, CSOs and other stakeholders, the UN system has developed comprehensive global guidance on rights-based bilateral labour migration agreements (UNNMN 2022). The Guidance's general principles of human and labour rights emphasize the importance of including provisions in the BLMA for the supervision of working and living conditions of migrant workers, including the specific role of the labour inspection, other relevant institutions and public health services in ensuring effective monitoring and enforcement of agreed commitments.

- The **Agreement on Labour Cooperation between Canada and the Republic of Honduras** (2013) includes a specific provision on government enforcement action, which provides that the parties to the agreement shall promote compliance with, and effectively enforce, their labour law by taking appropriate

⁵⁹ While bilateral Memoranda of Understanding within Asia, particularly in South-East Asia, have proliferated since 2000 (Wickramasekara and Ruhunage 2019, 11), the current growth of BLAs is particularly notable in the African region, where a number of countries have concluded or are negotiating bilateral agreements or MoUs with the GCC and Middle Eastern countries (ILO 2016a, para. 156).

and timely government action, including by (a) establishing and maintaining labour inspection divisions, including by appointing and training labour inspectors or officers who monitor compliance and investigate suspected violations, including through on-site proactive inspections; (b) initiating proceedings to seek appropriate sanctions or remedies for those contraventions; and (c) encouraging or supporting mediation, conciliation and arbitration, as well as the establishment of worker-management committees to address labour regulation of the workplace. (Article 3).

Oversight of activities also involves the establishment of joint committees tasked with exchanging and evaluating information on situations of migrant workers and potential migration, as well as enforcement of other provisions. The Governments of Nicaragua and Costa Rica have agreed to conduct joint labour inspections in Costa Rican companies employing Nicaraguan workers (ILO 2016a, para. 479). New Zealand and several Pacific Island States have agreed on criteria to assess implementation for discussion in bi-annual reviews of the Recognized Seasonal Employer policy inter-agency

agreements, for example, the Recognized Seasonal Employers Scheme (RSE), New Zealand.⁶⁰

Some mechanisms allow migrant workers in the country of destination to obtain assistance from country-of-origin authorities to investigate breaches of bilateral agreements requiring equality of treatment or other rights. (see also ANNEX II on bilateral cooperation frameworks).

► In **Sri Lanka**, the Bureau of Foreign Employment Act empowers the authorities to inquire into complaints made by migrant workers and, in particular, migrant domestic workers.⁶¹ The Sri Lanka National Labour Migration policy operational manual aimed at strengthening and streamlining the handling of migrant worker grievances and other services that Sri Lankan diplomatic missions provide in countries of destination, and giving safe housing and legal support to submit complaints for migrant domestic workers who have fled their employer.⁶² In addition, arrangements provide for countries of destination to operate visa offices in the country of origin to encourage the rights of potential migrant workers through regular migration pathways.

► 3.3. Dispute resolution mechanisms at workplace and sectoral levels

Good practice recognizes and addresses the notable obstacles that migrant workers in an irregular situation face in claiming their rights, and in particular the need for guarantees against reprisals. For example, obstacles may include abusive employers using the irregular immigration status of the claimant as a pretext to terminate the work relationship or reporting the worker to the immigration enforcement authority to

avoid dealing with the claims, which may include, for example, non-payment or underpayment of wages, excessive overtime, or violence and harassment. If left unaddressed, this conduct essentially grants employers de facto immigration enforcement authority (ILO 2016a). It also can endanger local workers if migrant co-workers fear to report workplace situations that present an imminent and serious danger to life or health.⁶³

60 More information on this can be found at the ILO's Labour Migration Good Practice database at: https://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=48.

61 More information on this can be found at the ILO's Labour Migration Good Practice database at: https://www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=27.

62 *ibid.*, revised 2013, p. 11.

63 The right to removal from such a situation is guaranteed, irrespective of migration or other status. See Occupational Safety and Health Convention, 1981 (No 155), Article 13.

In some countries, policy and practice seek to protect irregular-status migrant workers who submit claims against their employer from reprisals through bipartite procedures involving worker representatives and trade unions, public administrative oversight, or proactive compliance action.

- In **Belgium**, for example, migrant workers in an irregular situation can lodge a complaint against their employer directly with the Labour Inspectorate, who guarantees the anonymity of their complaint; further cooperation between labour inspectorates and NGOs regarding the back-payment of wages has recently been introduced with positive results (EC-EMN 2017).
- **The South African Commission for Conciliation, Mediation and Arbitration (CCMA)** (ILO 2013) pilots accessible, effective, and expedited means of dispute resolution open to workers, including migrant workers in an irregular situation, who are in an employment relationship.⁶⁴ The CCMA offers access in practice to those who do not otherwise have the resources to bring legal challenges against decisions of employers' civil courts with general jurisdiction or specialized labour courts. The CCMA's innovative techniques include simplified referral forms, absence of formal legal pleadings, and notification of hearings by mobile text message which contribute to its effective procedures (ILO 2013, 45–46).

In initiative-taking approaches, labour inspectorates, often working together with community groups or worker centers, are targeting workplaces, geographical areas, and trade sectors known for abuses of migrant workers

in an irregular situation. The authorities may seek to raise awareness of minimum rights among migrant communities with the help of migrant resource networks, community legal centers and other groups. Exemplary practice in the use of such proactive compliance interventions is reported by parties concerned in countries including **Australia, Brazil, Canada (Quebec), Japan, Malaysia**, and the **United States** (Ebuisi, Cooney and Fenwick 2016, 16–17).⁶⁵

- In **Malaysia**, a labour inspection at the intervention of MTUC on behalf of a Vietnamese woman migrant worker whose identity was kept confidential resulted in a company settlement of claims of withheld pay, no overtime pay, forced work on rest days, long working hours, a lower pay than promised and restriction of movement (ILO 2014c).

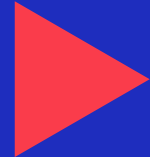
In many cases, the migrant worker in an irregular situation experiences difficulty in proving a work or employment relationship due to such circumstances as lack of a written employment contract or a disguised relationship in a chain of subcontractors. Even where a contract exists, the employer may assert the argument that it cannot be enforced since the employment was unauthorized. Good practice involves provisions in the law or in its interpretation that affirm the validity of the employment relationship.

- The **New Zealand** Employment Relations Authority, in a case brought by a labour inspector, recognized the right of migrant workers in an irregular situation to wages and holiday pay withheld over six years, rejecting the argument of unenforceability of the contract due to irregular status.⁶⁶

⁶⁴ Discovery Health Ltd. v. CCMA & others (2008) discussed supra.

⁶⁵ In relation to Brazil, see Platform of the National Plan for the Eradication of Slave Labour, explained in Interview with ILO officials in November 2019.

⁶⁶ See ILO 2016a, para. 492 and note 51, citing to Keightley (Labour Inspector) v. Ly t'a Taumaruni Bakery (2011) NZERA Auckland.



4

Part 4 – Strategies aimed at preventing irregular labour migration in abusive conditions

The UN Global Compact for Safe, Orderly and Regular Migration (GCM) recognizes that migrants may face situations of vulnerability due to the circumstances in which they travel or the conditions they face in countries of origin, transit or destination. Migration which takes place outside regular channels leaves workers vulnerable to abuse and exploitation (UNMN,2021).

Commitments under UN Global Compact for Safe, Orderly and Regular Migration that help address irregular migration

1. Enhance availability and flexibility of pathways for regular migration (Objective 5)
2. Minimize the adverse drivers and structural factors that compel people to leave their country of origin (Objective 2);
3. Provide accurate and timely information at all stages of migration (Objective 3);
4. Address and reduce vulnerabilities in migration (Objective 7);
5. Strengthen the transnational response to smuggling of migrants (Objective 9);
6. Prevent, combat and eradicate trafficking in persons in the context of international migration (Objective 10);
7. Strengthen certainty and predictability in migration procedures for appropriate screening, assessment and referral (Objective 12);
8. Provide access to basic services for migrants (Objective 15); and
9. Strengthen international cooperation and global partnership for safe, orderly and regular migration (Objective 23).

The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) aims at preventing all forms of migration for employment in abusive conditions. This includes both irregular labour migration and unauthorized employment of migrant workers, as well as, in its most extreme forms, trafficking in persons and forced labour of migrant workers. To this end, States must adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members to suppress irregular movements of migrants, and against the organizers of such movements, in order to prevent and to eliminate the abuses prohibited by international instruments or agreements or national laws and regulations (Article 3). Convention No. 143 offers a number of means of action to achieve these objectives:⁶⁷

- establish systematic contact and exchange of information with other States (Articles 3 and 4);
- consult representative organizations of employers and workers (Articles 2, 4,7);
- prosecute authors of labour trafficking whatever the country from which they exercise their activities (Article 5);
- define and apply sanctions (Article 6).

National policy coherence for effective policy making

Countries use a variety of legal and policy measures to pursue national objectives relating to irregular migration for employment. These may include: i) migration law regulating status, entry, stay, work, social protection and social services; ii) public law recognizing the rights of persons in the territory, and equality of treatment and due process to claim those rights; iii) labour and employment regulation of economic freedoms, rights and market policies; iv) laws on labour inspection and enforcement; v) authorization of immigration powers and enforcement; vi) administrative, civil, and penal laws and sanctions including for unauthorized employment, trafficking in persons and other unfair recruitment practices; vii) criminal procedure and enforcement powers; and viii) administrative and practical measures relating to education, training, information services, and awareness raising. Government's responses to irregular migration have however largely focused on strengthening border controls and implementing programmes, through which migrant workers are able to return to their country without penalty. Restrictive measures aimed solely

⁶⁷ See also ICRMW, Art.68.

at preventing irregular migration often fall short of reaching their objectives and do not address the underlying reasons that push migrant workers into irregularity. Such measures may reduce irregular migration in the short-term, but may not be effective in the long-term to ensure effective labour migration governance and protection of migrant workers' rights (UN 2017).

Preventing exploitation and abuse of migrant workers in the context of irregular migration requires fair and effective labour migration governance at all levels. This governance system is most effective when a number of inter-linking policy fields and ministries and other actors are concerned, there are strong workers' and employers' organizations, and the various stakeholders have the capacity to contribute to national dialogue (ILO 2017c, 53–54). In this regard, labour market institutions also have a key role (see also Part 3 on access to justice and the role of labour inspection). National policy coherence that respects the rule of law and reflects a country's international obligations vis-à-vis ratified treaties, conventions and agreements, is critical to effective rights-based governance of labour migration and is also a necessary basis for effective cooperation at international, regional and bilateral levels. Policy coherence implies coordinated action regarding laws and policies, institutional arrangements,

and the social partners (ILO 2020j).

This part of the report provides a short mapping of regulatory and policy measures used within and across States to address and prevent irregular migration for employment and associated abusive conditions. Such measures are manifold and include detecting irregular migration flows and abusive conditions, including through data collection and monitoring; promoting fair recruitment, imposing effective and dissuasive sanctions against organizers of irregular migration for employment or employers engaging migrant workers in an irregular situation; strengthening international collaboration and exchange of information, including among trade unions and employers' organization, as well as providing free and accurate information to migrant workers as means to prevent abuse. Other measures help to promote workplace mobility for documented migrant workers and to protect those workers from falling into irregular labour situations when they have lost their employment. Finally, trends in exemplary practice on regularization and other related schemes display the potential of reducing irregular labour migration by promoting inclusive approaches (see Part 2 – section on regularization programmes).

► 4.1. Collecting evidence

Effective policymaking and action on irregular migration requires assessment of the extent of irregular labour migration in the country and of the nature of related abusive conditions faced by migrant workers (ILO 2016a, paras 647–649). Whether countries of origin or destination, States must take appropriate measures to systematically detect illegally employed migrant workers on their territories, or any movements of migrant workers in which these workers are subjected to abusive conditions.⁶⁸ The terms “abusive conditions” refer to those conditions which are prohibited by the relevant international legal instruments, bilateral

agreements, or by national laws or regulations (ILO 2016a).

Collecting accurate and comprehensive data on irregular migrant workers is challenging, however. Irregular migration not only refers to irregular flows (movements) but also to stocks of migrants in an irregular situation. These can change over time due to migrants entering or leaving through irregular channels but also because of changes in the status for migrants already in the country. As stated in Part 1 of this report, migrants may be in an irregular situation for a variety of reasons, including irregular entry,

⁶⁸ See ILO Convention No. 143, Articles 2 and 4.

irregular residence or irregular employment. They can also get in and out of irregularity as laws and policies change over time. Different terms are used and the terms “irregular situation or status”, “undocumented” or “unauthorized” are also often used interchangeably. The use of “undocumented” may be misleading as most migrant workers may have identity documents, but still be in an irregular situation. The term “unauthorized” usually refers to unauthorized employment or entry.

In practice very few countries produce and analyse data on irregular labour migration and instead rely on estimates. More information about the number of irregular status immigrants and their characteristics would help however to match migration flows with labour market needs and counter public perception, prejudice and stereotypes about migrant workers in an irregular situations. It also facilitates decisions by employment and migration authorities to improve the governance of migration and maximize its positive impact. For example, accurate data collection and its analysis can help policymakers find the right balance between regularizing migrant workers and adjusting the conditions of work in regular status admissions policies (OECD-ILO 2018, 42–43). It can also help target services and measures to promote the rights of the migrant workers concerned. Some countries have fixed the importance of statistical evidence on irregular migration in their national policy.

Methods used in collecting data

The capacity to develop tools to collect and analyse data on irregular labour migration begins with sound systems for labour market and labour migration data collection and analysis based on comparable methods and criteria (OECD-ILO 2018, 43). The harmonization of methods of collection and detection on irregular labour migration across countries is necessary for data comparisons that lead to well-designed bilateral, regional and international responses. Data

disaggregated by sex and other pertinent factors such as origin and age, migrant status, sector of employment and occupation, and conditions of work and livelihood, all inform evidence-based policy responses and systems for evaluation and adaptation, as necessary. How data are used to better understand and respond to the specific context of irregular labour migration is important to effective evidence-based policies, within and between countries of origin and destination. Issues for analysis of the situation of irregular labour migration and abusive conditions include assessing complementarities by sector and skills, modelling and projecting interactions between migration and economic growth, evaluating the productivity impact and the potential for direct fiscal contributions if such labour were regularized (Ibid, 43–44).

The International Conference on Labour Statisticians (ICLS) Guidelines concerning statistics of international labour migration (2018) do not differentiate data on the basis of migrant status but may still help comparable data collection on the employment of migrant workers, regardless of permit, which facilitates regional and international co-operation in analysis and sharing.⁶⁹

► The **ILO Labour Migration Database** has over one hundred countries contributing with data on migrant workers and presents statistical information on migrant worker stocks, inflows, and outflows. It has data on employment, education and training, by region, age, and sex. It does not differentiate data based on migrant status.

► In the ASEAN subregion, **Thailand** and other countries of origin and destination established the International Labour Migration Statistics (ILMS) Database with ILO support which gathers all official government sources of data on stocks and flows of migrant workers within and outside the subregion. It facilitates the use of quantitative information in evidence-based policymaking on labour migration at national and regional levels (OECD-ILO 2018, 43).⁷⁰

⁶⁹ The ILO provides expertise at national and regional level that is informed by recent guidelines containing standardized statistical definitions and methodologies for migration adopted by the International Conference on Labour Statisticians. See <https://www.ilo.org/global/topics/labour-migration/policy-areas/statistics/lang--en/index.htm>.

⁷⁰ See for example, ASEAN Labour Migration Statistics: The International Labour Migration Statistics (ILMS) Database in ASEAN at: <http://apmigration.ilo.org/asean-labour-migration-statistics>.

- The ILMS approach has been adapted by the **Arab States** for a multi-country statistical effort in the Migration and Governance Network (MAGNET) (ILO 2017c, paras 120–121).
- The Economic Community of West African States (**ECOWAS**) has developed targeted studies and guides on labour market information systems, and other ways to harmonize policies to enhance regional integration (ibid., para 123).

In many countries, the detection of irregular labour migration is a responsibility shared among several authorities. Immigration authorities as well as defence agencies monitor cross-border movements closely. In addition, police officers, customs authorities, and labour inspectorates may engage in identifying specific cases of irregular employment. The activity of these law enforcement agencies can reveal indirect data on the extent of irregular labour migration. Other means of detecting irregular labour migration may be used with varying degrees of reliability, such as public reporting to the authorities, including through complaints and hotlines; or police checks (identification and residence permits). Approaches to consolidate and harmonize existing information systems are used in Brazil’s Digital Observatory of Slave Labour (ILO 2018c, 43–44) and in the United Kingdom’s Gangmasters Licensing Authority, which works with businesses to share information on trafficking in persons and similar practices within their sectors of industry.⁷¹

Labour inspection has a key role in detecting irregular-status migrant workers in abusive conditions, particularly in sectors or workplaces known for poor working conditions or non-compliance issues such as non-payment of tax.

Inspections may involve prescribed procedures in guidance documents, checking of employment documents, and access to databases on taxes, social security and employment. Efforts to detect irregular migration in abusive situations, including through inter-agency collaboration, must however preserve the rights of migrant workers in an irregular situation. In particular, the power of labour inspectorates to enter establishments without prior authorization should be granted with the intention to carry out the primary task of the labour inspectorate — enforcing legal provisions relating to conditions of work and protection of workers. Where this task is compromised by migrant workers’ fear that a labour inspector will report them to immigration enforcement, it is important to identify the limit of collaboration for immigration purposes (see also in Part 3 – role of enforcement authorities and role of labour inspection).

Further research and exchange on methods of collecting data and outcomes of good practice are needed to arrive at concrete examples of effective institutional collaboration respecting human and labour rights of migrant workers in an irregular situation. Collaboration with social partners and civil society organizations provides additional methods for information collection and transparency that can help the protection of rights of irregular-status migrant workers. Establishing cooperation with other countries for exchange of information and related action is also critical to effective detection and respect for rights. Many countries conduct such cooperation on the basis of provisions in agreements of subregional economic communities and bilateral labour arrangements (see below).

71 For more information on the Gangmasters Licensing Authority, see <https://www.gla.gov.uk>.

► 4.2. Exchanging information on irregular labour migration

Exchange of information between States

Information exchange and cooperation between States also helps to coordinate labour market needs, at all skills levels and address irregular migration movements for employment. Good practice in addressing and preventing irregular labour migration is founded on systematic contact and exchange of information between and among countries of origin and of employment, in consultation with employers' and workers' organizations, including on irregular movements of migrants for employment, and on the organizers and employers involved (as required in Convention No. 143, Articles 4 and 13(1)). This may occur among members of a region, across regions, within subregional economic groupings, or bilaterally. Information can cover labour market needs, demand and supply to open regular pathways for migration for employment, flows of irregular labour migration, and the needs of migrant workers in an irregular situation, including special circumstances for particular vulnerable groups. The Government of Portugal, for example, has established cooperation with other countries to prevent and combat irregular immigration and trafficking in persons, and to better manage circulation at borders.⁷²

Regional and sub-regional initiatives provide opportunities for systematic exchange of information and experience, on a regular basis or at members' initiatives.

- **In ECOWAS**, for example, Member States convene regular meetings for the exchange of all forms of information and experiences to ensure the harmonization of techniques and methods of actions such as the free movement of persons (ECOWAS 1985).
- To contribute to the prevention of irregular immigration the **EU established a framework**

for interoperability between the EU information systems already in existence to expand access for States to consult data in the framework (EU 2019, 85).

- **Inter-regional dialogues and processes** such as the Abu Dhabi Dialogue and the Africa-EU Strategic partnership, as well as the Colombo Process all provide platforms to discuss and exchange information on migration strategies, including approaches to prevent and address irregular migration ILO 2020k.

Bilateral labour migration agreements (BLMA) by nature cover regular migration but could include references to collaboration among parties to minimize irregular migration for employment. Some countries have chosen to conclude BLMAs with a view to discouraging such migration. For example, the bilateral labour migration agreement between the Republic of Moldova and Israel in the construction sector, prepared in consultation with social partners in both countries, aims to provide enhanced opportunities for regular migration and reduce the negative effects of irregular migration by ensuring labour and social protection to workers.

BLMAs can be a means to promote rights-based labour migration and give effect to workers' rights set out in international standards. Bilateral agreements typically provide for obligations to exchange information and have regular contact, through mechanisms such as joint committees. To ensure such exchanges, the agreements establish and task joint committees to meet regularly to exchange information gained from monitoring or enforcement programmes relevant to meeting labour market needs and preventing irregular movements of labour (See ANNEX II). It is nonetheless important to acknowledge that there are policy aspects that only national labour migration policies can address, such as modalities for entry, visa and permits systems, pathways

72 CEACR, Portugal, direct requests, 2014, Convention 97, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:0:0::>

to regularization and citizenship, etc. Therefore, bilateral agreements need to be closely aligned with the relevant national policies, promote equal treatment, and be grounded in labour market and migration information systems (LMMIS).⁷³ UN system wide Guidance on BLMAs contains a number of important principles, including with respect to “migration status”, that BLMAs should take into account to ensure effective protection and well-planned policies. These include: ensuring clear guidelines regarding procedures and processes documenting migrant status on the territory of the country of destination; ensuring clear and transparent procedures for renewal and extension of work and stay permits; and ensuring respect for the human and labour rights of migrants in irregular situations.⁷⁴

Information exchange and cooperation among states is even more essential in the context of measures addressing situations of crisis, including the COVID 19 pandemic. The Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) recognized that migrants, refugees and other persons forcibly displaced are among the most vulnerable. It calls upon ILO Members to strengthen international cooperation, including through the voluntary and systematic exchange of information, knowledge, good practices and technology for promoting peace, preventing and mitigating crises, enabling recovery and building resilience (para. 47). Nonetheless, some evidence suggests that the lack of governance, international cooperation and solidarity with shared responsibility in the fight against the COVID-19 pandemic has significantly hit migrant workers (ITUC 2020b). In some cases, travel restrictions have trapped migrants in countries of destination, and layoffs have led to income losses or the expiration of visa or work permits, putting migrants into irregular status. Travel restrictions have also prevented many migrant workers from taking up employment abroad for which they already had contracts, and for which many may have paid high recruitment fees and costs. There is evidence that such situations can lead to further irregular movements, potential debt bondage and human trafficking (ILO 2020e, f).

For migrant workers who are in irregular status or returning home, strong collaboration with the country of origin on amnesties, regularization, information exchange and processes of return can ensure protections and smoother repatriation. It can also support for skills recognition and other measures to facilitate effective reintegration into labour markets (ibid.). Upholding coordination and communication between tripartite partners, diplomatic missions, and recruitment intermediaries in countries of origin and destination to monitor the recruitment of migrant workers, particularly those recruited rapidly to meet labour shortages during the crisis (e.g., in the agricultural, health or manufacturing sectors, such as of personal protective equipment (PPE) materials) is equally essential (ILO 2020l).

► The **Inter-American Commission on Human Rights** recommended States to “establish cooperation, information exchange and coordination channels between countries of origin, transit and destination so that, in the context of COVID-19, the repatriation of migrants can be guaranteed in a voluntary, coordinated, assisted, safe and coordinated manner between the States” (IACHR 2020b and 2020c).

Exchange of information among and with social partners

In many cases, social partners provide relevant information on abusive conditions related to irregular migration to the Government, either directly by agreement with the government, or in the context of information-gathering, monitoring, or advocacy that forms part of their broader initiatives to address abuses. In their work with government authorities to provide services to migrant workers in such situations, for instance, some social partners have mandates to gather and directly share information on the needs and challenges facing the migrant workers. In some cases, social partners provide relevant information to governments as an outgrowth of their services to migrant workers. Workers’ organizations receive information of violations of rights of migrant

⁷³ See UN Network on Migration. Guidance on bilateral labour migration agreements (BLMAs), Geneva, (UNMN 2022)

⁷⁴ ibid

workers, including those with irregular status, that leads to advocacy and legal claims.

- The **Slovenian Association of Free Trade Unions**, for example, agreed with the Government to provide regular cooperation with the supervisory bodies and law enforcement services by promptly reporting violations (ILO 2016a).
- A migrant labour hotline in **Malaysia** run by members of the 40 Malaysian affiliates of the **UNI Global Union (UNI)** reportedly fields several hundred calls a month from documented and undocumented migrant workers experiencing employment-related difficulties. The hotline provides legal support in cases of withholding of wages and other violations of the migrant workers' labour rights (Howe and Owens 2016).
- Another effort involving a partnership between international and regional organizations, government institutions, employers' and workers' organizations, civil society organizations, among others (SDG Alliance 8.7), is the **Interactive Map for Business of Anti-Human Trafficking Organizations**.⁷⁵ It serves not only as a resource for companies to identify emerging partners to eliminate modern slavery and child labour, but also for governments to detect abusive conditions and exploitation connected with irregular labour migration.

Data exchange to cover special situations

Particular challenges exist to detect and collect information necessary to respond to the needs of irregular-status migrant workers who are in special or vulnerable situations such as those belonging to ethnic or religious minorities or indigenous

peoples (OSCE 2009, 20). Women migrant workers who are undocumented or in irregular situations often are even more disadvantaged and have additional needs. Evidence on migration in Latin America suggests that many indigenous migrant women are working in an irregular situation and that a significant gap exist in the extent to which the current labour migration regulatory framework is accessible to women migrants. The situation is critical particularly for migrant domestic workers with irregular status, especially those who live in the house of their employer. Domestic work remains one of the least protected sectors and suffers from poor monitoring. Data on numbers and on abusive situations are therefore difficult to obtain. Consulting women migrant workers, as part of a process of tripartite social dialogue, for example before imposing or lifting bans or restrictions on women's migration and putting in place alternative mechanisms is therefore essential. It also results in evidence-based and well informed policy making on irregular labour migration (Napier-Moor, 2017). Evidence also suggests that more women are migrating alone with their children, who face acute challenges to their rights to protection and welfare. Some migrant children, including unaccompanied children, are subjected to forced and child labour in sectors of industry such as land-based seafood processing. In many cases, victims of trafficking in persons and victims of forced labour are difficult to identify due to the coercive and clandestine nature of their activity or residence.

Trends in state practice in such situations includes the strategic use of available statistical data, such as the gender-related data on women migrant workers with regular or irregular status, to identify local needs and sectoral differentiation. Further research is however needed on the various approaches needed to collect specific data on those migrant workers in an irregular situation that have specific needs.

⁷⁵ The Interactive map is an online platform, available at: <https://www.modernslaverymap.org/>.

► 4.3. Social dialogue and consultation on questions of irregular labour migration

Convention No. 143 requires states to consult representative workers' and employers' organisations in the context of measures to detect and prevent labour migration in abusive conditions. For such measures to be successful, consultation with social partners, including on fair recruitment, are considered essential under the Fair Recruitment Guidelines (See Recommendation No. 169, para. 44). Trends in state practice reflect the transformative effect of consultation in addressing irregular labour migration in abusive conditions. Social dialogue has also proven valuable in addressing the impact of the COVID-19 pandemic on migrant workers, including those in irregular situations. For lessons learnt from past crises through the lens of social dialogue and related recommendations, see ILO 2020m

- The **International Trade Union Confederation (ITUC) and the International Organisation of Employers (IOE)** issued a joint statement on COVID-19 calling for enhanced coordination of all actors and for international financial institutions to support socio-economic measures and policies. It further called "in the strongest terms" for social dialogue and on the key role of the social partners (IOE-ITUC 2020).

As a basic principle of good practice, governments should therefore develop mechanisms to fully consult social partners on the detection of abusive situations associated with irregular labour migration, on national and international measures for systematic contact and information exchange, and on laws and regulations and other measures designed to prevent and eliminate abusive irregular labour migration.⁷⁶ Although a

number countries have consultative mechanisms for labour migration questions in general, the extent of government consultation with social partners on specific questions of irregular labour migration and associated abuses is not clear (ILO 2016a, paras 133–134 and 136).

- The Government of **Portugal** has established an Advisory Council on Immigration Issues to ensure the participation of migrant workers' organizations as well as workers' and employers' organizations in the development of public policies concerning migration.⁷⁷
- The Government of **Malta** reported that it regularly consulted and involved the social partners in regulatory decision-making in the field of unauthorized employment (EC-EMN 2017, sect. 3.1.3).
- In **Finland** employers' and workers workers' organisations, and the Government participate together in developing and monitoring legislation and the dissemination of information, including on unauthorized employment and the prevention of the informal economy (ibid.).
- In **Ghana**, the national plan for the fight against illegal employment 2016–2018 (PNLTI 2016–2018) recommends the development of preventive action with the social partners, including renewal of the partnership agreement in the agriculture sector and new partnership agreements in the performing arts sector and the domestic work sector.
- In **Cambodia**, the Government drafted ministerial orders (prakas) to strengthen existing protection mechanisms for migrant workers and set standards for private recruitment agencies, the recruitment process, and related access to justice, in consultation with Cambodian trade unions in a Technical Working Group (ILO 2014c).

⁷⁶ See Convention No. 143, Articles 2, 4 and 7. Recommendation No. 86, Paragraphs 4(2) and 19 require consultation with the appropriate organisations of employers and workers on "all general questions concerning migration for employment" and on "the operations of recruitment, introduction and placement of migrants for employment."

⁷⁷ CEACR, Portugal, direct requests, 2014, Convention No. 143, at https://ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3148641,102815

- In the **Netherlands**, the Government and the social partners developed an action plan in the context of the Social Agreement signed in 2013, to tackle sham contracting leading to unequal terms of employment.⁷⁸
- The **ILO's Triangle in ASEAN** project involves tripartite capacity-building on migration that includes the social partners in Australia, Cambodia, Lao PDR, Malaysia, Thailand, and Viet Nam covering a period of twelve years (2015–2027). The project has already generated a wide range of studies and publications covering these countries.⁷⁹
- In **Vietnam**, tripartite and civil society dialogue, including with Vietnamese migrant workers, informed the drafting process of the revised Law on Contract-Based Vietnamese Overseas Workers 69/2020/QH14 (Law 69) (for more info see Part 4, section on fair recruitment).

International level consultation with employers' and workers' organizations involves exchange of information and views.

- The **Business Mechanism of the Global Forum on Migration and Development** (GFMD) was established in 2016 to bring the voices of business, national employers, and business groups to the inter-governmental forum. The private sector informs dialogue with government representatives on issues of common concern in labour reform, migration governance, irregular migration, and migrants' rights. Trade unions participate separately in the GFMD processes and with civil society mechanisms.⁸⁰

Social partners initiatives to prevent and detect irregular labour migration in abusive conditions

The voluntary initiatives of social partners in protecting and promoting the rights of migrant workers in irregular situations leverage public measures and help prevent and eliminate abuses associated with irregular migration, and their value should be recognized (Convention No. 143, Article 7). Independent initiatives of workers' and employers' organizations, as well as civil society organizations, vary in scope, purpose, and means in promoting the rights of migrant workers in irregular situations.

These may involve: information and training services, social support and other assistance with social security benefits and childcare, legal services for migrant workers to claim their rights, and public and media awareness through campaigns against the stereotypes and prejudice that result in increased discrimination, racism and xenophobia. Some union-based initiatives focus on 1) organizing migrant workers as members in order to advocate for migrant workers' interests in collective bargaining and other matters, or 2) helping establish or support migrant worker cooperatives and centres that deliver legal and socio-economic assistance to migrant workers in irregular situations. Hotlines and referrals to NGOs, or collaboration between trade unions and NGOs, offer good practice for investigation of abuses and dispute resolution. See also Part 3 on access to justice.

- In **Thailand**, the State Enterprises Workers' Relations Confederation (SERC) has advocated for the rights of migrant workers, including for their freedom of association and rights to equal compensation for accidents at work, in line with Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) which Thailand has ratified (ILO 2014c, para. 5). The SERC joined

78 CEACR, Netherlands, direct request, 2014, Convention 97, at: https://ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3189658.

79 See the Triangle in ASEAN project website at: https://www.ilo.org/asia/projects/WCMS_428584/lang--en/index.htm.

80 More information on the GFMD business mechanism is available at: <https://gfmdbusinessmechanism.org/>. See also GFMD, *Toward a Global Compact on Migration: Perspectives on Labour Migration from the GFMD Business Mechanism*, June 2017.

the Thai Labour Solidarity Committee (TLSC) in a fact-finding visit to investigate recruitment practices and working conditions at specific factories that resulted in a report with recommendations to the Government and the factories (ibid.).

- The **Interprofessional Union of Workers (SIT)** with Swiss Unia have been mobilizing to organize undocumented migrant domestic workers and built strong alliances with migrant grassroots organizations. As a result of an agreement with the authorities, a voucher system was created through which employers can register their domestic workers, including undocumented domestic workers. The system provide access to health care and pension benefits, and undocumented migrant workers can access these without fear of being deported. SIT together with Unia continue to campaign for the rights of undocumented migrant domestic workers in Switzerland and provide information and services to all, regardless of migration status (ILO 2012a).
- In **France**, the national workers' organization CGT has advocated for and defended the rights of irregular migrant workers on the premise that "one regularized worker = one new formal job" for the economy (CGT 2018).

Guidance materials and training workshops for members can provide instruction for treatment of migrant workers in the workplace and in supply chain relationships. Online databases with resources on forced labour, modern slavery, and recruitment practices provide business, workers' organizations, and the public with the knowledge necessary to take due diligence in their decision-making and operations. Examples include:

- The **Interactive Map for Business of Anti-Human Trafficking Organizations**, which has been developed through the collaboration of the Global Business Coalition Against Human Trafficking, the RESPECT Initiative (consisting of Babson College Initiative on Human Trafficking, the International Organisation for Migration,

and the Global Initiative Against Transnational Organized Crime) and the UN Global Compact through the Action Platform on Decent Work in Global Supply Chains, with the support from the Alliance 8.7.⁸¹

Transnational networks of national workers' and employers' organizations have participated in processes for social dialogue on migration governance issues with influence on policymaking at global, regional or local levels. In bilateral and regional contexts, cross-border cooperation agreements among trade unions have expanded the capacity of trade unions to reach out to migrant workers in an irregular situation, and to coordinate advocacy with the public sector representatives, including in negotiations on bilateral labour agreements (see also Annex II).

Trade unions' initiatives

- **SARTUC** trade union members coordinated their advocacy efforts with their respective governments to achieve inclusion in the 18th SAARC Summit Declaration of a commitment to cooperation "to ensure safety, security and well-being of their migrant workers in the destination countries outside the region" (SAARC 2014, para. 21). When coupled with the SAARC Social Charter, the Declaration, which does not distinguish between migrant workers with regular and irregular status, may be considered to provide a legitimate basis to bring up issues concerning irregular labour migration in SAARC processes, and SARTUC demands for migrant worker protection: minimum wages and benefits; social security; gender equality; and the migration process.⁸²
- Since 2018, the **International Domestic Workers Federation (IDWF)** has been participating in bi-annual meetings between the Ministry of Labour and Social Affairs of the Qatari Government (ADLSA), the ILO, and other Global Union Federations (GUFs), including the International Transport Workers Federation

⁸¹ The interactive map is available at: <https://www.unglobalcompact.org/library/5620>.

⁸² See the Labour Migration Good Practice database on: Promoting trade union cooperation on labour migration in origin and destination countries at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=106.

(ITF), UNI Global Union, a global federation for the services sectors and Building and Wood Workers' International (BWI). Led by the ITUC, the bi-annual meetings are a space to review and provide input on the labour reform programme of the Government.

Employers' initiatives

Solidarity among employers' organizations is expressed in cross-border commitments to social baselines for competition, and business networks operate to confirm mutual understanding on good practice and to catalyse new approaches to existing problems.

► The **International Organization of Employers** runs a type of network of networks, through the ILO-sponsored Global Business Network on Forced Labour.⁸³

► **The Delhi Resolution on Migration of South Asian Forum of Employers** endorses non-discrimination between local and migrant workers in member firms and decent work and written labour contracts for international migrant workers.⁸⁴

► **Voluntary market-based standardization and certification** seek to set baselines for good practice, such as the fair practice standard developed by Verité and the IOM International Recruitment Integrity System (ILO 2018b; Verité 2011).

► Industry-based codes of conduct developed by leading business or sectoral organizations aim to set baselines of conduct for fair recruitment such as, for example, **the World Employment Confederation, Consumer Goods Forum; and Responsible Business Alliance** (ILO 2018b, paras 66–69, 76, 78).

► 4.4. Information and assistance to prevent labour migration in abusive conditions

Providing free and accurate information to migrant workers

Every potential migrant needs to fully understand and assess the reasons for moving abroad for work. Lack of access to full and reliable information on regular migration pathways and related rights and obligations prevents potential migrant workers to make informed decisions when seeking opportunities abroad. Providing adequate, accessible, relevant and accurate information to migrant workers and their communities on issues regarding migration is therefore critical in the context of effective labour migration governance and efforts to address the abuses related to irregular migration including its worst manifestations such as trafficking in persons.

ILO and UN standards on migration emphasize the right of migrant workers and their families to be duly informed concerning their rights under international law, and their conditions of admission, rights and obligations under the law and practice of the State concerned (Convention No. 97, Arts 2 and 3; ICRMW, Arts 33, 37, 65(c) and 68(a).

Government collaboration with social partners can effectively address urgent needs and protect the rights of migrant workers in irregular situations, both in countries of origin and abroad. In many cases, governments in countries of origin collaborate with social partners to deliver urgently needed social assistance and monitor and report abuses in the workplace or society.

83 See https://www.ilo.org/actemp/areas-of-work/WCMS_632434/lang--en/index.htm.

84 See <https://www.decp.nl/stories/resolution-on-migration-and-starting-up-social-dialogue-8838>.

and preventing misleading information

Preventing misleading or false propaganda on labour migration, and providing accurate, accessible and gender responsive information are essential to combat stereotypes and to ensure workers know their rights and conditions of recruitment and employment (see Convention No. 97, Articles 2 and 3). Such practices facilitate informed decisions by potential migrants about pathways for migration, and how to comply with procedures for departure and arrival. The IOE highlighted, in the context of the 2016 General survey by the CEACR on the migrant workers instruments, that exchanging information between States could help develop trust and create efficient systems to aid in the movement of regular migrant workers and reduce the reliance of some employers on the services of migrant workers in an irregular situation (ILO 2016a, para. 508). A number of countries run programmes on migration procedures,⁸⁵ as well as working conditions and labour and social security. Some countries of destination provide information and assistance with orientation programmes and information on job vacancies.⁸⁶

- **Belgium** ran a temporary information campaign to prevent the economic exploitation of Brazilian migrants residing in Belgium; campaigns in countries of origin to warn about the risks of irregular migration (EC-EMN 2017). Albania carried out campaigns in countries of origin that also informed about the risks of irregular migration.
- Training and awareness raising to improve recruitment practices are also underway in **Jordan** undertaken by factory owners, human resource managers, international buyers, and trade unions, in cooperation with the ILO (ILO 2016f).
- In **Bangladesh**, the law imposes punitive measures for misleading information, cheating and fraud. The Government also requires recruiting agents to supply women workers with a Bengali translation of their employment

contract and conducts training programmes to raise awareness about licensed recruitment agents by potential migrant workers (ILO 2016a, paras 241, 245, 264).

- **The Philippines Overseas Employment Administration (POEA)** has mandated that licensed private employment agencies that recruit domestic workers must maintain a Facebook account for their businesses. These serve as a communication platform for domestic workers abroad with the hope of preventing “disputes”, facilitating official registration of complaints, and requiring employment agencies to file reports to the POEA on the status and condition of their workers employed abroad.

To make information accessible, a variety of communication modalities are being utilized, including film, video, telephone hotlines, websites, and meetings (ILO 2016a, para. 239, notes 88–93). In some instances, information is disseminated through consulates, embassies or foreign missions abroad and specially deployed units in proximity of the migrant workers.

ICRMW, Article 68 (a)

States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include: Appropriate measures against the dissemination of misleading information relating to emigration and immigration.

Convention No. 97, Article 3

Each member undertakes that it will as far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration”(Article 3)

85 Austria, Belarus, Plurinational State of Bolivia, Colombia, Costa Rica, Czech Republic, Latvia and Lithuania (government reports) and Argentina (worker report). (ILO 2016a, para. 237 and note 80).

86 Belarus, Bulgaria, Cyprus, Latvia, Ukraine, and the United States. (ILO 2016a, para. 238, note 85).

- A pre-departure Manual “Travel Smart-Work Smart” provides guidance on income, financial management, and life in **Australia** for Nauru Seasonal Workers in Australia (ILO 2014e). Under The ILO TRIANGLE project, several Work Smart guides for migrant workers were developed with the support of the ILO, including a Travel Smart – Work Smart Guide for migrant workers in Thailand (2018), and similar Work Smart Guides for Cambodian migrant workers in Malaysia, (including in Khmer), Pakistani and Indian workers in the United Arab Emirates (2015), for Nepali and Indian workers in Qatar, and Nepal workers in Kuwait (2015). The Guides provide easily accessible information for migrant workers about rights and obligations, situations of irregularity, and information about where to get help.
 - Country of origin officials run information campaigns and services in countries of destination, as is the case with officials from the **Philippines** in **China, Hong Kong (SAR)**, and officials from **Jamaica** in the **United States**. **Jamaican** Liaison Officers, based near farms and hotels in the United States at which Jamaican migrant workers were employed, address complaints, and interfaced with employers concerning the conditions for Jamaican migrant workers, as well as prospective work for other Jamaican nationals (CEACR 2016a, para 240).
 - Several countries have disseminated information at national level about risks of irregular migration on government websites and in campaigns, including **El Salvador, Mali, Morocco, Myanmar, Peru, Poland, Senegal, Serbia, Turkmenistan, and the United States** (ibid., and para. 507).
 - The Government of **Nepal** reports steps to deploy women labour attachés to countries of destination with more than 1,000 Nepali women migrant workers to provide information and assistance (ibid., para. 245).
 - In **Italy, DOMINA** - National Association for Family Employment in the Domestic Work Sector is promoting “Fair recruitment for the domestic work in Italy. This international information campaign is promoted in collaboration with the ILO, and supported by the International Domestic Workers Federation (IDWF), the Italian federation of workers in the trade, tourism and services sectors (Filmcams CGIL), Italian federation of trade unions for trade, tourism and related services (Fisascat CISL), Italian union of workers in the tourism, trade and services sectors (UILTuCS) and the Trade union federation of domestic and care worker (Federcol). The campaign provides information on legal requirements to acquire a work permit and risks regarding informal and illegal intermediaries. It aims to prevent fraudulent practices during the recruitment and placement process of the migrant domestic workers, to protect their rights, to increase public concern and raise national and international political awareness on the issue. Its primary target audience are migrant domestic workers and employers residing in Italy (DOMINA-IDWF).
 - The Ministry of Manpower in **Singapore** requires employers who wish to hire a migrant domestic worker for the first time or who have changed more than 3 times a migrant domestic workers within one year workers, to follow an **Employers’ Orientation Programme (EOP)**, at least 2 days before submitting a work permit application. The programme is available in classroom format or online.
- To prevent or counter misleading information, many countries use legislation and awareness-raising campaigns (ILO 2016a, para. 270). ILO Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) also calls upon members to adopt targeted awareness-raising campaigns, especially for those who are most at risk of becoming victims of forced or compulsory labour, to inform them, inter alia, about how to protect themselves against fraudulent or abusive recruitment and employment practices, their rights and responsibilities at work, and how to gain access to assistance in case of need. It also emphasizes the importance of orientation and information for migrants, before departure

and upon arrival, in order for them to be better prepared to work and live abroad and to create awareness and better understanding about trafficking for forced labour situations (Para. 4(g)).

- In **Belize**, an Anti-trafficking in Persons Committee carried out public awareness campaigns and education sessions at the Tourism Board to counter false and misleading information, aimed at preventing commercial sexual exploitation of women and girls (ILO 2016a, para. 265, note 118).
- In **Indonesia**, the Government reports its use of a programme that aims to provide accurate information to protect migrant workers from illegal placement, trafficking in persons and forced labour (ILO 2016a, para. 270).
- In **Tunisia**, an autonomous national service against trafficking in persons established by law works to identify, assist, and represent victims of trafficking in persons and forced labour, many of whom are women migrants from West Africa in an irregular situation.⁸⁷

To help address irregular migration, governments of destination countries have engaged social partners and civil society organizations in countries of origin to provide accurate information and to prevent misleading information that can lead to irregular labour migration and abusive recruitment practices. Information services offered by public authorities, social partners, and civil society organizations include various stages of the migration process, such as pre-decision and pre-departure in the country of origin, arrival in the country of transit or destination, and preparation for return.

- Trade unions in **Costa Rica** issued similar capacity-building and training material at national level, including a pre-departure orientation manual for migrant workers from

Nicaragua and also organized a number of awareness-raising activities with trade unions in **Panama and Nicaragua** covering tri-national activities along the Nicaragua-Costa Rica-Panama corridor.⁸⁸

- In **Singapore**, a bipartite-led Migrant Workers Centre, set up jointly by the national trade union and employer federation of Singapore, provides information, orientation, advice and assistance to migrant workers seeking remedies against unfair employment practices.⁸⁹
- The **Tunisian General Labour Union (UGTT)** has a network of focal points on labour migration in regional offices across Tunisia, which are the first point of contact for migrant workers, mainly those coming from the Maghreb region and Sub-Saharan Africa. Services cover all migrant workers, irrespective of status, who can receive assistance regarding their rights at work or be provided with accurate information about living and working conditions in Tunisia. The UGTT aims to tackle the opportunities and challenges related to expansion of existing protection mechanisms to cover migrant workers in Tunisia and to promote the unionization of migrant workers in the country (ILO 2020n).
- **Public Services International (PSI)** has prepared pre-decision, pre-departure, and return guides based on research into conditions for migrant workers from the **Philippines** in specific countries of destination: Germany, Denmark, Finland, India and Norway.⁹⁰

Employers' organizations have also provided guidance tools to assist their members or developed specialized resources that allow enterprises to develop internal policies and procedures that support their adherence to national and international labour standards

87 See *Instance nationale de lutte contre la traite des personnes (INLTP)* of the Council of Europe at: <https://www.coe.int/fr/web/tunis/inltp>. The service has launched a national strategy for 2018–2023 and works in collaboration with the Council of Europe, receiving ILO assistance. [Drawn from interview with ILO official, September 2019].

88 *ibid.* Labour Migration Good Practice database at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=174.

89 More information on the migrant Workers' Centre is available at: <http://www.mwc.org.sg/wps/portal/mwc/home/Aboutus/whoweare>.

90 More information on this can be found at the ILO's Labour Migration Good Practice database at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=130.

and support companies to improve productivity, competitiveness and reputation.

- The **International Organization of Employers (IOE)**, with the support of the ILO, has developed a Guidance Tool for companies operating in the construction sector in the Middle East and particularly the Gulf Cooperation Council (GCC) to enhance their ability to comply with national and international labour standards. The Tool includes guidance around contract termination and how to prevent migrant workers ending up in an irregular situation, including by retention of documents; guidance around preventing visa irregularity (IOE-ILO, 2019).

Online communication of documented information presents yet another means by which social partners disseminate information on situations of irregular labour migration.

- **ITUC** has worked with local affiliates and partners in a range of countries of origin and destination for the development of an online information resource for potential and current migrant workers focused on specific recruiters' practices (**Recruitment Advisor**). Migrant workers are able to review services provided by private employment agencies and labour recruiters in both countries of origin and destination. In turn, they can support other potential migrant workers to make an informed choice of which recruitment agency they want to select. The website also contains information about relevant laws and policies and is linked to a complaint mechanism, in case migrant workers require follow-up support to resolve grievances. The Recruitment Adviser currently covers four countries of origin in Asia and five countries of destination in the Gulf region. For advocacy activities, it has connected with affiliates in Malaysia (MTUC), in China, Hong Kong (SAR), and in Bahrain and Qatar.

Services to migrant workers

Governments of destination countries coordinate with national workers' organizations and other actors to provide legal support, vocational training and health and social services to migrant workers present in the territory in an irregular situation. Governments of countries of origin have also arranged for trade unions in countries of destination to ensure advocacy and support services to their migrant worker nationals, irrespective of their migration status.

At an increasing rate, workers' organizations have signed cross-border union agreements and initiated cooperation between and among trade unions in countries of origin and destination in such areas as organizing, campaigning, pre-departure information to potential migrant workers, and social and legal support once in host countries. In addition, multilateral trade union accords offer greater geographic scope and influence for coordinated action on behalf of migrant workers' rights. Examples of these various models are:

- The **South Asian Regional Trade Union Council (SARTUC)** agreed to include migrant workers as active members in reform of trade union constitutions and structures and to build the capacity of trade unions to support new migrant worker members and non-members (ILO 2014c, para. 17).⁹¹
- Trade unions in 11 countries along five migration corridors have agreed to cooperate, including with civil society organizations, to protect domestic migrant workers' rights, along the corridors between **Ukraine-Poland, Zimbabwe-Lesotho-South Africa, Indonesia-Malaysia, Nepal-Lebanon, and Paraguay-Argentina**.⁹²
- **Trade unions are cooperating across borders**, for example between Malaysia and Bangladesh, on support to migrant workers, including food distribution, to mitigate the impact of the COVID 19 pandemic on migrant workers.

⁹¹ For more information see the SARTUC Migrant Labour Charter and Kathmandu Plan of Action, adopted 2013, at: https://www.ilo.org/dhaka/Whatwedo/Eventsandmeetings/WCMS_342119/lang-en/index.htm.

⁹² Labour Migration Good Practice database

A wide range of arrangements enables workers' organizations from local to transnational levels of cooperation to provide services to migrant workers in an irregular situation and facilitate access to remedies in cases of violation of their rights. In a marked trend of exemplary practice, actors in both countries of origin and destination have coordinated a significant number of services to assist potential migrant workers to prepare for migration, and to provide orientation and assistance to migrant workers after arrival in the country of destination. In addition to the information services mentioned above, these activities include social services, organizing migrant workers, and ensuring their rights to due process and access to justice. With the support of ILO, Migrant Resource Centres have also played a crucial role in providing services and legal aid to migrant workers who were stranded in the destination countries and lost their jobs.

Provision of social services

Social services, including health care and social security protection, are front-line tools of good practice to ensure the livelihood rights and inclusion of migrant workers in irregular situations. Global and national workers' organizations place priority on such services in their cross-border accords and cooperation models, including:

- The 40-member trade union accord in **Central America** administered under the umbrella of Comité Intersindical Regional⁹³ provides services to migrant workers in irregular situations, as do programmes run by Global Union Federations as well as the International Trade Union Confederation (ITUC). For skilled workers, UNI Global Union affiliates among the more than 900 national and regional trade union members offers a passport to services abroad that ensures skilled migrant workers are able to maintain trade union membership and

benefit from its associated support in countries of destination (see also Ford 2013).⁹⁴

- In **France**, a group of NGOs wrote a brochure 'What should I do? Reception for those without papers and police intervention' to provide guidance to those working with migrants in an irregular situation, in particular on the provision of social services (EU-FRA 2011, 63; La Climade et al. 2009).

Sector-specific assistance

Sector specific assistance has proven effective for specific sector-driven issues.

- With ITUC support, for example, trade unions in **Mauritania** and **Senegal** established several centres to aid Senegalese migrant workers in Mauritania, targeting the transport and construction sectors. Two local centres were also set up, one in Nouadhibou, a port city in northern Mauritania, where many irregular status migrants leave the country, and the other in Dakar, Senegal.⁹⁵ In **Dakar, Senegal** a call centre for domestic workers includes migrant domestic workers in facilitating resolution to employment-related issues and a meeting space for the domestic workers (ibid.).
- In **Spain**, a domestic workers' cooperative, the Co-operativa Valenciana de Empleadas de Hogar de Levante, provides services to regularize the employment status of migrant domestic workers and to help them access social security systems and benefits, and provide childcare support and vocational training. Twelve domestic workers formed the cooperative in 2012 after labour and social security legislation was amended to require domestic workers to have an employment contract, even if working only a few hours a month.⁹⁶

93 Labour Migration Good Practice database at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=174.

94 See the UNI Global Union Passport, ibid. at the Labour Migration Good Practice database: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=9.

95 See the Centres for Migrants in Senegal and Mauritania, ibid. at the Labour Migration Good Practice database: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=141.

96 See Co-operativa Valenciana, Labour Migration Good Practice database at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=1214.

Recently, a number of cities and regional municipalities in Europe began new initiatives to deliver social assistance, primarily in collaboration with NGOs.

- In 2012, in the context of a national reform restricting irregular-status migrants' entitlements to free health care (beyond emergencies, pregnancy, delivery and postpartum care), all of **Spain's Autonomous Communities** approved special measures to extend access to additional health-care services at regional level. The provincial measures now provide some degree of access to health care for people in an irregular situation throughout Spain. Two Spanish regions, Andalusia and Asturias, provide equal access with nationals to services for undocumented migrants (Delvino 2017).
- In **Senegal**, a Senegalese trade union, backed by a trade union in Spain, initiated a system for mutual savings and credit societies that provides income alternatives to employment abroad, as well as a returnees' centre works to provide socio-economic incentives in the local industry to prevent re-emigration by the youth.⁹⁷

In countries of origin, social and economic assistance programmes offer incentives to potential migrant workers to stay home by increasing livelihood opportunities. The aim of such programmes converges with that of the GCM which "aims to mitigate the adverse drivers and structural factors that hinder people from building and maintaining sustainable livelihoods in their countries of origin, and so compel them to seek a future elsewhere" (UN 2019, para. 12).

Organizing migrant workers

Organizing migrant workers to join existing trade unions to claim their rights is a key priority for trade unions in their cross-border coordination agreements.

- With support from the ILO, **the ITUC** has pioneered a model contract for cross-border agreements in which trade union parties undertake to "reach out and organize migrant workers and ensure they may join the trade union in the country of destination, may participate in union activities and may obtain trade union protection in case of abuses and violations of their rights"⁹⁸ (see also ILO 2021d).
- **Global Union Federations (GUFs)** have taken similar action. For example, in the Malaysian construction sector, the global union federation, Building and Woodworkers International (BWI), encouraged the local sectoral union to collaborate with its counterparts in countries of origin. BWI also provided financial support to hire a Nepalese trade unionist to organize Nepalese workers in Peninsular Malaysia (Ford 2013).
- The ILO FAIRWAY Programme has been supporting **the International Domestic Workers Federation (IDWF)** to empower domestic workers in Kuwait through organizing, which has led to the establishment of the **Sandigan Kuwait Domestic Workers Association (SKDWA)** in the Philippines community, as well as outreach to African communities (for further info, see [ILO Arab States website](#)).

In a number of cases, workers' organizations and civil society organizations have helped establish and/or support the capacity of migrant worker cooperatives and resource centres that deliver legal and socio-economic assistance to migrant workers in irregular situations.

- In **Lebanon**, the migrant community centre established by the Anti-Racism Movement offered migrant workers a space to meet, learn skills and access information and support.⁹⁹
- In a regional study, the ILO has mapped legislative and policy frameworks, institutional

⁹⁷ Centers for migrant workers in Senegal and Mauritania, at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=141 - ANRAF - National Association of Repatriated People, Senegal

⁹⁸ See model bilateral agreement for trade unions in countries of origin and destination to protect migrant workers in the Labour Migration Good Practice database at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=61.

⁹⁹ See Migrant Community Center (MCC) in Beirut, Lebanon in the Labour Migration Good Practice database at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=133.

structures and membership-based initiatives in **Jordan, Kuwait and Lebanon** that show potential to promote domestic workers' economic enterprises and solidarity economy organizations (ILO 2014f).

► In outreach to migrant domestic workers, in **Thailand**, the NGO HomeNet established the first domestic Workers Association in Thailand; membership is open to Thai and migrant workers (ILO 2014c, annex 6).

► 4.5. Promoting fair recruitment to prevent irregular labour migration

The recruitment stage in a migration process can be fraught with risks and dangers. To pay recruitment fees and related costs many workers may sell family assets, borrow money at high rates or go into debt with their employers. Some workers choose to go through irregular migration channels, which is often perceived as a cheaper option. Others overstay their visa and end up in an irregular situation. Both approaches increase their vulnerability to abuse and exposes them to further exploitation, including trafficking and forced labour (ILO 2020b). While in some situations, workers using irregular migration channels may pay less recruitment costs, they are more likely to earn lower wages, have poor conditions of work and limited labour rights (ibid).

Promoting fair recruitment helps ensuring that labour migration takes place under conditions that respect internationally recognized human and labour rights and through regular pathways. It also helps to create decent work, provide new job opportunities and improve labour market functioning. By accessing workers through regular and fair recruitment channels employers would also ensure that recruited workers fit their skills needs and hence also have a better outcome in terms of productivity/reduced rotation of workers.¹⁰⁰ Fair recruitment of migrant workers and its implementation based on ILO General Principles and Operational Guidelines on Fair Recruitment, which are grounded in ILO standards, plays an essential role in preventing and reducing

labour migration in abusive conditions. Such abuses include:

► ... deception about the nature and conditions of work; retention of passports and other identity documents; deposits and illegal wage deductions; collection of fees and related costs from workers ... debt bondage linked to repayment of recruitment fees; (and) threats if workers want to leave their employers, and fears of subsequent expulsion from a country (ILO 2016d, para. 1; Andrees et al., 25–26).

In combination, these abuses can amount to trafficking in persons and forced labour, and in many cases are linked to other serious violations of fundamental rights at work including recruitment of children below working age, physical and sexual violence at work, and recruitment into hazardous and unsafe work (ibid., 10–11). The risk of such abuses and difficulty of detection are especially high in complex chains of sub-contracting.¹⁰¹ Specific legislation to criminalize and prosecute perpetrators of smuggling of migrants and trafficking in persons and forced labour is crucial to eliminate recruitment practices that lead to severe abuses in migration. In addition, administrative, civil and penal sanctions are used on those who employ migrant workers without authorization.

The implementation of agreed international labour standards relevant to fair recruitment practices is essential (see also Annex II on the international legal framework). The 1949 ILO standards on migration for employment contain specific

¹⁰⁰ See in this regard: [FAIR Integrated Programme on Fair Recruitment. The benefits of fair recruitment results of the impact study on the Nepal-Jordan corridor](#), ILO Geneva, 2019

¹⁰¹ CEACR, Belgium, direct request, 2007, 2009, 2010, Convention 29, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

provisions regarding the regulation of recruitment and charging of fees and costs (Convention No. 97, Art.7(2), and Article 4 of Annex I and II, Article 9 Annex II). The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) requires member States to take measures to prevent malpractices at the stage of recruitment or departure liable to result in irregular entry, or stay, or employment, in another country; Both countries of origin and destination should also take measures to prevent abuse in the recruitment for employment abroad, prevent the exploitation of migrant workers, and ensure the full exercise of the rights to freedom of association and to organize and bargain collectively. The Private Employment Agencies Convention, 1997 (No. 181) establishes the principle that no recruitment fees and related costs shall be charged to the worker, including migrant workers (Article 7(1)). The Convention also provides clear guidance aimed at the regulation of private recruitment agencies, including prevention of abusive practices with regard to migrant workers, while the Employment Service Convention, 1948 (No. 88) reaffirms the important role of employment services in the context of recruitment. The most recent standards on forced labour contain provisions aimed at “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process” (Protocol No. 29, Article 2(d)), and also on:

... the promotion of coordinated efforts by relevant government agencies with those of other States to facilitate regular and safe migration and to prevent trafficking in persons, including coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion” (Recommendation No. 203, para. 4 (i)).

The Domestic Workers Convention, 2011 (No 189) protects domestic workers, including migrant domestic workers, from abusive practices of private employment agencies (Article 15), while the Work in Fishing Convention, 2007 (No. 188), includes several provisions on the recruitment and placement of fishers, including by private employment agencies. Similarly, the Maritime Labour Convention (MLC, 2006), stipulates that each Member to the Convention shall effectively

exercise its jurisdiction and control over seafarer recruitment and placement services established on its territory (Article 5(5)).

The *ILO General Principles and Operational Guidelines for fair recruitment and Definition of recruitment Fees and related Costs* (“GPGFR”) which were negotiated by a tripartite group of experts in 2016 and 2018, and endorsed by the ILO Governing Body for dissemination, are the most up-to-date, internationally agreed guidance in the area of recruitment (2019e). Thirteen “general principles” (summarized in box 10) apply to both public and private sector recruitment and to employers, labour recruiters, or employment agencies involved in recruitment. The *Operational Guidelines* provide guidance for good practice among the different actors in the recruitment process, namely: governments and enterprises and public employment services including labour recruiters and employers. All the parties concerned have their roles to play in line with the *Operational Guidelines* in order to contribute to respect for the human rights of migrant workers, protect them from abuse by third parties, and ensure regular pathways for migration that meet the needs of the countries and individuals (ILO 2019e, Section D and para. 34).

The Global Compact on Safe, Orderly and Regular Migration (GCM) further requires States to develop and improve national policies and programmes relating to international labour mobility, including by taking into consideration relevant recommendations of the ILO General Principles and Operational Guidelines for Fair Recruitment, the United Nations Guiding Principles on Business and Human Rights 21 and the IOM International Recruitment Integrity System (IRIS).

► **Box 10. The General Principles and Operational Guidelines for Fair Recruitment, and the Definition for Recruitment Fees and Related Costs**

1. Recruitment respects, protects and fulfils internationally recognized human rights, including fundamental principles and rights at work.
2. Recruitment is a response to established labour market needs.
3. The law and policies on employment and recruitment apply to all workers, labour recruiters and employers.
4. Recruitment takes into account policies and practices that promote efficiency, transparency and protection for workers.
5. Regulation of employment and recruitment activities is clear, transparent and effectively enforced: role for labour inspectorate; use of registration, licensing or certification systems, measures against abusive and fraudulent methods.
6. Cross-border recruitment respects national laws and regulations, employment contracts and collective bargaining agreements of countries of origin, transit and destination, and international human rights and labour standards.
7. No recruitment fees or related costs are charged to workers or jobseekers.
8. Terms and conditions of work are specified and enforceable: easily understandable and clear, preferably written contract, include job location, requirements and tasks, sufficiently before departure, measures to prevent contract substitution.
9. Worker's agreement is voluntary and free from deception or coercion.
10. Worker has access to free, comprehensive and accurate information on rights and conditions of recruitment and employment.
11. Worker is free to move within or leave a country, and worker's identity documents and contracts are not confiscated, destroyed or retained.
12. Worker is free to terminate employment, to change employers, or return home.
13. Worker has access, irrespective of location or legal status, to free or affordable grievance and other dispute resolution mechanisms in case of alleged abuse of rights in recruitment process and to effective and appropriate remedies.

Source: ILO 2019e and 2020a.

Role of national and cross border mechanisms for regulating fair recruitment

National and cross-border mechanisms for regulating recruitment are critical to promoting labour migration based on established labour market needs and aim to contribute to the elimination of abusive and fraudulent recruitment practices and irregular migration for employment.

Fair recruitment requires establishing and enforcing laws or regulations that cover all aspects of the recruitment process and apply to all employers and labour recruiters, including intermediaries, and to all workers (ILO 2016b; OG 3-5).¹⁰² Emerging good practice for fair recruitment engage a variety of regulatory and other measures to address the wide spectrum of recruitment models in operation in both public and private sectors. Migrant workers may be recruited directly by the employer or the employer's agent,

¹⁰² See also Convention 97, Article 7 and Annexes I and II; Recommendation 86, paras 1, 13-15; ILO 2016a, para. 195. For public supervision of private recruitment agencies, see Convention 97 Annex I, Article 3(4), Annex II, Article 3(5).

or indirectly by labour recruiters. A considerable number of countries have both public and private recruitment mechanisms, for example, Austria, Cyprus, Ecuador, Germany, Italy, Jamaica, Japan, Lao People's Democratic Republic, Lithuania, Lebanon, Pakistan and Poland (ILO 2016a, para. 203, note 23). In other countries, for example, Algeria and the Republic of Korea, public services play an important or exclusive role in recruitment and placement of migrant workers.

- In **Morocco**, the National Agency for the Promotion of Employment and Skills (ANAPEC) provides placement services for high, middle and low-skilled workers both domestically and abroad. Through its international placement division, the Agency is active in the recruitment of Moroccans to various countries of destination including France, Spain, Qatar, Canada and Saudi Arabia.

In several countries, private labour recruiters conduct recruitment of migrant workers.¹⁰³ Regulatory schemes for the recruitment industry include registration, licensing, reporting requirements or a combination of approaches (ILO 2016a, paras 200–201, note 18). In a number of countries, licensing schemes and registration systems operate in parallel as part of recruitment regulation. For example, licensing may be required for recruiters operating in specific vulnerable sectors or for certain types of recruitment agencies, while other recruiters may come under a general registration scheme subject to the controls used for any other registered industrial or commercial business (Andrees et al. 2015).

As a basic principle of good practice, all forms of regulation of recruitment activities in all sectors are expected to provide means for meeting the Fair Recruitment Guidelines (ILO 2019e, OG 4.3). In particular, the regulation should aim to ensure respect for human rights and protection from human rights abuses in the recruitment process (ILO 2019e, OG 1.1, 2.1 and 14) and eliminate the

charging of recruitment fees and related costs to workers and jobseekers (ibid., OG 6).

- In **Canada**, the regulation of labour recruiters is implemented through provincial licensing regulations and proactive enforcement, including in Manitoba, Nova Scotia, Alberta, Saskatchewan and New Brunswick (Andrees et al. 2015).¹⁰⁴
- In **Belgium**, certification to operate as a private labour recruiter is based on conditions such as non-discriminatory treatment of workers (ILO 2016a, para. 210, note 37).
- In **Jordan**, following a national tripartite consultation, Jordanian national stakeholders adopted a **zero-fee policy** aimed at ensuring that workers do not pay recruitment fees pre, during and post-employment in the garment sector. The zero-fee policy has been effective from January 2019 (ILO 2021d).
- In **Mexico**, amendments to the Federal Labour Law in 2012, and corresponding regulations in 2014, require labour recruiters to register with the labour ministry and certify to the conditions of the employment contract with the migrant worker. It prohibits recruiters from charging migrants a fee or making false/misleading statements, and from discriminating against workers for any reason including advocating for their own or others' rights (Gordon 2015; Howe and Owens 2016).
- The Gangmasters' Licensing Authority of the **United Kingdom** is an independent government enforcement body, charged with monitoring agencies' adherence to multiple laws. To receive and maintain a license, an employment agency must demonstrate compliance with tax, social insurance, immigration, employment, and worker housing requirements. The GLA audits an agency for compliance prior to granting a license, can make unannounced worksite inspections at firms where agency employees

¹⁰³ Twenty-eight countries reported that private labour recruiters intervened in recruiting migrant workers (ILO 2016a, para. 210, note 33).

¹⁰⁴ See: Worker Recruitment and Protection Act of 2008, Province of Manitoba, 2008; Labour Standards Code of 1989 (Amendments of 2011), Province of Nova Scotia; Fair Trading Act, Employment Agency Business Licensing Regulation of 2012 (No. 45/2012), Province of Alberta; Foreign Worker Recruitment and Immigration Services Act of 2013 (FWRISA) Province of Saskatchewan; Province of New Brunswick, Act to Amend the Employment Standards Act of 1982, 26 March 2014.

work, revoke a license, or shut down the agency in case of particularly serious violations. The GLA collaborates closely with the police and UK tax agency but can independently impose both civil and criminal penalties on agencies that operate without a license or in violation of the terms of their licenses. The GLA can also penalize firms that contract with unlicensed agencies. Foreign employment agencies that want to provide workers to UK employers must open a UK office, bound by UK law. In this way, the GLA can for instance hold an agency responsible for providing inaccurate or deceiving information to migrants in their home country, even without extraterritorial jurisdiction. The GLA developed licensing standards in 2012 for labour recruiters in such areas as prevention of forced labour and

mistreatment of workers, working conditions, health and safety, and recruitment and contractual arrangements.

- In **Viet Nam**, with the support of the ILO, the Government revised substantially the Law on Contract-Based Vietnamese Overseas Workers (Law 72), involving broad consultations with workers' and employers' organizations, and migrant workers. The new Law on Contract-Based Vietnamese Overseas Workers 69/2020/QH14 (Law 69) recognizes the nexus between labour migration, fair recruitment and trafficking in persons; specifies rights and responsibilities of private labour recruiters as well as state agencies in monitoring them, and regulates extensively the licensing of private

► Box 11. Regulating recruitment fees and related costs

Reducing crippling recruitment costs could not only facilitate access to foreign employment opportunities, but also help counter irregular labour migration, and result in larger remittance flows to migrant households which could be used for education, health and other productive uses. Recent ILO research on migrant workers in Thailand found, on average, irregular-status migrants, and women in particular, were much more likely than regular-status migrants to pay a recruitment agency or broker. However, while paying less in recruitment costs and fees, irregular status migrant workers are more likely to earn less, have poorer employment conditions, and have more limited labour rights. They also work more days per week and are less likely to have days of rest. The research suggests that the high recruitment fees and related costs are a deterrent for migrant workers to use regular migration channels (ILO 2020b). Steps are therefore needed in both destination and origin countries to reduce recruitment fees and related costs, in particular those associated with getting required documentation (Ibid.).

In 2020, the ILO published a global comparative study on defining recruitment fees and related costs (ILO 2020a), which covered interregional research on law, policy and practice, reviewing 90 countries and 99 policies. The study found that a majority of countries' policies (63) prohibited recruitment fees for workers. Thirty-six policies regulated recruitment fees and related costs and 27 countries had full or partial definitions of these fees and costs. Varying sanctions were used in 66 countries with legal provisions on violations of policies on fees and costs, including fines and penalties, such as refunds of fees paid by workers (59 per cent), criminal prosecution and penal sanctions (32 per cent), and revocation or suspension of the license of the labour agencies (30 per cent).

In addition, the [ILO Global database](#) includes a map displaying a global database of national laws, policies and regulations (policies) that have defined recruitment fees and related costs. The data collection was undertaken in 2018 in preparation for the global study to support the Tripartite Meeting of Experts to Define Recruitment Fees and Costs, November 2018.*

* The ILO global database on laws is available at: <https://ilo.org/gimi/FRI.action>. For more information on the meeting, see https://www.ilo.org/global/topics/labour-migration/events-training/WCMS_632651/lang--en/index.htm.

labour recruiters. In line with the ILO Guiding Principles and Operational Guidelines for Fair Recruitment, and Definition of Recruitment Fees and Related Costs, the new Law removes brokerage fees to be paid by migrant workers to recruitment agencies, with an explicit prohibition for agencies to pass on these costs to workers. Migrant workers are also no longer obliged to pay service fees to the public employment service, in line with Convention No. 88. The new legislation prohibits among others deceitful advertising for the purpose of organizing trafficking in persons and taking advantage of the placement of workers abroad for the purpose of organizing unlawful exit. It also prohibits trafficking, exploitation, forced labour coercing, enticing, seducing or deceiving Vietnamese workers to stay unlawfully abroad; providing the service of placing Vietnamese contract-based workers abroad without license; or using license of other enterprises for this purpose. Under the Law, migrant workers can unilaterally terminate contracts in situations of threats, sexual harassment, maltreatment or forced labour. The new Law also defines discrimination and forced labour in line with ILO standards and provides for legal aid in cases of abuse, violence or discrimination whilst working abroad. The state goals specifically refer to gender equality (see ILO 2021h).

Cross-border mechanisms for recruitment regulation at bilateral and (inter)regional level

ILO standards and guidance indicate that cross-border cooperation among countries of origin, transit and destination is an essential tool in effective regulation of recruitment of migrant workers and its corollary aims of maximizing labour market synergies and reducing irregular labour migration in abusive conditions (see also Annex I (Model Agreement) to Recommendation No. 86; Recommendation No. 169, paras 43–44; and UN 2019, Objective 5). Such cooperation

takes a variety of forms, including cross-border activities based on diplomatic relations in the territory, bilateral labour migration instruments, and regional economic integration arrangements with policy effect or legally binding status.

In line with ILO standards and fair recruitment principles, and as a basic principle of good practice, cross-border arrangements for recruitment of migrant workers should be consulted with the social partners (ILO 2019e, OG 13; and Recommendation No. 169, para. 44), be based on objective labour market needs, consistent with international human rights and labour standards and other relevant international standards and be enforceable. Many such arrangements reflect the shared responsibility between countries or origin, transit and destination for protection of migrant workers from fraudulent and abusive recruitment.¹⁰⁵ In some instances, the country of origin or the labour recruiter abroad applies the recruitment regulation of the country of destination for purposes of recruitment of migrant workers to the overseas destination.

- Under **MoUs on recruitment with Manitoba (Canada) and several other provinces**, the Philippines agreed to hold recruiters of workers bound for Manitoba to the standards of the Manitoba Act, which are higher than Philippine law. The Philippines permits fees equivalent to a month's salary in the destination country, while Manitoba bans fees entirely. Manitoba recruiters can only enter into agreements with Filipino recruiters licensed by the Philippines Government (as cited in Gordon 2015). The Memoranda of Understanding (MoUs) express an intention to cooperate on many aspects of labour migration, including training and recruitment.
- In the **United Kingdom**, the licensing act requires labour recruiters based abroad which supply migrant workers to the United Kingdom to apply for a license under the same system as local labour recruiters operating in agriculture, fish processing and related industry sectors (ILO 2016a, para. 224).

¹⁰⁵ Convention 181, Article 8(1) and (2): See supervisory comments involving Convention No. 181 in ILO2016a, para 222, note 56 (Israel and Portugal). Article 8(2) refers to the possibility of concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment. Convention No. 189 also recognizes the need for measures aimed at effectively protecting migrant domestic workers against abusive practices by private intermediaries, including through concluding bilateral, regional or multilateral agreements.

In some countries of destination, pre-departure services to migrant workers in their country of origin seek to prevent fraudulent and abusive recruitment and irregular migration (see Section 4.4.). Countries of origin also hold recruitment-related training and orientation for their nationals who are migrant workers in countries of destination. In other countries, bilateral arrangements to expand regular pathways for international labour migration emphasize the exchange of labour market information and develop better information systems. In an ILO-supported project, India, Nepal and Pakistan work with Kuwait, Qatar and the United Arab Emirates to improve recruitment services, such as access to reliable information on job opportunities and GCC requirements and job-matching; provide pre-departure information and training; and offer other means for protecting migrants' rights and reducing irregular flows (ILO 2016a, para. 226).

- **The Filipino Overseas Labour Office**, in collaboration with the ILO, for example, runs a service in China, Hong Kong (SAR) that provides information and advice, including on issues of contract termination where loss of employment leads to involuntary irregular migration status.¹⁰⁶
- Under the **Ethiopia's Overseas Employment Proclamation No. 923/2016**, as amended, the Government of Ethiopia is required to appoint labour attachés in destination countries to ensure protection of the rights, safety and dignity of workers employed overseas, and follow up on complaints and to monitor recruitment agencies abroad (Ethiopia 2021; Andrees et al. 2015).
- **The Republic of Korea** responded to an increase in irregular migration by implementing a flexible Employment Permit System (EPS) through MoUs with 15 countries of origin that set out the mutual responsibilities and rights of the governments in relation to recruitment, selection criteria and placement in Korea. Under the MoUs, the Korean Ministry of Employment and Labour operates liaison offices in all the countries of origin to provide pre-departure

training and orientation, including for the prevention of recruitment abuses and to ensure that no fees are charged to workers at any stage. Employers must obtain special permits to access the EPS labour pool and meet certain conditions to participate, and origin countries that violate the requirements may be suspended from the scheme for a fixed duration (Andrees et al., 55–56).

Some bilateral arrangements address recruitment directly by expanding opportunities for regular migration. Some States conclude multiple bilateral agreements on recruitment while other arrangements adopt a sectoral recruitment approach based on collaboration and exchange of information (for examples see ILO 2016a). The bilateral labour migration agreement between the Republic of Moldova and Israel in the construction sector, prepared in consultation with social partners in both countries, aims to provide enhanced opportunities for regular migration and reduce the negative effects of irregular migration by ensuring labour and social protection to workers (ILO 2017c, 39). See also Annex II.

- Under **Bilateral agreement concerning the Placement of Filipino Health Professionals in the Federal Republic of Germany**, parties agree to cooperate, among others, to exchange ideas and information about their experiences with the aim of improving and simplifying job placement procedures. Parties must further ensure that 1) the recruitment and employment of Filipino health professionals under the Agreement shall be in accordance with the existing laws, procedures, guidelines and regulations of each country; 2) Filipino health professionals to be deployed are in possession of an appropriate and duly signed employment contract (Attachment to the BLA); and health professionals are provided with proper briefing/ orientation prior to their departure on relevant laws, regulations, policies, procedures, norms, cultures and practices in both countries of origin and destination relative to their deployment (BLA, Clause C). The bilateral agreement further includes provisions regarding job placement procedures including on unauthorized

¹⁰⁶ For more information on this see the ILO project website: https://www.ilo.org/global/topics/labour-migration/events-training/WCMS_507923/lang--en/index.htm.

recruitment, and the job placement in cases where the employment contract, through no fault of the worker, does not materialize or is terminated subsequent to arrival, which help prevent migrant workers falling into irregularity upon loss of employment.

Recruitment measures at regional level offer a multiplier effect to advancing fair recruitment. The Plan to Facilitate the Free Movement of Workers within the Southern Cone Common Market prioritizes the use of a subregional system of public employment services to prevent the abuse of migrant workers. There is some progress in a continent-wide agreement of free movement, which was started by the Global Forum on Migration and Development (GFMD) in 2017 (Okunade 2021). The countries of the Andean Community are reportedly establishing a similar network which will give access to job offers to citizen of those four countries (ILO 2016a, para. 207). The Revised Migration Policy Framework for Africa and Plan of Action (2018-2030) and the IGAD Free Movement Protocol, emphasize the importance of fair recruitment measures.

Initiatives by trade unions to promote fair recruitment

Workers' and employers' organizations are key actors the context of strategies to combat unfair recruitment and its linkages with forced labour and trafficking. Trade unions have been actively promoting the ILO Fair Recruitment Principles and Guidelines and adopted promising initiatives aimed at improving recruitment practices. Trade unions can play a critical role in three broad interlinked and inclusive areas, notably: a) promoting fair recruitment and social dialogue, and influencing policy dialogue; b) monitoring recruitment practices and; c) delivering services to workers.

- The Joint Committee established under the 2013 **bilateral agreement between the Philippines and Germany** on health

professionals was responsible for adopting the implementing guidelines, monitoring the implementation, recommending proposals to amend the agreement as well conducting periodic meetings. **The participation of trade unions enabled Filipino nurses to have access to PSLink and Ver.di unions** who were able to provide information and organize the workers. The unions were also able to review job descriptions and monitor the deployment and recruitment conditions of workers (ILO 2020n).

- In 2014, the **Konfederasi Serikat Buruh Seluruh Indonesia (KSBSI)** built a network of various migrant labour civil society organizations (JARI PPTKLN, Network for Revision of Placement and Protection of Overseas Workers) to lobby for legislative change of Law No.39/2004 on the Placement and Protection of Indonesia Workers Overseas. In 2017, a new law 'No.18/2017 on the Protection of Indonesian Migrant Workers' was passed. The Law imposes heavier sanctions for violations and provides that every person who deliberately places workers in employment that does not match the employment contract (which causes harm to the migrant workers), will face imprisonment and fines (At.83) (Ibid.).

- The **Federation of Asian Domestic Workers Unions (FADWU) is the only registered trade union of domestic workers in Hong Kong (China)** organising local and migrant domestic workers. The **Progressive Labor Union of Domestic Workers Hong Kong (PLU)** is affiliated with FADWU. Both, in collaboration with other national and international organizations such as IDWF, play a very active role in the promotion and protection of migrant workers' rights, including in the monitoring and oversight of recruitment practices (Ibid.). Following research conducted by FADWU and the PLU, the Hong Kong Labour Department adopted a code of practice for employment agencies, which involves, inter alia, the setting out of minimum standards for these agencies (ibid.)

- **The Tunisian General Labour Union (UGTT)** delivered training sessions to its members on fair recruitment and labour migration governance as well as on the role and responsibilities of trade unions on these issues. In addition, UGTT established migrant resource centres (“Espace migrants”) which provide reliable information to migrant workers, deliver training, and provide services in the case of labour disputes, and it developed a comprehensive guide for migrant workers (Ibid).
- A training workshop on fair recruitment, organized in 2018 in partnership with the **Confederación Revolucionaria de Obreros y Campesinos (CROC)** in Mexico, resulted in a tripartite working group on fair recruitment for the State of Baja California, and a joint Manual on Recruitment of Migrant Workers developed (ibid).

Initiatives by employers’ organisations and business

Private business and recruitment agencies can also take diverse initiatives to regulate and promote fair recruitment of migrant workers, including through the adoption of code of conducts, or forming alliances and networks.

- The **Responsible Business Alliance (RBA)** – a globally active group of businesses – developed a comprehensive Code of Conduct covering a series of labour rights, including principles of fair recruitment. Members require their next tier supplier to acknowledge and implement the Code and its standards. Compliance is monitored through a Validated Assessment Programme. Over US\$50 million has been reimbursed in settlements to workers who faced abuse. Close to 90 per cent of RBAs 164 member businesses have committed to the Code, impacting an estimated 3.5 million workers (ILO 2021i).
- **Mexico-United States – CIERTO Global** (recruitment agency)’s policy is aligned to ILO’s *General Principles and Operational Guidelines for Fair Recruitment* (ILO 2019e). When the United States allowed temporary migration in the

agricultural sector in 2020, CIERTO adapted its existing fair recruitment practices immediately to address COVID-19 related concerns, including ensuring the health and safety of all migrant workers. The agency’s recruitment practices are sensitive to ethnic, linguistic and gender diversity. The work of the recruitment agency is monitored through an independent third-party, both in communities of origin and destination, and a worker’s survey. The fair recruitment model has generated demand from employers for recruited workers and has resulted in requests for visa renewals by the agency being prioritized by US authorities (ILO 2021j).

- The **World Employment Confederation (WEC)** has developed a [good practice data base](#) for its members and a [Compendium of Voluntary initiatives promoting ethical recruitment practices](#). The **WEC Code of Conduct** aims to set out acceptable standards for professional practices to which the employment industry is committed and expected to operate. It lays out ten guiding principles for an ethical business with compliance and complaints mechanism, providing a sound framework about responsibilities at the different levels, and outlining a clearer procedural path for complaints. The Code is informed by the ILO’s fundamental principles and rights at work, international labour standards, and Guidance on Business and Human Rights and Corporate Social Responsibility. Guidelines include respect for free-of-charge provision of services to job seekers, respect for non-discrimination principle, respect for workers’ rights, and respect for access to remedy, among others.
- The **Global Business Network on Forced Labour**, which is coordinated by the ILO, brings together business in all 187 ILO member States. The Network provides access to resources including on fair recruitment, links up business actors across from across sectors and regions, supports business to find sustainable solutions, and creates spaces to identify gaps and methods to scale up solutions to tackle forced labour, including of migrant workers.

Recruitment monitoring and enforcement mechanisms

Recruitment regulation can contribute to a reduction in the risks which vulnerable migrants face. With intense competition it is particularly necessary to ensure that migrants have protection from “unscrupulous recruitment intermediaries who charge crippling fees in exchange for jobs, which often turn out to be far from what was promised” (IOM 2015b, iv). Monitoring of national recruitment practices is required to ensure that internationally accepted legal and fair recruitment standards are being followed to protect migrants – with the additional benefit of helping communities and countries of origin, and the businesses, economies and communities of destination countries.

A marked trend in state practice promotes shared responsibility to hold employers and recruiters accountable for the respect of workers’ rights in the recruitment process (ILO 2019e, OG 5.2). Combining licensing requirements and information-sharing collaboration with workers’ and employers’ organizations as well as enterprises and labour recruiters has reported effective results. In addition, the ability of victims to denounce the abuses, receive remedies, and hold perpetrators accountable is important to effective enforcement (see sec. 3).¹⁰⁷

- Supervision of compliance includes a variety of methods. Reporting requirements permit the authorities to monitor information on activities of labour recruiters such as the number of placements and returns as, for example, in **Lithuania, Mauritius and the Republic of Moldova** (ILO 2016a, para. 213).
- In **Cambodia**, a consortium called the Cambodia Trade Union Committee on Migration contributes to the process of monitoring recruitment agencies. In one instance, a migrant resource centre managed by the Cambodian Labour Confederation resolved claims of recruitment malpractice through mediation between the potential migrant workers who had paid a recruitment agency to supply

passports and arrange their migration for employment to Thailand, and the agency, who subsequently agreed to pay US\$50 each for its non-performance (ILO 2014d).

- The **Association of Hong Kong Manpower Agencies (AHKMA) and the Society of Hong Kong Accredited Recruiters of the Philippines (SHARP)** signed in June 2019 the first ever Code of Conduct on the fair recruitment of domestic workers from the Philippines to China, Hong Kong (SAR). An online worker feedback system allows for monitoring of compliance to the Code’s principles and identification of corrective action where needed. Branding of fair recruitment practices serves as a leverage for other agencies to come clean (ILO 2021k).
- In **Indonesia**, active enforcement of a regulation on the protection of migrant workers abroad by the Ministry of Manpower involved a monitoring system for the performance of private migrant worker placement agencies and inspections of the agencies in 2016 that led to the revocation of 44 agency operational permits and suspension of 202 agency business activities, and the prevention of 4,626 cases of private recruitments abroad due to violation of relevant procedural requirements.¹⁰⁸
- **Norway** has taken measures to strengthen the Labour Inspection Authority, including the signing of cooperation agreements with the labour inspection authorities in Lithuania, Estonia, Poland, Romania and Bulgaria. Workers’ and employers’ organizations may report recruitment violations to the competent authority under collective bargaining agreements where applicable (ILO 2019e, OG 1.3).
- In **Tunisia**, the Law on the organization of the exercise of the activities of placement of Tunisians abroad by private agencies (or Recruitment Law), approved by the Council of Ministers on 8 May 2019, extends the State’s authority to deliver sanctions to recruitment agencies that do not comply with defined operational and procedural standards. The

107. For use of a complaints process in Cambodia, see (ILO 2016a, para. 215 Box “ILO support to build a complaints process”).

108. CEACR, Indonesia, direct request, 2018, Protocol 29, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

Ministry of Labour approved the formation of a new inspectorate, to monitor and enforce the implementation of the new Recruitment Law. It also developed comprehensive guidance and tools to equip the new inspectorate, and a training programme to build its capacity (ILO 2021I).

- An external on-site audit was undertaken of a sub-contractor of a large construction company in **Qatar** and a private recruitment agency in Bangladesh, assessing compliance against ILO's General Principles and Operational Guidelines for Fair Recruitment. The audit identified gaps in existing systems, policies, and procedures; and assessed the organizations' capacity to comply with fair recruitment. Based on the results of the assessment, the Ministry of Administrative Development, Labour and Social Affairs (ADLSA) in **Qatar** and ILO provided tailored training and tools to expand the capacity of the management and staff of the sub-contractor and the private recruitment agency to comply with fair recruitment. The service agreement between the sub-contractor and the private recruitment agency was amended. Procedures and tools were developed to establish an effective grievance and workers' communication system during the recruitment process. The pilot also worked with the sub-contractor and the private recruitment agency to build a comprehensive pre-departure programme for workers going into the Qatari construction sector (ILO 2021m).
- In the **United Kingdom** the Gangmaster Licensing and Abuse Authority enters into voluntary information-sharing agreements or "protocols" with major retailers and suppliers to share information to protect vulnerable and exploited workers, mainly migrants.

The value of model employment contracts and their supervision

ILO standards (including Convention No. 97 and Annexes) as well the ILO Guiding Principles and Operational Guidelines on Fair recruitment refer to the importance of employment contracts in the context of measures aimed at promoting fair recruitment and preventing irregular conditions of employment and migration. The Domestic Workers Convention (No. 189) [Article 7] and Recommendation (No. 201) [Para. 6(2)], 2011 also emphasize the importance of informing domestic workers of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner, preferably through written contracts.

As a basic principle of good practice, the government, labour recruiters, enterprises and employers should take steps in their various roles to ensure that employment contracts are clear, transparent, and implemented, and that they contain the terms and conditions specified in the Fair Recruitment Guidelines. These should also be provided to the migrant worker in sufficient time before departure (OG 7, OG 26).¹⁰⁹ A number of countries adopt model employment contracts or standard terms of employment for use with migrant workers.

- A substantial number of countries require registration, supervision or monitoring by public authorities of migrant employment contracts, including **Ecuador, Madagascar, Mali, Myanmar, Nepal, Sri Lanka and Trinidad and Tobago** (ILO 2016a, para. 218). In some countries, model contracts are adopted in certain sectors of employment, such as agriculture in **Cyprus and Nicaragua** (ILO 2016a, para. 219 and notes 52–53).
- A copy of the employment contract or binding job offer is required as part of the process for approval of proposed employment of a third-party national in EU member States.¹¹⁰

109 Convention 97, Annex I, Article 5; Annex II, Article 6. (employment contract).

110 See for example the Directive 2009/50/EC (EU Blue Card), Art. 5(1)(a); Directive 2014/36/EU (Seasonal workers), Art. 6(1)(a).

- In **Morocco**, migrant workers' contracts concluded by private labour recruiters must comply with specified requirements and cases of non-compliance had been uncovered (ibid.). In **Mauritius**, employers are required to use a model contract of employment vetted by the responsible agency.¹¹¹
- The **Ethiopia Overseas Employment Proclamation** was amended in 2021 to respond to the new government policy direction of facilitating labour migration to reduce irregular migration and unemployment in the country, with the intention of diversifying the skills, sector and countries of destination. For overseas employment facilitated through government-to-government contact, a private employment agency or direct recruitment, the Proclamation requires a contract of employment based on the model employment contract provided by the Ministry to ensure the protection of Ethiopian migrant workers' rights, dignity and safety. The contract must be approved by the Ministry after it is signed by the employer, the worker and by the agency as appropriate (Ethiopia 2021, sec. 37 (1)–3)).
- The 2018 revision of the **Royal Ordinance Concerning Management of Employment of Migrant Workers in Thailand** included a number of provisions in line with ILO standards and fair recruitment practices: Zero recruitment fees charged to migrant workers (drawing on the ILO Private Employment Agencies' Convention (No. 181)). However, the definition of "recruitment fees" still needs to be defined in secondary legislation. No prison sentences imposed on irregular migrant workers. Written contracts are to be provided in the language of migrant workers. Increased flexibility for migrant workers to change employers. No confiscation of migrants' identification documents. Removal of housing zones that restrict migrants' freedom of movement, and appointment of a tripartite committee to oversee migration policy (ILO Infostories, 2021).
- **Lebanon** launched a new Revised Standard Unified Contract for the Employment of Domestic Workers, which addressed many of the key elements of the kafala system that can lead to forced labour. The contract stipulates clearly that domestic workers can leave the household during their weekly day off and annual leave, and that they are not required to pay recruitment fees or related costs. It also prohibits employers from withholding wages and confiscating passports and other personal documents.¹¹²
- The bilateral agreement concerning the **Placement of Filipino Health Professionals in Employment Positions in the Federal Republic of Germany** provides that the parties shall ensure that Filipino health professionals to be employed are in possession of appropriate employment contract (model attached to the BLA) duly signed by both the health professionals and employer concerned prior to their departure from the Philippines.

111 CEACR, Mauritius, direct request, 2008, Convention 97, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

112 As of May 2021, the implementation of the new contract has been suspended by a decision of Shura Council, following a lawsuit by the Syndicate of the Owners of the Worker Recruitment Agencies. See ILO *Press Release* 18 Sep 2020, "Lebanon takes crucial first step towards dismantling Kafala in Lebanon", at: https://www.ilo.org/beirut/media-centre/news/WCMS_755008/lang--en/index.htm.

► 4.6. Imposing effective and dissuasive sanctions

In addition to steps to prevent irregular labour migration in abusive conditions, ILO standards require that effective and proportionate sanctions should be brought against employers in breach of the labour rights of migrant workers, as well as against any persons found to have organized or contributed to irregular migration. Administrative, civil and penal sanctions should be available, adequate, and implemented regarding the unauthorized employment of migrant workers in an irregular situation, or in abusive working conditions (See for example Convention No. 143, Articles 5 and 6; Convention No. 97, Annex I, Articles 5(3) and 8, Annex II Articles 6(3) and 13; ILO 2016a, para. 639). An important aspect of this principle recognizes that an employer prosecuted for such employment has the right to furnish proof of good faith. To ensure the employers' right to furnish proof of good faith, employers ask governments to provide them with the information and other tools to verify that migrant workers are authorized to work (ILO 2016a). Regulatory frameworks in a number of countries, such as Croatia and Cyprus, require the employer to receive government approval to employ persons recruited from abroad as a preventive measure (EC-EMN 2017).

In some countries, migrant workers in irregular situations may be subjected to the imposition of sanctions, including imprisonment of fines, instead or in addition to their employer or recruitment agent. As stated elsewhere in this report, UN and ILO supervisory mechanisms have pointed out that the penalization of unlawful migration increases the vulnerability of migrant workers in an irregular situation still further. The measures called for in Part I of Convention No.143 (migration in abusive conditions) do not address the question of sanctions against migrant workers in an irregular situation. The CEACR has emphasized that a multiplication of repressive laws and practices is not sufficient to efficiently control migration flows and that abusive practices to which migrant workers can be victim often continue to occur on a similar scale (ILO 2016a, para 513).

►► “Noting the increasing criminalization of the irregular entry or stay of migrants in some countries, and the sanctions against migrant workers in an irregular situation, the Committee recalls that sanctions against migrant workers in an irregular situation often preclude them from enjoying their rights provided for in the instruments and claiming redress for any violations. Member States should adopt the necessary measures to protect migrant workers from violations of their basic human rights, regardless of their legal status”.

Source: ILO2016a, para.520.

Targeted sanctions against trafficking and forced labour

Specific legislation to criminalize and prosecute organizers and others involved in trafficking in persons and forced labour is essential to eliminate recruitment practices that lead to irregular migration in abusive conditions (UN-OCHR 2000; ILO 2016a, para. 266). In addition, administrative, civil and penal measures are used to detect and sanction those who employ migrant workers without authorization.

Institutional investigation and enforcement capacity are essential to effective action against trafficking in persons and forced labour in the context of international migration. Some Governments establish task forces and inter-agency committees or national plans, such as, Jamaica, Latvia, Pakistan, Romania, Suriname, and the United States (ILO2016, paras 258 and 269). A number of governments partner with workers' and employers' organizations and civil society organizations in programmes to combat these severe forms of abusive migration.

- The **Netherlands** has worked with major cities and the social partners to combat exploitation, in the context of the EU project on labour migration and has tackled sham contracting (ibid., para. 258).
- **Chile's** National Plan on Trafficking in Persons reportedly coordinates efforts at an inter-agency level to prevent, control and sanction trafficking at both national and regional levels of the country, including through working groups composed of public and civil society actors (ibid., para. 269).
- As part of a National Strategy on Combatting Trafficking in Human Beings and Illegal Migration, **North Macedonia** has a national commission and a national referral mechanism for victims of trafficking with a special public prosecutors' office to coordinate all court proceedings involving trafficking in persons and to refer the cases to a single court; its national rapporteur is responsible for collecting and analysing data and for monitoring and evaluating the overall activities and the Action Plan on Human Trafficking and Illegal Migration.¹¹³
- In **Pakistan** the law prescribes criminal penalties for fraudulent inducement of a person to emigrate through irregular channels, as well as prohibiting irregular entry for employment (ILO 2016a, paras 20, note 111; 510, note 72).
- Administrative and criminal sanctions target employers of migrant workers in irregular situations; such is the case in **Bulgaria, Chile, El Salvador, Israel, Senegal, Uruguay, and the Bolivarian Republic of Venezuela** (ibid., para. 260, note 111).
- Other laws target employment in violation of labour laws in Belgium, Burkina Faso, Republic of Korea and Seychelles (ibid., para. 510, note 73)
- Criminal terms of imprisonment and/or fines may include covering the costs of expulsion of the migrant worker concerned, as in **Guinea and the Netherlands** (ibid.).¹¹⁴
- In **Armenia**, enforcement of the Criminal Code, which provides for imprisonment for the term of five to 14 years, involved 21 criminal cases of human trafficking and abuse between January 2007 and May 2012 and two cases of engagement of other persons in prostitution or other forms of sexual exploitation, forced labour or services, or slavery or practices similar to slavery, with an average term of imprisonment of seven years.¹¹⁵
- In **Slovenia**, under the Prevention of Undeclared Work and Employment Act, 2014, employers who have been found to have committed the offence of unlawful employment of third-party nationals are entered on a list of employers who are excluded from public procurement procedures or have lost their right to public funds, including EU funds.¹¹⁶

Employer sanctions for unauthorized employment

In EU Member States, the EU Employer Sanctions Directive requires prohibition in national law of the hiring of “illegally staying third-country nationals” (Article 1) and imposition of financial sanctions on employers (Article 5) (EP 2009; ILO 2016a, para. 512).¹¹⁷ A study of sanctions applied among EU Member States for such hiring found that the most common sanction applied is fines (in all participating EU Member States) followed by imprisonment in 17 EU Member States, temporary

113 CEACR, Macedonia (now North Macedonia), direct request, 2018, Convention 143, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

114 CEACR, Guinea, direct request, 2014, Convention 143, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

115 CEACR, Armenia, direct request, 2021, Convention 143, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

116 CEACR, Slovenia, observation, 2014, Convention 97, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

117 In Portugal, the number of inspections conducted after the Directive into national law increased by 10 per cent. CEACR, Portugal, direct request 2014, Convention 97. See Annex I for the definition of third-country national.

or definitive closure of business in 13 EU Member States and other fines such as suspension of operations, revocation of license, confiscation of financial gains, and suspension from public procurement (EC-EMN 2017, sec. 5). Severity of sanction was reported to vary according to whether the employer acted negligently/without knowledge or with intent (*ibid.*). In some countries, enforcement of the various laws is accomplished through inter-agency coordination.

The imposition of employers' sanctions should not prejudice migrant workers' rights to claims against the employer; good practice to give this principle effect varies in different legal systems. This principle includes action to ensure that migrants, irrespective of their migration status, are able to access the justice mechanisms to lodge complaints without fear of deportation, regardless of their location. For example, the UN Special Rapporteur on the Human Rights of Migrants in a regional study which included the EU Employer Sanctions Directive, called for "more energy to ensure that migrants are able to access the mechanisms envisaged for their protection, without fear of systematic deportation (EP 2009). For example, while Article 6 (of the Directive) contains a number of provisions enabling irregular migrants to lodge complaints, these are not used in practice" (UN-HRC 2013). With regard to access to justice, see also Part 3)

► In **Australia**, the Migration Act of 1958 was amended pursuant to the Migration Amendment (Reform of Employer Sanctions) Act of 2013 with a view to strengthening sanctions for the employment of workers in an irregular situation. In June 2015, a Joint Agency Task Force

was established to enhance operational and intelligence capabilities to support government efforts targeting organized fraud, unauthorized work and the exploitation of migrant workers. This Task Force consists of the Department of Immigration and Border Protection, the Australian Border Force and a Fair Work Ombudsman.¹¹⁸

- In **Tajikistan**, the Migration Service together with the General Prosecutor's Office, the Ministry of Internal Affairs, the State Committee on National Safety and the border services authorities operate to prevent irregular migration, including under the "Illegal Alien Programme".¹¹⁹
- In **Greece and Lithuania**, having an integrated policy and legal framework of administrative and criminal sanctions was reported to contribute to effective sanctions implementation.¹²⁰
- In the **United Kingdom**, an inter-agency campaign targeting high-risk sectors of the economy provided activities to support employer compliance and enforcement, with use of promotional material, including posters and videos, to explain the responsibilities of employers (EC-EMN 2017).
- In **Argentina**, the migration law explicitly states this principle (as cited in ILO 2016a, para. 511) and the EU Employer Sanctions Directive similarly obliges Member States to ensure that migrants in an irregular situation can bring a claim against their employer and enforce a judgment, with facilitation of their complaints by the State concerned (EP 2009, Article 6(2)(a) and Article 13).

118 CEACR, Australia, direct request, 2019, Convention 29, at: [https://ilo.org/dyn/normlex/en/f?p=1000:11003:::...](https://ilo.org/dyn/normlex/en/f?p=1000:11003:::)

119 CEACR, Tajikistan, direct request, 2018, Convention 143, at: [https://ilo.org/dyn/normlex/en/f?p=1000:11003:::...](https://ilo.org/dyn/normlex/en/f?p=1000:11003:::)

120 *Ibid.*, sec. 5.3.2.

► 4.7. Preventing workers from falling into irregular status

Measures aimed at preventing migrant workers falling into irregular status upon loss of employment, and allowing flexibility for migrant workers to change employment, are crucial in the context of overall strategies to address irregularity in the context of migration and the abusive conditions associated with it. These measures have also been particularly essential in the context of limiting the impact of COVID 19 on the employment of migrant workers (see Box 7).

Protection in case of loss of employment

Migrant workers lawfully employed may find themselves in an irregular situation due to dismissal or when non-compliance of the employer negatively affects their migration status. Loss of employment often also means loss of work permit, especially when work and residence permits are linked and tied to one employer. This leaves migrant workers vulnerable to irregularity, and subsequent arrest, immediate repatriation or deportation. In many cases, migrant workers cannot seek alternative employment, and when they do they may accept work with poor terms and conditions, lower wages, and even higher risk of exploitation and irregularity. Migrant workers concentrated in low-paid work are even more exposed to risks of job and earning losses (ILO 2020e). Protecting migrant workers from such automatic withdrawal of authorization to reside or work solely due to loss of employment is therefore critical in the context of measures to prevent irregularity in the context of migration and the abusive conditions associated with it.

The ILO migrant workers instruments consider that migrant workers who have resided lawfully in the territory, but lose their employment prematurely, should not fall into an irregular situation but

be protected from automatic revocation of permission to reside and work in the country. That is, solely as the result of lost employment.¹²¹ These migrant workers should also be entitled to equality of treatment with nationals regarding security of employment, provision of alternative employment, relief work and retraining.¹²²

In giving effect to this principle, state practice should make no distinction between migrants with permanent residence, regional integration status, or temporary residence in regard to staying the revocation of permission to reside in the country. If the employment termination was not justified but reinstatement is not possible, sufficient time to find alternative employment is given within the limits of the original residence permit or for the period of unemployment benefit.¹²³ In the context of the COVID 19 pandemic, measures to prevent migrant workers who had lost their jobs from falling into an irregular situation have been particularly important. Measures to alleviate constraints faced by migrant workers and their families living in countries of destination have been taken in Bahrain, Kenya, Kuwait, Lebanon, Morocco, South Africa, Thailand, and the United Arab Emirates, for example (ILO, 2020e) (See also Box 6 and Box 12). The Government of Thailand provided relief measures to allow registered migrant workers and their family members to remain temporarily in the country, without a fine, if their visa expired during the pandemic period. The Government of Singapore similarly extended all expiring work visas for migrant workers between three and five months. The Government also made clear that employers must continue to pay their workers and provide for their upkeep or repatriation, even if they are unable to find work.

Programmes to rehabilitate workers who are injured or fall ill so that they do not become a burden on public funds are advisable where the

121 If the loss of employment is due to the conduct of the worker, then revocation with due process and right of appeal is to be provided, see Recommendation 151, para. 32(1) and (2); and Convention 143, art 8(1).

122 Convention 143, Article 8(2) and Recommendation No. 151, para. 31.

123 Ibid. This also applies on grounds of lack of means or state of the labour market, para. 440.

► **Box 12. EU and OECD Member States responses to managing residence permits and migrant unemployment during the COVID-19 pandemic**

The period within which the migrant worker can find a new job was extended due to the crisis in **Cyprus** (by six months) and in the Slovak Republic (to the end of the pandemic). In four EU Member States, the renewal of the residence permit was linked to entitlement to unemployment benefits or national care insurance.

In **Ireland**, the residence permits of third-country nationals laid off during the crisis, which were due to expire between 20 March and 20 May 2020 and 20 May to 20 July 2020 were automatically renewed for two months on the same basis and conditions as the permission that was currently held. In **Italy**, residence permits for prospective employment were extended until 31 August 2020. In **Finland**, the residence permit remained in effect for the duration of the layoff.

An extended permit could be granted on condition that the employee had secure means of subsistence while the previous permit was in effect. In countries where the permit was withdrawn, such as in **Malta**, third-country nationals laid off due to the crisis were able, since March 2020, to benefit from a special service within the employment service 'Jobs plus', to find alternative employment. In **Croatia**, if a third-country national was able to find another employment during the permit withdrawal procedure, a new application for temporary residence and work permit with the new employer was possible.

The **Republic of Korea**, from August 2020, allowed non-professional temporary foreign workers holding H-2 or E-9 visas who were unable to depart at the end of their maximum work period (36 or 58 months) to work in farming and fishing for up to five months and to receive a loan against their Departure Guarantee Insurance. It also allowed E-9 workers who were unable to return to their home country at the end of the maximum stay in Korea to extend their employment period by an additional year. The Act on Employment of Foreign workers was also revised in April 2021 to cover these situations.

Source: European Migration Network, Inform Issue 1 (EC-EMN 2020, 5–6) and OECD 2021

individual circumstances permit, failing which, the support of the state of the employment market is expected (ILO 2016a, para. 439).

- Loss of employment does not lead to revocation of residence permit for permanent residents in **Benin, Côte d'Ivoire, Gambia, Madagascar and Togo** nor automatic revocation in Argentina (ibid., para. 426).
- In the **EU**, similar protections apply to nationals of EU Member States, the European Economic Area and **Switzerland**, to third-country nationals in the EU who are long-term residents, or highly qualified workers such as those in the Czech Republic, Germany and Poland (ibid., para. 427).
- For temporary migrant workers of seasonal, time-bound, short- and medium-term employment, loss of employment did not lead to automatic withdrawal of residence permits in the **Gambia, Guinea, Suriname, or Uganda**, (ibid., para. 428, note 9) and the unemployed migrant worker could remain for the validity of the work permit, as in **North Macedonia** (ibid., para. 428, note 10).
- Other countries reported renewal of permits or case-by-case reviews of temporary migrant workers in cases of loss of employment, including **Australia, Chile, Finland and Jamaica** (ILO 2016a, para. 433).
- During the COVID 19 pandemic, a tripartite memorandum of understanding, signed on 20 April 2020 in **Kenya**, includes a measure that maintains the residency status and work permits of migrant workers who have lost their jobs (ILO 2020e, fn.22).
- In most **EU Member States and Norway** a (temporary) job loss by a third-country national worker in the context of COVID-19 did not lead to the immediate withdrawal of their residence permit. Most of these countries allowed the residence permit to continue until expiration or during a certain fixed period to allow the third-country national to find a new job.

The corollary principle of equal treatment with nationals aims to facilitate restoration of the previous position of the migrant worker who has lost his or her employment. Trends in state practice provide variously for the migrant worker to remain and seek new employment.

- In the **Republic of Moldova, Panama, and Peru**, the migrant worker who has lost his or her employment can seek new employment or keep his or her residence subject to new employment (ILO 2016a, para. 442).
- Short periods are prescribed in the **Netherlands, Senegal, and Sweden** (another three months) (*ibid.*) and in Bulgaria, Romania, and the Russian Federation (*ibid.*, notes 24 and 25).
- In some countries, the unemployed migrant worker may remain subject to new employment, such as in Japan and, if three months before expiry of his or her permit, in **Armenia** (*ibid.*, para. 428).
- In **Slovenia**, registration as a person seeking employment is possible.¹²⁴
- In **San Marino**, the migrant worker may look for employment in the same sector as was formerly authorized (ILO 2016a, para. 443).

Facilitating change of employment and labour mobility

There is increased awareness that internal labour market mobility may reduce the number of migrant workers in irregular situations in countries of destination and can better address shortages if workers are allowed to change employers instead of being repatriated and then restarting the application process again from abroad (Kouba and Baruah 2019). Facilitating change of employment would also help prevent migrant workers remaining in abusive conditions, some of which are caused by systems where a

migrant's residence and employment permit is tied to a single employer or sponsor. Under such systems, frameworks allowing employers to file "absconding" charges for absenteeism or abandoning of work against migrant workers who leave their employment without permission, create additional constraints for workplace mobility.

Absconding, often associated with sponsorship systems, is usually linked to migrant workers' residence status, and can result in arrest, detention or deportation. In some regions, absconding can apply to workers who have escaped an exploitative or abusive situation and particularly migrant domestic workers have been most affected by their employer's power to file absconding charges.¹²⁵ Isolation and restrictions on mobility and access to information may prevent these workers from filing a complaint for labour rights' violations. Workplace absence can legitimately provide grounds for termination of employment, but without alternative employment, this may lead to a change in immigration status. However, workplace absence, especially when related to abuse or exploitation, should not in itself constitute a violation of the residency right followed by arrest, detention and automatic expulsion. Trends in state practice should treat work abandonment as a labour issue on the basis of which the employer may terminate the employment relationship. In these cases, workers usually have a certain period of time during which they can find a new employer.¹²⁶ Under the Migrant Workers Recommendation, 1975 (No. 151), migrant workers who have lodged an appeal against the termination of their employment should be allowed sufficient time to obtain a final decision thereon. If this termination of employment was unjustified, they should, on the same terms as nationals, be entitled to reinstatement, to compensation for wage loss or of other payment which results from unjustified termination. Or, they should have access to a new job with the right to indemnification. They should also have sufficient time to find alternative employment.

ILO and UN supervisory bodies have confirmed the incompatibility of the "absconding framework"

124 CEACR, Slovenia, direct request, 2018, Convention 143, at: <https://ilo.org/dyn/normlex/en/f?p=1000:11003:.....>

125 See for example: CEACR, Convention No 29, observations of 2021 for Oman and Saudi Arabia, Observation of 2017 for United Arab Emirates; CEACR, Convention No. 111, observation of 2019 for Kuwait.

126 For more information and possible solutions, see also ILO, IOM, OHCHR and UNWOMEN. 2022. Doing away with absconding: A roadmap to a rights-based approach to labour contract termination in the Arab States" (Forthcoming).

associated with sponsorship systems with human rights and labour standards. Where a system of employment of migrant workers places those workers in a particularly vulnerable position and provides employers with the opportunity to exert disproportionate power over them, this could result in discrimination based on the grounds enumerated in Convention No. 111 (ILO 2012b). Preventing or limiting the ability of migrant workers to change employment, in particular in the context of immigration law tying the work permit to one employer or workplace, might create a significant dependency on the employer, and accordingly indirectly prevent migrant workers from feeling able to enforce their rights (ILO 2016a, para 465). Within the context of forced labour, ILO supervisory bodies have stressed that migrant workers, including migrant domestic workers must – both in law and in practice – be free to exercise “their right to freely terminate their employment, so that they do not fall into abusive practices that may arise from the sponsorship system”.¹²⁷ Particularly in countries where migrant workers constitute a large proportion, and sometimes the majority of the working population, or in a particular economic sector, consistent efforts may be required to ensure that migrant workers are able, in practice, to change workplaces when subject to violations of applicable labour legislation, and to ensure that the legislation is fully implemented and enforced.

- In the construction sector in **Singapore**, new measures have allowed greater flexibility to change employer and support is being given to migrant workers to be matched with a new employer.
- In **Qatar**, reforms of the sponsorship system, ended the requirement for migrant workers to obtain their employers’ permission to change jobs. Following Law Decree No. 18 and Law Decree No. 19 of 2020, migrant workers can now change jobs before the end of their contract without first having to obtain a No Objection Certificate (NOC) from their employer. Workers may terminate the employment contract during the probation period to transfer to another employer, provided they notify their current employer, in writing, of their intent to terminate

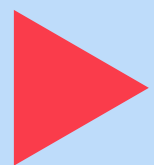
the contract at least one month before the date of termination. The new employer must compensate the current employer a portion of the recruitment fees and the air ticket, provided that the amount does not exceed the equivalent of two months of the worker’s basic wage. The new legislation further permits either party to the employment contract, whether fixed-term or permanent, to terminate the employment contract after the probation period, in which case the party wishing to terminate the contract shall notify the other party in writing, with a specific notice period of one or two months depending on the number of years of employment.¹²⁸

- **United Arab Emirates** legislation is allowing a grace period for workers to find a new employer (30 days).
- In **Canada**, foreign workers with temporary permits are allowed to change employers. In case the work permit only allows the worker to work only for the current employer, the new employer will need permission from the Government to hire the temporary foreign worker who will also need to apply for a new work permit before changing jobs ([Employment and Social Development Canada webpage](#)).
- In **Sweden**, which has ratified Convention No. 143, work permits become fully portable after two years. After four years, it becomes possible to convert a temporary visa into permanent residence.
- Under the Employment Permit System (EPS) of the **Republic of Korea**, migrant workers have three months in which to seek and switch jobs.
- In June 2021, an amendment to the Seasonal Workers Act of **Finland** was implemented to make it easier for seasonal workers from third countries to change employers. Meanwhile, employers are able to notify the Finnish Immigration Service of more than one employee at once, and the return of seasonal workers to the same employer is facilitated by suppressing the obligation to report on the employment conditions (OECD 2021).

¹²⁷ For example: CEACR, Observation – Convention No. 29 – Oman, published in 2021.

¹²⁸ See also CEACR, observation – Convention No. 29, Qatar, published in 2021.

Bibliography & annexes



► Bibliography

- AA-ICJ (American Association for the International Commission of Jurists). 1985. *The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*. Washington, D.C. Available at: <http://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles- ICCPR-legal-submission-1985-eng.pdf>.
- ACHPR (African Commission on Human and Peoples' Rights). 1986. *African (Banjul) Charter on Human and People's Rights*. Addis Ababa. Available at: <https://www.achpr.org/legalinstruments/detail?id=49>.
- . 1999. *African Charter on the Rights and Welfare of the Child*. Addis Ababa. Available at: <https://www.achpr.org/legalinstruments/detail?id=46>
- . 2003. *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa*. Addis Ababa. Available at: <https://www.achpr.org/legalinstruments/detail?id=37>.
- Alami, Alya. 2026. *Régularisation des migrants en situation irrégulière: Le processus est en marche*. Rabat: Horizon Press. Available at : <https://www.ccme.org.ma/images/documents/fr/2016/12/LesEchos15dec16.pdf>.
- Amnesty International. 2009. *Irregular migrants and asylum-seekers: Alternatives to immigration detention*. London. Available at: <https://www.amnesty.org/download/Documents/48000/pol330012009en.pdf>.
- Andrees, B., A. Nasri and P. Swiniarski. 2015. *Regulating labour recruitment to prevent human trafficking and foster fair migration*, Working paper; No. 1/2015. Geneva: ILO. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_377813.pdf.
- ASEAN (Association of Southeast Asian Nations). 2012. *Declaration on the Protection and Promotion of the Rights of Migrant Workers*. Jakarta. Available at: https://asean.org/?static_post=asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers.
- . 2016. *ASEAN Labour Ministers' (ALM) Work Programme 2016–2020 and Work Plans of the Subsidiary Bodies*. Jakarta. Available at: https://asean.org/storage/2012/05/FINAL-PRINTING_27Content-ALM-WP.pdf.
- . 2018. *ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers*. Jakarta. Available at: <https://asean.org/storage/2019/01/3.-March-2018-ASEAN-Consensus-on-the-Protection-and-Promotion-of-the-Rights-of-Migrant-Workers.pdf>.
- AU (African Union). 1994. *Treaty Establishing the African Economic Community*. Addis Ababa. Available at: <https://au.int/en/treaties/treaty-establishing-african-economic-community>.
- . 2018a. *Revised Migration Policy Framework for Africa and Plan of Action (2018-2030)*. Available at: https://au.int/sites/default/files/newsevents/workingdocuments/32718-wd-english_revised_au_migration_policy_framework_for_africa.pdf
- . 2018b. *Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment*, (African Union Free Movement Protocol) adopted by the 30th Ordinary Session of the AU Summit, 29 January 2018. Addis Ababa. Available at: https://au.int/sites/default/files/treaties/36403-treaty-protocol_on_free_movement_of_persons_in_africa_e.pdf.
- AUC (African Union Commission). 2013. *Draft AU Youth & Women Employment Pact For Africa (YWEP-A) – Theme: "Enhancing the Capacity of the Labour Market Institutions in Africa to meet the Current and Future Challenges"*. LSC/EXP/6/IX. Addis Ababa. Available at: https://au.int/sites/default/files/newsevents/workingdocuments/28065-wd-youth_employment_pact_for_africa-english.pdf.

- . 2018. *Migration Policy Framework and Plan of Action (2018–2030)*. Migration for Development in Africa. Addis Ababa. Available from: https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/other_documents/35316-doc-au-mpfa_2018-eng.pdf.
- Benton, Meghan, Jeanne Batalova and Samuel Davidoff-Gore and Timo Schmidt, 2021. *COVID-19 and the State of Global Mobility in 2020*. Geneva and Washington, D.C.: IOM and the Migration Policy Institute. Available at: <https://reliefweb.int/report/world/covid-19-and-state-global-mobility-2020>.
- Bimha, P. Z. J. 2017. *Legalising the illegal: An Assessment of the Dispensation of Zimbabweans project (DZP) and Zimbabwe Special Dispensation Permit (ZSP) regularisation projects*. Cape Town: University of Cape Town. Available at: https://open.uct.ac.za/bitstream/item/28572/thesis_hum_2017_bimha_primrose_zvikomborero_joylyn.pdf?sequence=1.
- Carrera, S. and Marco Stefan. 2018. *Complaint Mechanisms in Border Management and Expulsion Operations in Europe: Effective remedies for victims of human rights violations?* Brussels: Centre for European Policy Studies. Available at: https://www.ceps.eu/download/publication/?id=10505&pdf=Complaint%20Mechanisms_A4.pdf.
- Castles, Stephen, M. A. Cubas, C. Kim and D. Ozkul. 2012. "Irregular Migration: Causes, Patterns and Strategies". In *Global Perspectives on Migration and Development: GFMD Puerto Vallarta and Beyond*, edited by Irena Olemaniuk, 180–229, Global Migration Issues, Vol. 1. Berlin: Springer.
- Chassamboulli, A. and G. Peri. 2015. "The labor market effects of reducing the number of illegal immigrants". In *Review of Economic Dynamics*, Vol. 18, Issue 4: 792–821.
- CGT (Confédération Générale du Travail). 2018. *Droits des travailleurs migrants, Repères revendicatifs*. Montreuil. [brochure] Available at: <http://www.cgt.fr/sites/default/files/2018-08/Fiche%20n%C2%B0%201a%20%E2%80%93%20Droits%20des%20travailleurs%20migrants.pdf>.
- Costello, Cathryn and Mark Freedland (eds). 2014. *Migrants at work: Immigration and vulnerability in labour law*. Oxford: Oxford University Press.
- Cummings, Clare, Julia Pacitto, Diletta Lauro and Marta Foresti. 2015. *Why people move: Understanding the drivers and trends of migration to Europe*. ODI Working Paper No. 430. London: Overseas Development Institute (ODI). Available at: <https://assets.publishing.service.gov.uk/media/582594aead915d7ad5000022/understanding-drivers-migration-Europe.pdf>.
- Delvino, Nicola. 2017. *European cities and migrants with irregular status: Municipal initiatives for the inclusion of irregular migrants in the provision of services*. Report for the City Initiative on Migrants with Irregular Status in Europe (C-MISE), No. 11. Oxford: Centre on Migration, Policy and Research. Available at: <https://www.compas.ox.ac.uk/2017/european-cities-and-migrants-with-irregular-status/>.
- Dembour, Marie-Bénédicte. 2015. *When Humans Become Migrants: Study of the European Court of Human Rights with an Inter-American counterpoint*. Oxford: Oxford University Press.
- Di Porto, Edoardo, Enrica Maria Martino and Paolo Naticchioni. 2018. *Back to Black? The Impact of Regularizing Migrant Workers*. Naples: Centre for Studies in Economics and Finance. Available at: <http://www.csef.it/WP/wp517.pdf>.
- DOMINA and IDWF (International Domestic Workers Federation). *Fair Recruitment ADV Campaign for the Domestic Work in Italy*. Available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-rome/documents/genericdocument/wcms_744837.pdf
- Ebuisi, Minawa, Sean Cooney and Colin Fenwick. 2016. *Resolving individual labour disputes: A comparative overview*. Geneva: ILO. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_488469.pdf
- EC (European Commission). 2015. *A European Agenda on Migration*. COM(2015) 240. Brussels. Available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/communication_on_the_european_agenda_on_migration_en.pdf.

- 2019. *Progress report on the Implementation of the European Agenda on Migration*. Communication from the Commission to the European Parliament, the European Council and the Council. COM(2019) 481 final. Brussels. Available at: <https://ec.europa.eu/migrant-integration/librarydoc/progress-report-on-the-implementation-of-the-european-agenda-on-migration>.
 - 2020. *New Pact on Migration and Asylum*. COM(2019) 609. Brussels. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF
 - 2021. *EU Strategy on Combatting Trafficking in Human Beings 2021–2025*. COM(2021) 1717. Brussels. Available at: https://ec.europa.eu/home-affairs/sites/default/files/pdf/14042021_eu_strategy_on_combatting_trafficking_in_human_beings_2021-2025_com-2021-171-1_en.pdf
- EC-EMN (European Commission, European Migration Network). 2017. *Illegal employment of third-country nationals in the European Union*. Brussels. Available at: https://ec.europa.eu/home-affairs/sites/default/files/00_eu_illegal_employment_synthesis_report_final_en_0.pdf.
- 2020. *EU and OECD Member States responses to managing residence permits and migrant unemployment during the COVID-19 pandemic*. Brussels. Available at: https://ec.europa.eu/home-affairs/sites/default/files/oo_eu_inform1_residence_permits_and_unemployment_en_updated_final.pdf.
 - 2021. *Impact of COVID-19 pandemic on voluntary and forced return procedures and policy responses*. Inform No. 5. Brussels. Available at: https://ec.europa.eu/home-affairs/sites/default/files/00_eu_inform5_return_en.pdf.
- ECOWAS (Economic Community of West African States). 1985. "A/SP 2/7/85 — Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment", in *Official Journal of the ECOWAS*, Vol. 7, July 1985. Available at: <https://www.refworld.org/docid/49218b4d2.html>.
- 2008. *ECOWAS Common Approach on Migration*, Ouagadougou. Available at: <https://www.unhcr.org/49e47c8f11.pdf>.
- Echevarría, Gabriel, 2020. *Towards a Systemic Theory of Irregular Migration Explaining Ecuadorian Irregular Migration in Amsterdam and Madrid*, IMISCOE Research Series. Cham: Springer Nature Switzerland. Available at: <https://link.springer.com/content/pdf/10.1007%2F978-3-030-40903-6.pdf>.
- ECtHR (European Court of Human Rights). 2017. *Chowdury and Others v. Greece*. Appl. No. 21884/15. Brussels. Available at: https://ec.europa.eu/anti-trafficking/case-law/chowdury-and-others-v-greece-0_en.
- EP (European Parliament). 2008. *Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115&from=EN>.
- 2009. *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*. [Consolidated text]. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009L0052-20090720>.
 - 2019. "Asylum and migration in the EU: Facts and figures" in *European Parliament News*, 22 July 2019. Brussels. Available at: <https://www.europarl.europa.eu/news/en/headlines/society/20170629STO78630/asylum-and-migration-in-the-eu-facts-and-figures>.
 - 2021. *The European Approach to Migration in the Mediterranean*. Brussels. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694413/IPOL_STU\(2021\)694413_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/694413/IPOL_STU(2021)694413_EN.pdf).
- European Platform Undeclared Work (EPUW) - European Labour Authority (ELA). 2021. *The Foreign Labour Inspection Unit: Capacity building of inspectors*.

- Ethiopia. (Government). 2021. *Ethiopia, Overseas Employment Proclamation (Amendment) No. 1246/2021*, Addis Ababa. Available at: <https://chilot.me/2021/07/22/ethiopians-overseas-employment-amendment-proclamation-no-1246-2021/>.
- European Trade Union Confederation (ETUC) – UnionMigrantNet and Platform for International Cooperation on Undocumented Migration (PICUM): Trade Unions. Organising and Promoting Undocumented Migrant Workers Rights. Available at: http://picum.org/wp-content/uploads/2017/12/Trade_Union_Participation_EN_2017.pdf
- . 2012b. *Treaty on the Functioning of the European Union (TFEU)*. C26/349. Brussels. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN>.
- . 2019. *Establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration (borders and visa)*. COM(2017)793. Brussels. Available at: <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vkk4raab4tzm>.
- ; FRA (Agency for Fundamental Rights) (EU-FRA). 2011. *Fundamental rights of migrants in an irregular situation in the European Union: Comparative report*. Vienna. Available at: <https://fra.europa.eu/en/publication/2012/fundamental-rights-migrants-irregular-situation-european-union>.
- ; —. 2014. *Criminalisation of migrants in an irregular situation and of persons engaging with them*. Vienna. Available at: https://fra.europa.eu/sites/default/files/fra-2014-criminalisation-of-migrants_en.pdf.
- ; —. 2021. *Protecting migrants in an irregular situation from labour exploitation. Role of the employers' sanctions Directive*. Vienna. Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-employers-sanctions-directive-report_en.pdf
- Farbenblum, Bassina. and Berg, Laurie L. 2021. *Migrant Workers Access to Justice for Wage Theft. A global study of promising initiatives* (Migrant Justice Institute). Available at: [https://static1.square-space.com/static/593f6d9fe4fcb5c458624206/t/61adba9108bec25ce355c6e4/1638775475553/Farbenblum+Berg+2021+MWA2\]+with+hyperlinks.pdf](https://static1.square-space.com/static/593f6d9fe4fcb5c458624206/t/61adba9108bec25ce355c6e4/1638775475553/Farbenblum+Berg+2021+MWA2]+with+hyperlinks.pdf).
- Fargues, P. and N. M. Shah (eds). 2017. *Skilful Survivals: Irregular Migration to the Gulf*. Gulf Labour Markets and Migration Programme. Cambridge: Gulf Research Centre Cambridge.
- FES (Friedrich Ebert Stiftung). 2017. *PROMIG-FES: Promoting Migration Governance 2017–2020*. Tunisia Project Collaboration. Tunis. Available at: <https://mena.fes.de/topics/promoting-migration-governance>.
- Foley, Laura and Piper, Nicola. 2021. *Returning home empty handed: Examining how COVID-19 exacerbates the non-payment of temporary migrant workers' wages* (Global Society Policy). Available at: <https://journals.sagepub.com/doi/pdf/10.1177/14680181211012958>.
- Ford, Michele. 2013. "The Global Union Federations and temporary labour migration in Malaysia" in *Journal of Industrial Relations*, Vol. 55 (2), 260–287.
- Frontex [Social Media Platform]. 2021. *Irregular migration into last year lowest since 2013 due to COVID-19*. Available at: <https://migrationdataportal.org/blog/irregular-migrant-workers-eu-and-us>.
- Gebhardt, Dirk. *Building inclusive cities: Challenges in the Multilevel Governance of Immigrant Integration in Europe*. Transatlantic Council on Migration. London: The Migration Policy Institute. Available at: https://www.migrationpolicy.org/sites/default/files/publications/TCM_Cities_Gebhardt-FINAL.pdf.
- Gordon, Jennifer. 2015. *Roles for Workers and Unions in Regulating Labour Recruitment in Mexico*, Transformation of Work Series, Washington, D.C.: International Aid Agency. Available at: <https://www.solidaritycenter.org/wp-content/uploads/2015/05/Migration.Roles-for-Workers-and-Unions-in-Regulating-labor-Recruitment-in-Mexico.Jennifer-Gordon-Fordham.5.15.pdf>.
- Hastie, Bethany and François Crépeau. 2014. "Criminalising irregular migration: The failure of the deterrence model and the need for a human rights-based framework". In *Journal of Immigration, Asylum and Nationality Law*, 28(3), 213–236. Available from: https://www.bloomsburyprofessionalonline.com/view/journal_immigration/ILJ28-3-000-00190.xml

- Howe, Joanna and Rosemary Owens, 2016. *Temporary Labour Migration in the Global Era: The Regulatory Challenges*. London: Hart Publishing/Bloomsbury.
- IACHR (Inter-American Commission on Human Rights). 2020a. *The IACHR urges States to protect the human rights of migrants, refugees and displaced persons in the face of the COVID-19 pandemic*. Press Release. Washington, D.C. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2020/077.asp.
- . 2020b. *Migrants must be included in all COVID-19 recovery plans*. Dec 2017. Washington, D.C. Available at: https://www.oas.org/en/iachr/media_center/PReleases/2020/303.asp.
- . 2020c. *Resolution on Pandemic and Human Rights in the Americas – Resolution 1/2020*. Washington, D.C. Available at: <http://www.oas.org/en/iachr/decisions/pdf/Resolution-1-20-en.pdf>.
- ICJ (International Commission of Jurists). 2014. *Migration and Human Rights Law*, Practitioners Guide No.6. Geneva. Available at: <https://www.refworld.org/docid/4dcbac872.html>.
- ICMPD (International Centre for Migration Policy Development). 2021. *ICMPD Migration Outlook 2020: Seven things to look out for in 2021*. Vienna. Available at: https://www.icmpd.org/file/download/50542/file/ICMPD_Migration_Outlook_2021_final.pdf.
- ; IOM. 2015. *A Survey on Migration Policies in West Africa*, Vienna. Available at: <https://publications.iom.int/books/survey-migration-policies-west-africa>.
- IDWF (International Domestic Workers Federation). 2018. *Agents of change? Assessing Hong Kong employment agencies' compliance with the Code of Practice*, China, Hong Kong (Special Administrative Region (SAR)). Available at: <https://idwfed.org/en/resources/agents-of-change-assessing-hong-kong-employment-agencies-compliance-with-the-code-of-practice>.
- IGAD (Inter-Governmental Authority on Development). 2012. *IGAD Regional Migration Policy Framework*. Adopted by the 45th Ordinary Session of the IGAD Council of Ministers 11 July 2012. Addis Ababa. Available at: <https://www.iom.int/sites/default/files/icp/igad-regional-migration-policy-framework1.pdf>.
- IDMC (Internal Displacement Monitoring Centre). 2020. *Global Report on Internal Displacement 2020 (GRID)*. Available at: <https://www.internal-displacement.org/sites/default/files/publications/documents/2020-IDMC-GRID.pdf>.
- International Labour Office. 1939. *Report of the Committee on Migrant Workers: Second discussion in plenary*. ILC 25th Session. Available at: ilo.primo.exlibrisgroup.com/discovery/fulldisplay/alma994956237102676/41ILO_INST:41ILO_V2.
- . 1999. *General Survey on the reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975*. ILC 87th Session. Report III (Part I(B)). Available at: [https://ilo.org/public/libdoc/ilo/P/09661/09661\(1999-87_1B\).pdf](https://ilo.org/public/libdoc/ilo/P/09661/09661(1999-87_1B).pdf).
- . 2004a. *Towards a fair deal for migrant workers in the global economy*, ILC, 92nd Session. Report VI, Sixth item on the agenda. Available at: <https://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/rep-vi.pdf>.
- . 2004b. *A fair deal for migrant workers in a global economy: An ILO plan of action for migrant workers*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/genericdocument/wcms_232817.pdf.
- . 2004c. *Resolution and Conclusions concerning a fair deal for migrant workers in a global economy*. Available at: https://www.un.org/en/development/desa/population/migration/events/coordination/3/docs/ILC_2004_Resolution.pdf.

- 2006. *Multilateral Framework for Labour Migration (MFLM): Non-binding principles and guidelines for a rights-based approach to labour migration*. Available at: https://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/documents/publication/wcms_146243.pdf.
- 2008. *Declaration on Social Justice for a Fair Globalization*, ILC 97th Session. Available at: https://www.ilo.org/wcmsp5/groups/public/-dgreports/-cabinet/documents/genericdocument/wcms_371208.pdf.
- 2010a. *Declaration on Fundamental Principles and Rights at Work*, ILC 86th Session (1998). Annex revised, ILC 99th Session. Available at: <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang-en/index.htm>
- 2010b. *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization. Report III (Part 1B), ILC 99th Session*. Available at: https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_123390.pdf.
- 2012a. *Achieving decent work for domestic workers. An organizers' manual to promote ILO Convention No. 189 and build domestic workers' power*. Available at: https://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@actrav/documents/publication/wcms_181344.pdf
- 2012b. *Giving Globalization a Human Face. General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 101st Session, Geneva, 2012. Available at: [wcms_174846.pdf \(ilo.org\)](https://www.ilo.org/wcms_174846.pdf)
- 2013a. *Assessing South Africa's Commission for Conciliation, Mediation and Arbitration (CCMA)*. Working Paper No. 47. Available at: https://www.ilo.org/wcmsp5/groups/public/-ed_dialogue/-dialogue/documents/publication/wcms_210181.pdf.
- 2013b. *Conclusions Tripartite Technical Meeting on Labour Migration, 4-8 November 2013, TTMLM/2013/14*, Geneva. Available at: https://www.ilo.org/wcmsp5/groups/public/-ed_protect/-protrav/-migrant/documents/meetingdocument/wcms_232352.pdf
- 2014a. *Fair migration: Setting an ILO agenda*, Tripartite Technical Meeting on Labour Migration, Conference discussion of the Director-General's Report. 103rd Session, Report 1(B). Available at: https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_242879.pdf
- 2014b. *Evaluation lessons learned and emerging good practice*, Policy Guidelines for results-based evaluation, Guidance Note no. 3. Available at: https://www.ilo.org/wcmsp5/groups/public/-ed_mas/-eval/documents/publication/wcms_165981.pdf.
- 2014c. *Good practices on the role of trade unions in protecting and promoting the rights of migrant workers in Asia*. Bangkok: Bureau for Workers Activities. Available at: https://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-sro-bangkok/documents/publication/wcms_301215.pdf.
- 2014d. *Work in Fishing in the ASEAN Region: Protecting the rights of migrant fishers: Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the ASEAN Region*. Regional Office for Asia and the Pacific. Available from: https://www.ilo.org/wcmsp5/groups/public/-asia/-ro-bangkok/-sro-bangkok/documents/publication/wcms_306645.pdf.
- 2014e. *Travel smart – Work smart: Pre-departure Manual for Nauru Seasonal Workers in Australia*. Available at: <https://www.ilo.org/dyn/migpractice/docs/320/Nauru.pdf>
- 2014f. *Cooperating out of isolation: The Case of Migrant Domestic Workers in Lebanon, Jordan and Kuwait*. Available at: https://www.ilo.org/beirut/publications/WCMS_325243/lang-en/index.htm
- 2015a. *ILO Global estimates on International Migrant Workers. Results and Methodology. Special focus on migrant domestic workers*. Available at: http://www.ilo.ch/wcmsp5/groups/public/-dgreports/-dcomm/documents/publication/wcms_436343.pdf

- 2015b. *Regional Model Competency Standards: Core Competencies*. Bangkok: Regional Office for Asia and the Pacific. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_420961.pdf.
- 2016a. *Promoting Fair Migration. General survey concerning the migrant workers instruments*, Report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Report III (Part 1B) ILC 105th session. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_453898.pdf.
- 2016b. *General principles and operational guidelines for fair recruitment: Background report to the Tripartite Meeting on Fair Recruitment*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536263.pdf.
- 2016c. *Labour inspection and other compliance mechanisms in the domestic work sector. An introductory Guide*. Available from: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safe-work/documents/publication/wcms_429836.pdf
- 2016d. *Report for discussion at the Tripartite Meeting of Experts on Fair Recruitment Principles and Operational Guidelines*, MEFR/2016. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/meetingdocument/wcms_508966.pdf.
- 2016e. *Guiding Principles on access of refugees and other forcibly displaced persons to the labour market*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536440.pdf.
- 2016f. *Pilot testing a fair recruitment model from Nepal to Jordan in the apparel industry* [Flyer]. Available at: https://www.ilo.org/global/topics/labour-migration/events-training/WCMS_464656/lang-en/index.htm
- 2016g. *Bali Declaration. 16th Asia and the Pacific Regional Meeting December 2016. APRM/16/D.6, Bali, 6–9 December*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_537445.pdf.
- 2017a. *Resolution and Conclusions concerning fair and effective labour migration governance*, ILC, 106th Session. Available at: https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_671940.pdf.
- 2017b. *Matters arising out of the work of the 106th (2017) International labour Conference. Follow-up to the resolution concerning fair and effective labour migration governance*, GB.331/INS4/1(Rev). Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_579683.pdf
- 2017c. *Addressing governance challenges in a changing labour migration landscape*, Report IV, ILC 105th session. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_550269.pdf.
- 2017d. *Global Estimates of Modern Slavery*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf.
- 2017e. *Access to justice for migrant workers in South-East Asia*, ILO Bangkok. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_565877.pdf
- 2017f. *General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture*. ILC 106th Session. Report III (Part 1B). Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_543647.pdf.
- 2017g. *Conclusions on the promotion of decent work for migrant fishers*. Tripartite Meeting on Issues relating to Migrant Fishers TMIMF/2017/7. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_576895.pdf.

- 2018a. *ILO Global Estimates on International Migrant Workers: Results and Methodology*, 2nd edition. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_652001.pdf.
- 2018b. *Findings from the global comparative study on the definition of recruitment fees and related costs: Background paper for discussion at the Tripartite Meeting of Experts*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/meetingdocument/wcms_646693.pdf.
- 2018c. *Ending Forced Labour by 2030: A Review of Policies and Programmes*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_653986.pdf.
- 2018d. *General Survey concerning working-time instruments – Ensuring decent working time for the future*. ILC 107th Session. Report III(B). Available at: https://www.ilo.org/ilc/ILCSessions/previous-sessions/107/reports/reports-to-the-conference/WCMS_618485/lang--en/index.htm
- 2018e. *Guidelines concerning statistics on international labour migration*. 20th International Conference of Labour Statisticians Geneva, 10-19 October 2018, ICLS/20/2018. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648922.pdf.
- 2018f. *Panama Declaration for the ILO Centenary: The future of work in the Americas*. 19th American Regional Meeting, Panama City, 2–5 October 2018. AM/RM.19/D.4. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_646373.pdf.
- 2019a. *ILO Centenary Declaration for the Future of Work*. Available at: https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf.
- 2019b. *Policy Brief: Key findings and recommendations from survey on labour migration from Ethiopia to GCC states and Lebanon*. Addis Ababa. Available at: https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---sro-addis_ababa/documents/publication/wcms_712236.pdf.
- 2019c. *Good Labour Practices (GLP) Guidelines in Thailand's seafood industry*. Available at: <https://shiptoshorerights.org/wp-content/uploads/good-labour-practices-english.pdf>.
- 2019d. *Universal social protection for human dignity, social justice and sustainable development, Committee of Experts on the Application of Conventions and Recommendations (CEACR)*, ILC 108th Session. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673680.pdf.
- 2019e. *The General Principles and Operational Guidelines for Fair Recruitment, and the Definition for Recruitment Fees and Related Costs*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf.
- 2019f. *Report of the Director-General Second Supplementary Report: Report of the Meeting of Experts on Cross-border Social Dialogue*, GB.337/INS/12/2. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_721421.pdf.
- 2019g. *Bali Declaration Implementation Progress Report 2017–2018*. Available at : https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/meetingdocument/wcms_725381.pdf.
- 2019h. *Resolutions and Conclusions Concerning Fair and Effective Labour Migration Governance*. Addis Ababa: ILO Regional Office for Africa. Available at : https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_671940.pdf.
- 2019i. *Extending access to social protection and portability of benefits to migrant workers and their families*. Abidjan: Regional Office for Africa. Available at: https://www.ilo.org/wcmsp5/groups/public/---africa/documents/publication/wcms_714335.pdf.

- 2020a. *A global comparative study on defining recruitment fees and related costs*. Interregional research on law, policy and practice. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_761729.pdf
- 2020b. *Recruitment fees and related costs: What migrant workers from Cambodia, the Lao People's Democratic Republic and Myanmar pay to work in Thailand*. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_740400.pdf
- 2020c. *Experiences of ASEAN migrant workers during COVID-19: Rights at work, migration and quarantine during the pandemic, and re-migration plans*. ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/briefingnote/wcms_746881.pdf.
- 2020d. *Social protection for migrant workers: A necessary response to the Covid-19 crisis*. ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_748979.pdf
- 2020e. *Protecting migrant workers during the COVID-19 pandemic*. Policy Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_743268.pdf.
- 2020f. *Issue paper on COVID-19 and fundamental principles and rights at work*. GOVERNANCE and FUNDAMENTALS. Available at: https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipec/documents/publication/wcms_757247.pdf
- 2020g. *The Migrant Pay Gap: Understanding wage differences between migrant workers and nationals*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_763803.pdf
- 2020h. *Seasonal Migrant Workers' Schemes: Rethinking Fundamental Principles and Mechanisms in light of COVID-19*. ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_745481.pdf
- 2020i. *COVID-19: Impact on migrant workers and country response in Malaysia*. Regional Office for Asia and the Pacific. Available from: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/briefingnote/wcms_741512.pdf
- 2020j. *Coherence of labour migration, employment, education and training policies in the ECOWAS subregion*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_748724.pdf.
- 2020k. *Interregional dialogues on migration involving countries in the Middle East and Africa*. Discussion Note for Policymakers. Available at: https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_736192.pdf.
- 2020l. *Ensuring fair recruitment during the COVID-19 pandemic*. ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_748839.pdf.
- 2020m. *The need for social dialogue in addressing the COVID-19 crisis*. ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/briefingnote/wcms_743640.pdf.
- 2020n. *Trade union Action to promote fair recruitment for migrant workers*. ILO Brief (April 2020). Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/briefingnote/wcms_740198.pdf
- 2020o. *Impact of COVID-19 on migrant workers in Lebanon and what employers can do about it*. Beirut. Available at: https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_741604.pdf

- 2021a. *ILO Global Estimates on International Migrant Workers: Results and Methodology*, 3rd edition.
 - 2021b. *Resolution concerning a global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient*. ILC.109/Resolution I, adopted by 17 June 2021. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_806092.pdf.
 - 2021c. *Protection wages of migrant workers in the Arab States: Discussion Note for Policy Makers* (15 June 2015). Available at: https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/briefingnote/wcms_803052.pdf
 - 2021d. *Temporary labour migration: Two studies on workers' perspectives and actions*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_816182.pdf
 - 2021e. *Inequalities and the World of Work, Report IV, International Labour Conference, 109th session, 2021*. Geneva. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_792123.pdf
 - 2021f. *Intervention Model: social protection to migrant workers in an irregular situation*. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_826719.pdf
 - 2021g. *Extending Social Protection to Migrant Workers, Refugees, and their Families: Guide for Policymakers and Practitioners*, Geneva. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_826684.pdf
 - 2021h. ILO. 2021. *Promising practices for fair recruitment. Vietnam – Revision of the Law on Contract-Based Overseas Workers*, ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_778824.pdf
 - 2021i. *Promising practices for Fair Recruitment. Code of Conduct in international supply chains by Responsible Business Alliance*, ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_778834.pdf.
 - 2021j. *Promising practices for fair recruitment. Mexico - Fair recruitment practice by recruitment agency adapted to COVID-19*. ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_778832.pdf
 - 2021k. *Promising practices for Fair Recruitment. Code of Conduct on the fair recruitment of Filipino migrant domestic workers in Hong Kong (China)*, ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_778833.pdf.
 - 2021l. *Promising practices for Fair Recruitment: Tunisia – Formation of a new body of inspectors for the recruitment industry*, ILO Brief. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/--migrant/documents/publication/wcms_778828.pdf
 - 2021m. *Piloting fair recruitment from Bangladesh to Qatar in the construction sector*. Available at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=197
 - 2021n. *ILO Monitor: COVID-19 and the world of work, 7th ed*. Available at: https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_767028.pdf.
 - Forthcoming. *Report on obstacles to and good practices on freedom of association and collective bargaining for migrant workers*
- IOE (International Organisation of Employers)- ILO. 2019. *Guidance Tool for Construction Companies in the Middle East* (2019). Available at: https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_734490.pdf

- IOE. 2020. *IOE Guidance on surviving COVID-19 and coming out strong*. Available at: emp.org/index.php?eID=dumpFile&t=f&f=146627&token=4e8749b067659f215a24581a1022c57ca83e24.
- . 2021. *Report on IOE Conference on COVID-19: What Employers Need to Prepare for Next*. Geneva. Available at: <https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=155289&token=dc2bf0d45753bd-77b8680a3e8a9171a27588c15c>.
- IOM (International Organization for Migration). 2008. *World Migration 2008: Managing global mobility in the evolving global economy*. Geneva. Available at: <https://publications.iom.int/books/world-migration-report-2008-managing-labour-mobility-evolving-global-economy>.
- . 2015a. *Costa Rica and Panama signed ground-breaking agreement to protect right of migrants*. Geneva. Available at: <https://www.iom.int/news/costa-rica-panama-sign-ground-breaking-agreement-protect-rights-migrants>.
- . 2015b. *Recruitment Monitoring and Migrant Welfare Assistance. What Works?* Geneva. Available at: https://www.iom.int/sites/default/files/migrated_files/What-We-Do/docs/Recruitment-Monitoring-Book.pdf.
- . 2017a. *Analysis: Flow monitoring surveys the human trafficking and other exploitative practices prevalence indication survey*. Geneva. Available at: https://migration.iom.int/docs/Analysis_Flow_Monitoring_and_Human_Trafficking_Surveys_in_the_Mediterranean_and_Beyond_14_June_2017.pdf.
- . 2017b. *Profil de gouvernance des migrations: Royaume du Maroc*. Geneva. Available from: <https://migrationdataportal.org/sites/default/files/2018-11/MGI%20Morocco%20FR.pdf>.
- . 2018. *Global Migration Indicators 2018*. Geneva. Available at: https://publications.iom.int/system/files/pdf/global_migration_indicators_2018.pdf?language=es.
- . 2019a. *Glossary on Migration*. International Migration Law, No. 34. Edited by Alice Sironi, Céline Bauloz and Milen Emmanuel. Geneva. Available at: https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf.
- . 2019b. *IOM Regional Strategy for Southern Africa 2019–2023*. Geneva. Available at: https://publications.iom.int/system/files/pdf/iom_regional_strategy_for_southern_africa.pdf.
- . 2020a. *Global Migration Indicators, 2018: Insights from the Global Migration Data Portal*. Geneva. Available at: <https://publications.iom.int/books/global-migration-indicators-2018>.
- . 2020b. *COVID-19 and rethinking the need for legal pathways to mobility: Taking human security seriously*. Edited by L.F. Freier. Geneva. Available at: <https://publications.iom.int/system/files/pdf/rethinking-the-need-for-legal.pdf>.
- . 2021. *Regional Study; Migratory Regularization programmes and Processes. Belize - Costa Rica - El Salvador - Guatemala - Honduras, Mexico - Panama - Dominican Republic*, Regional Office for North America, Central America and the Caribbean. Available at: https://portal.crmsv.org/sites/default/files/publicaciones/regional_study_ligero.pdf
- IPU (Inter-Parliamentary Union); ILO. 2019. *Eliminating Forced Labour*. Handbook for Parliamentarians, No. 30. Geneva. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_723507.pdf.
- ITUC (International Trade Union Confederation). 2020a. *Joint statement on COVID-19*. Brussels. Available at: <https://www.ioe-emp.org/news/details/1584954926-joint-statement-on-covid-19>.
- . 2020b. *COVID-19 and Migrant Workers' Rights*. Brussels. Available at: <https://www.ituc-csi.org/covid-19-and-migrant-workers>.
- Jones, K., Mudaliar, S. and Piper, N. 2021. *Locked down and in limbo: The global impact of COVID-19 on migrant worker rights and recruitment*, ILO Geneva. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_821985.pdf

- Kouba, Sabrina and Nilim Baruah. 2019. *Access to the labour market for admitted migrant workers in Asia and related corridors*. Geneva: ILO. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/documents/publication/wcms_669748.pdf.
- La Cimade, Emmaüs, Fédération de l'Entraide Protestante (FEP), Fédération nationale des association d'accueil et de réadaptation sociale (FNARS) and Secours Catholique. 2009. *Accueil des sans-papiers et interventions policières: Que dois-je faire?* Paris. Available at: <https://www.lacimade.org/publication/que-dois-je-faire-accueil-des-sans-papiers-et-interventions-policieres/>
- Lauterpacht, E., C. J. Greenwood and A. G. Oppenheimer (eds). *International Law Reports*, Vol. 104. Cambridge: Cambridge University Press.
- Lopez, M., Passel, J. and Cohn, D. 2021. *Key facts about the changing U.S. unauthorized immigrant population*, Pew Research Center.
- MERCOSUR (Mercado Común del Sur). 2014. *Libre circulación de trabajadores, ciudadanía regional y derechos humanos de migrantes*. Fórum Mundial de Direitos Humanos, December, Brasilia. Brasilia: Instituto de Políticas Públicas en Derechos Humanos. Available at: <https://www.ippdh.mercosur.int/wp-content/uploads/2014/11/Memoria-libre-circulaci%C3%B3n-de-trabajadores-y-ciudadn%C3%ADa-regional1.pdf>.
- Migrant Forum Asia. 2021. *Crying out for Justice. Wage theft against migrant workers during COVID 19. An Analysis report on Wage Theft Cases Documented by MFA members and Partners*. Available at: [MFA_Crying-Out-for-Justice_04.12.pdf](https://mfasia.org/Crying-Out-for-Justice_04.12.pdf) (mfasia.org)
- Migrant-Rights Organization. 2019. *Faulty Fixes: A Review of Recent Amnesties and Recommendations for Improvement*. [web article]. March 29, 2020. Riyadh: GCC. Available at: <https://www.migrant-rights.org/2019/03/faulty-fixes-a-review-of-recent-amnesties-and-recommendations-for-improvement/>.
- . 2020. *Huroob, Runaway, Absconding: Trapping migrants in extreme abuse*. Available at: <https://www.migrant-rights.org/2020/09/huroob-runaway-absconding-trapping-migrants-in-extreme-abuse/>
- Monras, Joan, Javier Vasquez Grenno and Ferran Elias. 2018. *Understanding the Effects of Legalizing Undocumented Immigrants*. CATO Institute Research Briefs in Economic Policy No. 121. Washington, D.C. Available at: <https://www.cato.org/publications/research-briefs-economic-policy/understanding-effects-legalizing-undocumented>.
- Napier-Moore, Rebecca. 2017. *Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries*, UN Women and ILO Regional Office for Asia and the Pacific. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_555974.pdf
- Ndlovu, P. 2018. *Exploring the effects of documentation on socio-economic experiences of Zimbabwean migrant workers in South Africa*. Johannesburg. University of Witwatersrand. Available at: <http://wired-space.wits.ac.za/bitstream/handle/10539/27237/Performance%20Ndlovu%20MA%20research%20paper.pdf?sequence=2&isAllowed=y>.
- OECD (Organisation for Economic Cooperation and Development). 2019. *International Migration Outlook 2019*. Paris. Available at: <https://www.oecd-ilibrary.org/sites/c3e35eec-en/index.html?itemId=/content/publication/c3e35eec-en>
- ; 2021. *International Migration Outlook 2021*. Paris. Available at: <https://www.oecd-ilibrary.org/sites/29f23e9d-en/index.html?itemId=/content/publication/29f23e9d-en>
- ; ILO. 2018. *How Immigrants Contribute to Developing Countries' Economies*. Paris and Geneva. Available at: oecd-ilibrary.org/docserver/9789264288737-en.pdf?expires=1627053982&id=id&accname=guest&-checksum=84EBD4936A271C271052F160C1FB0B3D.

- ; —; IOM; UNHCR. 2019. *2019 International Migration and Displacement Trends and Policies Report to the G20*. Paris. Available at: <https://www.oecd.org/migration/mig/G20-migration-and-displacement-trends-and-policies-report-2019.pdf>.
- Okunade, Samuel. 2021. *Africa Moves Towards Intracontinental Free Movement for Its Booming Population*. Washington D.C.: Migration Policy Institute. [Online article January 21, 2021] Available at: <https://www.migrationpolicy.org/article/africa-intracontinental-free-movement>.
- OSCE (Organization for Security and Co-operation in Europe). 2009. *Guide on Gender-sensitive Labour Migration Policies*. Vienna. Available at: <https://www.osce.org/files/f/documents/b/4/37228.pdf>.
- OSCE - ODIHR (Office for Democratic Institutions and Human Rights). 2021. Regularization of Migrants in an Irregular Situation in the OECE region. Recent Developments, Points for Discussion and Recommendations. Available at: <https://www.osce.org/files/f/documents/b/3/494251.pdf>.
- Oucho, John. 2015. "Migrants and Cities in New Partnerships in sub-Saharan Africa". In *World Migration Report 2015*. Edited by June J.H. Lee et al. Geneva: IOM. Available at: https://publications.iom.int/system/files/pdf/wmr2015_en.pdf.
- Passel, J. and Cohn, D. 2019. *Mexicans decline to less than half the U.S. unauthorized immigrant population for the first time*, Pew Research Center. Available at: <https://www.pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/>
- Paweenawat, Sasiwomon W. and Jessica Vechbanyongratana. 2019. "Will ASEAN mutual recognition arrangements induce skilled workers to move? A case study of the engineering labor market in Thailand." In *Skilled Labor Mobility and Migration: Challenges and Opportunities for the ASEAN Economic Community*. Edited by Elisabetta Gentile. Cheltenham: Elgar.
- Pew Research Center. 2019. *Europe's Unauthorized Immigrant Population Peaks in 2016, then Levels Off*. Online article from 13 Nov 2019. Washington, D.C. Available at: <https://www.pewresearch.org/global/2019/11/13/europes-unauthorized-immigrant-population-peaks-in-2016-then-levels-off/>.
- Phuket News. 2021. *Over 650,000 workers seek amnesty as government sounds warning*. February 15, 2021. Bangkok. Available at: <https://www.thepuketnews.com/over-650-000-workers-seek-amnesty-as-government-sounds-warning-79010.php>
- PICUM (Platform for International Cooperation on Undocumented Migration). 2020. *A Worker is a Worker: How to Ensure that Undocumented Migrant Workers Can Access Justice*. Brussels. Available at: <https://picum.org/wp-content/uploads/2020/03/A-Worker-is-a-Worker-full-doc.pdf>.
- Popova, Natalia and Francesco Panzica. 2019. *Tool for the Assessment of Bilateral Labour Migration Agreements Pilot-tested in the African region*. Available at: https://www.ilo.org/global/topics/labour-migration/publications/WCMS_722208/lang-en/index.htm.
- Provera, Mark. 2015. *The Criminalisation of Irregular Migration in the European Union*, Centre for European Policy Studies (CEPS) Papers, No. 80. Brussels: CEPS, Fiducia, European Commission. Available at: http://aei.pitt.edu/60856/1/Criminalisation_of_Irregular_Migration.pdf.
- Reuters News Agency. 2019. *Colombia plans temporary work permit for undocumented Venezuelans*. July 8, 2019, London: Voice of America. Available at: <https://www.voanews.com/americas/colombia-plans-temporary-work-permit-undocumented-venezuelans>
- SAARC (South Asian Association for Regional Cooperation). 2014. *Kathmandu Declaration*, Eighteenth SAARC Summit November 2014. Kathmandu. Available at: https://mea.gov.in/Uploads/PublicationDocs/24375_EIGHTEENTH_SUMMIT_DECLARATION.pdf
- Shivakoti, Richa, Henderson, Sophie and Withers, Matt. 2021. *The migration ban policy cycle: a comparative analysis of restrictions on the emigration of women domestic workers*, in Shivakoti et al, *Comparative Migration Studies*. Available at: <https://comparativemigrationstudies.springeropen.com/track/pdf/10.1186/s40878-021-00250-4.pdf>

- South Africa, Republic of (Government). 1997. *Act. No. 130 of 1993: Compensation for Occupational Injuries and Diseases; as amended by Compensation for Occupational Injuries and Diseases Amendment Act No. 61 of 1997*. Johannesburg. Available at: <https://www.labourguide.co.za/workshop/1547-compensation-for-injury-and-occupational-diseases-act-130-of-1993-coida/file>.
- Spencer, S. and Triandafyllidou, A. (eds). 2020. *Migrants with Irregular Status in Europe: Evolving Conceptual and Policy Challenges*, IMISCOE Research Series. Berlin: Springer. Available at: <https://link.springer.com/content/pdf/10.1007%2F978-3-030-34324-8.pdf>.
- United Nations (UN). 1948. *Universal Declaration of Human Rights*. New York. Available at: https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf.
- . 2014a. *Resolution 68/4. Declaration of the High level Dialogue on International Migration and Development*. A7RES/68/4. New York. Available at: <https://database.girlsrightsplatform.org/api/files/15826478132762xh3z1y195f.pdf>.
- . 2014b. *UN General Assembly Resolution 69/229. International Migration and Development*. New York. At: https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_69_229.pdf.
- . 2015. *Resolution 70/1 – Transforming our world: The 2030 Agenda for Sustainable Development*. New York. At: https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.
- . 2017. Issue Brief #6 Irregular migration and regular pathways, including decent work, labour mobility, recognition of skills and qualifications and other relevant measures. Available at: https://refugeesmigrants.un.org/sites/default/files/ts6_issues_brief_0.pdf
- . 2019. *Global Compact for Safe, Orderly and Regular Migration: Resolution No. 73/195*. Adopted by the General Assembly on 19 December 2018. New York. Available at: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195.
- UNAOC (UN Alliance of Civilizations) and Panos Europe. 2014. *Media-Friendly Glossary on Migration*. Edited by: Charles Autheman, Nihal Saad and Meenakshi Dalal. New York. Available at: https://www.unaoc.org/wp-content/uploads/UNAOC-Panos-Europe-Institute_Media-Friendly-Glossary-on-Migration.pdf.
- UN-CMW (UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families). 2009. *Report of the Special Rapporteur on the Human Rights of Migrants: The protection of children in the context of migration*. AG/64/217. Available at: <https://www.undocs.org/A/64/213>.
- . 2011. *General comment No. 1 on migrant domestic workers*. CMW/C/GC/1. Available at: <https://www.refworld.org/docid/4ed3553e2.html>.
- . 2013. *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families* (CMW/C/GC/2). New York. Available at: <https://undocs.org/CMW/C/GC/2>.
- . 2017a. *Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration*. CMW/c/GC/3 – CRC/c/GC/22. New York. Available at: <https://www.refworld.org/docid/5a1293a24.html>.
- . 2017b. *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*. CMW/C/GC/4 – CRC/C/GC/23. Available at: <https://www.refworld.org/docid/5a12942a2b.html>
- . 2020. *Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants*. Available at: <https://www.ohchr.org/Documents/Issues/Migration/CMWSPMJointGuidanceNoteCOVID-19Migrants.pdf>.

- UNDESA (United Nations Department of Economic and Social Affairs). 2015a. *International Migration Report*. New York. Available at: https://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf.
- . 2015b. *Transforming our world: The 2030 Agenda for Sustainable Development*. Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1. New York. Available at: https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.
- . 2020. *International Migration 2020. Highlights*. Available at: https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2020_international_migration_highlights.pdf
- UNDP (United Nations Development Programme). 2009. *Human Development Report – Overcoming barriers: human mobility and development*. New York. Available at: http://hdr.undp.org/sites/default/files/reports/269/hdr_2009_en_complete.pdf.
- . 2019. *Scaling Fences: Voices of Irregular African Migrants to Europe*. New York. Available at: <https://www.africa.undp.org/content/rba/en/home/library/reports/ScalingFences.html>.
- . UNODC. 2020. *Ensuring Access to Justice in the Context of COVID-19*. Guidance Note. New York. Available at: <https://www.undp.org/publications/ensuring-access-justice-context-covid-19#modal-publication-download>.
- UN-ESC. (UN. Economic and Social Council). 1987. *The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*. E/CN.4/1987/17. New York. Available at: <https://www.refworld.org/pdfid/48abd5790.pdf>.
- . 2008. *General Comment No. 19 on the right to social security (Article 9)*. Available at: <https://www.refworld.org/docid/47b17b5b39c.html>.
- UNESCAP (UN Economic and Social Commission for Asia and the Pacific). 2015. *Asia-Pacific Migration Report 2015: Migrants' Contributions to Development*. New York. Available at: <https://www.unescap.org/sites/default/d8files/knowledge-products/SDD%20AP%20Migration%20Report%20report%20v6-1-E.pdf>.
- UNHCR (UN High Commissioner for Refugees). 2018. *Global Compact on Refugees*. GAOR 73rd, Supp. No. 12, A/73/12. Geneva. Available at: <https://www.unhcr.org/the-global-compact-on-refugees.html>.
- . 2021. *For displaced Venezuelans, regularization is the key to building productive lives*, *Stories*, 23 June. Available at: <https://www.unhcr.org/news/stories/2021/6/60d2ed814/displaced-venezuelans-regularization-key-building-productive-lives.html>
- UN-HRC (UN Human Rights Council). 2009. *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: Report of the Working Group on Arbitrary Detention** UN Doc. A/HRC/10/21. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/10/21.
- . 2012. *Report of the Special Rapporteur on the human rights of migrants*, A/HRC/20/24, New York. Available at: [ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-24_en.pdf).
- . 2013. *Report of the Special Rapporteur on the human rights of migrants, François Crépeau Regional study: management of the external borders of the European Union and its impact on the human rights of migrants*. A/HRC/23/46. New York. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/46.
- . 2016. *Report of the Special Rapporteur on the human rights of migrants on the impact of bilateral and multilateral trade agreements on the human rights of migrants*. A/HRC/32/40. New York. Available at: <https://undocs.org/A/HRC/32/40>.

- . 2017. *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*. A/HRC/35/25. New York. Available at: <https://undocs.org/A/HRC/35/25>.
 - . 2018. *Report of the Working Group on Arbitrary Detention: (Revised) No. 5 Deprivation of Liberty of Migrants*. A/HRC/39/45. New York. Available at: <https://undocs.org/A/HRC/39/45>.
 - . 2019. *The impact of migration on migrant women and girls: a gender perspective Report of the Special Rapporteur on the human rights of migrants*. A/HRC/41/38. New York. Available at: <https://undocs.org/A/HRC/41/38>.
 - . 2020. *Resolution adopted by the Human Rights Council on 16 July 2020 No. 44/4. Trafficking in persons, especially women and children: strengthening human rights through enhanced protection, support and empowerment of victims of trafficking, especially women and children*. New York. Available from: <https://undocs.org/en/A/HRC/RES/44/4>.
 - . 2021. *Report on means to address the human rights impact of pushbacks of migrants on land and at sea: Report of the Special Rapporteur on the Human Rights of Migrants*, A/HRC/47/30. New York. Available at: <https://digitallibrary.un.org/record/3928693?ln=en>.
- UNMN (United Nations Network on Migration). 2020. Official Statement. *Forced Returns of Migrants Must be Suspended in Times of COVID-19*, 13 May
- . 2021. Guidance Note. Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability (July 2021). Available at: https://migrationnetwork.un.org/sites/default/files/docs/guidance_note-regular_pathways_for_admission_and_stay_for_migrants_in_situations_of_vulnerability_final.pdf.
 - . 2022. Guidance on bilateral labour migration agreements. Available at: [Global Guidance on Bilateral Labour Migration Agreements | United Nations Network on Migration](#)
- UN-ODC (United Nations. Office on Drugs and Crime) 2020. *Interlinkages between Trafficking in Persons and Marriage*. Vienna. Issue Paper. Available at: https://www.unodc.org/documents/human-trafficking/2020/UNODC_Interlinkages_Trafficking_in_Persons_and_Marriage.pdf.
- UN-OHCHR (Office of the High Commissioner of Human Rights). 1976. *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. New York. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>.
- . 1990. *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Adopted by General Assembly resolution 45/158 of 18 December 1990. New York. Available at: <https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx>.
 - . 2000. *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. Res. 55/25. New York. Available at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>— . 2018. *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations*. New York: UN-OHCHR and the Global Migration Group. Available at: <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>.
 - . 2020. *COVID-19 and the Human Rights of Migrants: Guidance*. New York. Available from: https://www.ohchr.org/Documents/Issues/Migration/OHCHRGuidance_COVID19_Migrants.pdf.
- ; CEDAW (Committee on the Elimination of Discrimination Against Women). 2009. *General recommendation No. 26 on women migrant workers*. C/2009/WP.1/R. New York. Available at: https://www2.ohchr.org/english/bodies/cedaw/docs/GR_26_on_women_migrant_workers_en.pdf.
- ;— . 2010. *General recommendation No. 28 on the core obligations of States parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*. CEDAW/C/GC/28. New York. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/472/60/PDF/G1047260.pdf?OpenElement>.

- UN Women. 2017a. *Making Gender-responsive Migration Laws*, Policy Brief No. 4. New York. Available at: <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2017/Policy-brief-Making-gender-responsive-migration-laws-en.pdf>
- . 2017b. *Women migrant workers in the ASEAN Economic Community*. New York. Available at: <https://asiapacific.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2017/06/aec-women-migration-study.pdf?la=en&vs=4122>.
- . 2020. *Addressing the impacts of the COVID-19 pandemic on women migrant workers*. New York.
- United States, Government. Department of Labour. n.d. *Establishment of Interagency Working Group for the Consistent Enforcement of Federal Labor Employment and Immigration Laws*. Washington, D.C. Available at: <https://www.dol.gov/general/immigration/interagency-working-group>.
- van Panhuys, C., S. Kazi-Aoul and G. Binette. 2017. *Migrant access to social protection under bilateral labour agreements: A review of 120 countries and nine bilateral arrangements*, ESS Paper No. 57. Geneva: ILO. Labour Migration Branch. Available at https://labordoc.ilo.org/discovery/delivery/41ILO_INST:41ILO_V2/1246399820002676?lang=en.
- Verité. 2011. "Tool 2: Sample Benchmarks of Good Practice in Recruitment and Hiring", in *Fair Hiring Toolkit for Suppliers*. Amherst, MA. Available at: https://ecommons.cornell.edu/bitstream/handle/1813/101647/V_sample_benchmarks_of_good_practice_in_recruitment_and_hiring.pdf?sequence=1&isAllowed=y.
- WHO (World Health Organization). 2021. *Refugees and migrants in times of COVID-19: mapping trends of public health and migration policies and practices*. Global Evidence Review on Health and Migration Series. Geneva. Available at: <https://www.who.int/publications/i/item/9789240028906>.
- Wickramasekara, Piyasiri. 2015. *Bilateral agreements and memoranda of understanding on migration of low skilled workers: A review*. Geneva: ILO. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_385582.pdf.
- ; L.K. Ruhunage. 2018. *Good practices and provisions in multilateral and bilateral labour agreements and memoranda of understanding*. Geneva: ILO and the Swiss Agency for Development and Cooperation. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_683740.pdf.
- ; —. 2019. *Assessment guide for bilateral agreements and memoranda of understanding on labour migration, with a special focus on Bangladesh*. Geneva: ILO Country Office for Bangladesh and Swiss Agency for Development and Cooperation. Available at: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-dhaka/documents/publication/wcms_683744.pdf.
- WIEGO (Women in Informal Employment: Globalizing and Organizing); IDWF. 2021. *Ten Years Since Winning C189: Domestic Workers Become an Unstoppable Movement*. Manchester. Available at: https://www.wiego.org/sites/default/files/resources/file/C189%20Ten%20Years%20Since%20Winning%20C189%20for%20web_0.pdf.
- Wintermayr, I. and Weatherburn, A. 2021. Access to protection and remedy for victims of human trafficking for the purpose of labour exploitation in Belgium and the Netherlands, ILO. Available at: https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---ilo-brussels/documents/publication/wcms_783811.pdf.
- Wright, C., Dimitria Groutsis and Diane van den Broek. 2017. "Employer-sponsored temporary labour migration schemes in Australia, Canada and Sweden: Enhancing efficiency, compromising fairness?" In *Journal of Ethnic and Migration Studies*. DOI:10.1080/1369183X.2016.1251834.

► Annex I

Terms and definitions¹²⁹

The terms found in the text and application of international labour standards, and in the outcomes of meetings published by decision of the Governing Body inform the meaning of terms used in this Compendium. The broader meaning of several key terms is set out in Part 1, followed by Part II which is a select list of terms and brief definitions drawn from the *Media-Friendly Glossary on Migration* (UNAOC and Panos Europe Institute 2014). This glossary was drafted with inputs from eight international and civil society organizations, including the ILO.

Part 1 – Term definitions for the purpose of this Compendium

Migrant workers

The references in this Compendium to migrant workers are consistent with the meaning of the relevant terms used in ILO migrant worker instruments and include, in particular, all migrant workers in irregular situations. Convention No. 143 refers to the obligation of ratifying States to undertake to respect the “basic human rights of all migrant workers”, including those in an irregular situation.¹³⁰ In relation to promoting “respect for human rights of migrant workers, irrespective of their migrant status”, the UN uses the term “migrant workers” to refer to “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (ICRMW, Article 2(1)).¹³¹ For specific provisions involving equality of opportunity and treatment with nationals and other rights, the ILO instruments use the term “migrant worker” and the largely similar term “migrant for employment” to refer only to migrants in regular situations.¹³²

“International labour migration” and “irregular situation”

The term “international labour migration” is used in this Compendium to refer to the cross-border movement of persons from one geographical location to another in order to find gainful employment (UNAOC and Panos Europe 2014, 22).¹³³ The term “irregular situations” for present purposes refers generally to situations of international labour migration that do not comply with the conditions for entry, stay or engagement in remunerated activity in the State of employment, pursuant to the law of that State

129 In-text citations in parentheses in this Annex can be found in the Compendium’s Bibliography.

130 Convention 143, Article 1. Articles 1-9 of Convention 143 aim to provide a minimum level of protection to all migrant workers, including those in irregular situations, and to address the problems arising out of irregular migration and unlawful employment of migrants.

131 See also *General principles and operational guidelines for fair recruitment*, sec. 2, (ILO 2019e), in which “migrant worker means a person who migrates or has migrated to a country of which he or she is not a national with a view to being employed otherwise than on his or her own account”.

132 See Convention 97) Article 11(1), which defines “migrant for employment” as “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment”; and Convention 143, Article 11(1), which refers only to migrants in a regular situations provides that the term “migrant worker” means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes a person regularly admitted as a migrant worker”. Article 11(2) enlarges the categories in the list of exclusions in Convention 97, Article 11(2).

133 This is the *Media-Friendly Glossary on Migration* (UNAOC and Panos 2014) which was drafted with inputs from eight international and civil society organizations, including the ILO. This is the source of Part 2 of Annex I.

and international agreements to which that State is a party.¹³⁴ Migrant workers can be considered to be in an irregular situation from the time of unauthorized entry into a transit or destination country, or they can acquire irregular status after lawful entry. A migrant with regular status in a country may stay in the country after expiration of their work or other permit or may leave the employment of an unscrupulous employer to whom the work permit was tied. In other situations, migrants whose entry is subject to restrictions not to work or only to work in a specific occupation may later engage in unauthorized remunerative activity, or an asylum-seeker who is denied asylum may take up unauthorized work and fail to observe a deportation order. Migrants who are smuggled or trafficked across an international border have, in most cases, effectuated an unauthorized entry and thus are in irregular situations.

“Recruitment” and “labour recruiter”

The term “recruitment” is used within the meaning given to it in international labour standards and subsequent guidance: (i) the engagement of a person in one territory on behalf of an employer in another territory, or (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants”.¹³⁵ Under the *General Principles and Operational Guidelines for Fair Recruitment, and the Definition of Recruitment Fees and Related Costs* (ILO 2019e), the term covers activities in contexts of countries of origin, transit and destination and includes “the advertising, information dissemination, selection, transport, placement into employment and – for migrant workers – return to the country of origin where applicable. This applies to both jobseekers and those in an employment relationship” (ibid.).

The term “labour recruiter” refers to both public employment services and to private employment agencies and all other intermediaries or subagents that offer labour recruitment and placement services. Labour recruiters can take many forms, whether for profit or non-profit, or operating within or outside legal and regulatory frameworks.¹³⁶

Third-country national

According to the EU a third-country national is “any person who is not a citizen of the European Union within the meaning of Article 20(1) of TFEU and who is not a person enjoying the European Union right to free movement”, as defined in Article 2(5) of the Regulation (EU) 2016/399 (Schengen Borders Code).

According to the UNHCR, third-country nationals are individuals who are generally not refugees but who are “stranded” in a country that is not their own – neither abiding in their home country nor a national of the host country. Some third-country nationals may require refugee protection and are in a situation where they are not able to return to their country of origin, which is unable or unwilling to protect them from persecution or other serious harm.

In the context of the international coverage of this Compendium, a third-country national is considered to be an individual outside of their home country, and not a citizen of their host country, a migrant, for the purposes of this Compendium. When found in an irregular situation, they often lack basic protections and face compounded difficulties to access employment, housing, health care or other basic protections.

¹³⁴ See also the UN Migrant Workers Convention, Article 5(b) (UN-OCHR 1990).

¹³⁵ Recommendation 86, para. 1(b).

¹³⁶ Recommendation 86, para. 1(b).

Part 2 – General terms related to migration¹³⁷

Children in an irregular migration situation: Children in an irregular migration situation are children whose own migration or residence status is irregular; they are also termed “undocumented” children. Children whose own status is regular but whose parent(s) or caregiver(s) are undocumented are often affected by the irregular migration status of their parent(s) or caregiver(s).

Country of destination: Either “country of destination” or “destination country”, is the most neutral and accurate term to refer to the country in which a person intends to conclude their journey. These are preferable to “host country” which connotes that migrants are merely guests and that their stay is dependent on the invitation and at the expense of hosts. “Host country” also feeds the perception that migrants take advantage of benefits and services, but do not make contributions.

Country of origin: Country of origin” is a neutral and accurate term to refer to the country from where a migrant, asylum-seeker or refugee originated. It is preferable to “sending country” or “home country”.

Debt bondage: Debt bondage is the situation that arises when a person pledges their own personal services, or the services of a person under their control, as a method to secure a debt, and when the value of those services pledged (as reasonably assessed) is either not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined. Debt bondage creates a vulnerability for abuse, for example: deception about the nature and conditions of work, retention of passports, deposits and illegal wage deductions, extortionate recruitment fees, threats to workers who want to leave their employers, and, in some instances, physical violence.

Decent work: Decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men. “Decent work” is a key element to achieving a fair globalization and poverty reduction. To achieve “decent work” requires job creation, rights at work, social protection and social dialogue, with gender equality as a cross-cutting objective.

Deportation: Deportation is the act of expelling or removing a foreigner from a country, either to the country of origin or to a third country. It can be the outcome of immigration enforcement. According to human rights, refugee law and international humanitarian law, no deportation should take place where it will likely result in violations of the deportee’s human rights, persecution or where an asylum-seeker would not receive the protection owed by the destination country. Therefore, migrants should always have access to legal representation and opportunities to appeal their deportation with suspensive effect.

Forced and voluntary migration: Forced migration describes an involuntary type of migration where an element of coercion exists. Examples of this type of coercion could include environmental disasters, chemical or nuclear disasters, famine, trafficking, war, conflict, human rights violations etc. Voluntary migration describes when people move of their own free will.

Free movement: “Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country.” Universal Declaration of Human Rights, 1948, Article 13. While free movement is a fundamental right under the Universal Declaration of Human Rights, and it puts no restriction on whom these rights apply, it is important to note that the laws or constitution of specific states might restrict this right in the case of migrants who are not regular residents.

¹³⁷ Part 2 is taken from the *Media-Friendly Glossary on Migration* (UNAOC and Panos Europe Institute 2014).

Irregular migration: Irregular migration is a cross-border movement that takes place outside the regulatory norms of the countries of origin, transit and destination. From the perspective of the country of destination it is entry, stay or work in a country without the necessary authorization or documents required under immigration regulations. From the perspective of the country of origin, the irregularity is, for example, seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country.

Migration corridor: A migration corridor is the migratory pathway between two different countries whereby individuals born in or holding the nationality of a certain country move to another country.

Recruitment fees and related costs: the terms recruitment fees or related costs refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection. The terms have been further defined by the ILO Tripartite Meeting in 2019 in the ILO Guiding Principles and Operational Guidelines on Fair Recruitment, and the Definition of Recruitment Fees and related Costs (2019). See also Part 4.

Trafficking in persons. The issue of trafficking is closely related to the irregular entry or stay in foreign countries, and one of the the most extreme forms of irregular migration. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), supplementing the United Nations Convention against Transnational Organized Crime (the so-called Palermo Protocol) defines trafficking in persons as (a) “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”. (b) “The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;” (c) “The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;” (d) “Child” shall mean any person under eighteen years of age”.

Undocumented migrant worker: An undocumented migrant worker is someone who is engaged in employment without authorization or without authorization to do the specific work they are engaged in (i.e., they are allowed to work only in a particular sector, etc.). Authorization to work is often linked to a single employer and dependent on the employer making the application and/ or submitting various documents and a fee. Under these conditions, migrant workers are vulnerable to losing their status or working irregularly in poor conditions, with the promise that the employer will regularize their status or under the false pretence that they have. See also Part 1.

Migrant worker in an irregular situation - Illegal migrant: The term “illegal migrant” should never be used. As any other person, migrants are not “illegal”. They are in an “irregular” or “undocumented” situation. The term “illegal” is not accurate; it is misleading, contributes to negative stereotyping and criminalizes migrants. Irregular entry and stay are administrative offences, not criminal offences; they involve no crimes against persons, property or national security, as noted by the United Nations Special Rapporteur on the Human Rights of Migrants. In 1975 the UN General Assembly adopted a resolution requesting the United Nations organs and the specialized agencies concerned to utilize in all official documents the terms “non-documented or irregular migrant workers” to define those workers that irregularly enter and/or surreptitiously enter another country to obtain work. See also Part 1.

► Annex II

International and regional law and policy¹³⁸

International legal instruments

Annex II examines two forms of international, regional and bilateral levels of cooperation:

- legally binding instruments and other obligations whose provisions reflect internationally agreed standards for law and practice; and
- international policy instruments and other non-binding commitments.

These reference sources offer guidance to States and non-state actors in their national efforts and cross-border cooperation. Some sources of good practice are mentioned here in general terms, with more specific content of relevant provisions detailed throughout the rest of the Compendium.

ILO instruments

Throughout its history, ILO standard setting has been concerned with the protection of migrant workers, starting with the very first two ILO Recommendations¹³⁹, adopted in 1919. A broad range of labour instruments of both specific and general application provide key normative foundations for addressing irregular labour migration and protecting the rights of migrant workers, whether or not they are in a regular situation. These standards can be grouped as follows: (i) instruments specific to migrant workers; ii) instruments concerning fundamental rights at work or governance issues; iii) instruments that contain provisions on migrant workers; and (iv) instruments of general application that are of particular relevance to the situation of migrant workers.

The ILO instruments specific to ensuring the rights of migrant workers are:

- Migration for Employment Convention (Revised), 1949 (No. 97) and Migration for Employment Recommendation (Revised), 1949 (No. 86)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Migrant Workers Recommendation, 1975 (No. 151)

They cover the entire labour migration process in countries of origin, destination and transit. Importantly, the instruments do not affect in any way the right of Member States to determine which non-nationals may enter and remain in their territories. It is left to each State to determine the manner in which it organizes or refuses the potential entry of migrant workers. Notwithstanding this, they provide guidance on how this can best be done.

Convention No. 97 and Recommendation 86 were adopted in a post-World War II context in which ILO constituents wished to encourage migration while also giving the utmost possible protection to migrant workers. Although applying specifically to migrant workers lawfully admitted to the country of employment, the instruments do contain some provisions that help address irregular migration for employment indirectly. More specifically, Convention No. 97 calls for an adequate and free service to assist migrants for employment, including accurate information,¹⁴⁰ and requires ratifying States to take

¹³⁸ In-text citations in parentheses in this Annex can be found in the Compendium's Bibliography.

¹³⁹ Unemployment Recommendation, 1919 (No. 1) and Reciprocity of Treatment recommendation, 1919 (No. 2).

¹⁴⁰ Convention 97, Article 2.

all appropriate steps against misleading information relating to emigration and immigration.¹⁴¹ The 1949 instruments also provide the foundation for principles for fair recruitment by employment services, and for no costs on return to migrant workers (and their families) in case of loss of employment in the country of destination for no fault of their own.¹⁴²

The Annexes to Convention No. 97 specifically provide that any person promoting irregular migration shall be subject to appropriate penalties.¹⁴³ Accurate information on migration risks and opportunities, fair recruitment and protection against loss of employment are key elements in the context of a strategy to prevent irregular migration for employment and protect potential migrant workers. A model bilateral agreement annexed to Recommendation No. 86 also contains some provisions pertinent to migrants in an irregular situation on such matters as misleading propaganda, information and assistance, recruitment, contracts and changes of employment.¹⁴⁴ The Model Agreement further prohibits compulsory return for refugees and displaced persons or migrants who do not wish to return for political reasons to their country of origin (Recommendation No. 86, Annex, Article 25(1)).

In 1975, about twenty-five years later, the migration landscape had changed and further guidance, including through binding instruments, was needed to deal with particular concerns relating to an increase in irregular labour migration and the abusive conditions of migrant workers in an irregular situation. The focus was on managing migration flows, in particular eliminating irregular migration and suppressing the activities of organizers of “clandestine movements” of migrants and their accomplices. Migration was also described as being “fundamental to the aims of the ILO, because it concerned workers exposed to serious difficulties” (ILO 2016a). Convention No. 143 and Recommendation No. 151 were adopted with the aim to supplement Convention No. 97 and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Convention No. 143, and in particular Part I on migration in abusive conditions, is one of the first attempts of the international community to address the problems arising out of irregular migration and the unlawful employment of migrants. Convention No. 143 requires ILO Member States to take the appropriate measures to systematically detect whether there depart from, pass through or arrive on their territories, any movements of migrants for employment in which these migrants are subjected during their journey, on arrival, or during their residence and employment to abusive conditions (Article 2(1)). The terms “abusive conditions” refer to situations which are prohibited by the relevant international instruments, bilateral agreements or by national laws or regulations. The Convention is aimed primarily against the organized movement of migrant workers by labour traffickers, but also applies to irregular migration by individuals acting on their own or in small groups. It does not deal with irregular migration for employment in conditions that are not abusive.

States must then adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members [...] to suppress these irregular movements of migrants, and against the organizers of such movements, in order to prevent and to eliminate abuses prohibited by international instruments or agreements or national laws and regulations (Article 3). The Convention offers a number of means of action to achieve these objectives including: (a) establish systematic contact and exchange of information with other States (Articles 3 and 4); (b) consult representative organizations of employers and workers (Articles 2, 4 and 7); (c) prosecute authors of labour trafficking whatever the country from which they exercise their activities (Article 5); and (d) lastly, define and apply sanctions (article 6).

At the same time, the Convention recognizes that irregular migration is a significant global and complex issue involving important human rights challenges. This is reflected in a number of provisions intended

¹⁴¹ Convention 97, Article 3.

¹⁴² Convention 97, Annex I and II, Article 4 (public employment) and Annex II, Article 9 (return).

¹⁴³ Convention 97, Annex I, Article 8 and Annex II, Article 13.

¹⁴⁴ Recommendation 86, Annex, ‘Model Agreement on Temporary and permanent Migration for Employment, including Migration of Refugees and Displaced Persons’, Articles 2, 6, 8, 22, and 23.

to ensure a basic level of protection to migrant workers in an irregular situation. These include provisions regarding basic human rights of all workers (Article 1), rights arising out of past employment for migrants in an irregular situation, and rights related to expulsion (Article 9). Part I also provides for certain protective measures for migrant workers who have lost their employment (Article 8).

The principle of respect for the “basic human rights of all migrant workers” (Convention No. 143, Article 1), has been understood by the ILO supervisory bodies as applying to all migrant workers, irrespective of their migration status. The term refers to the fundamental human rights as contained in international human rights instruments adopted by the United Nations, some of which include the fundamental rights of workers. These fundamental rights at work are embodied in the eight fundamental ILO Conventions and reaffirmed in the ILO Declaration on the Fundamental Principles and Rights at Work, 1998. The intention of Article 1 is to affirm, without challenging the right of States to regulate migration flows, the right of migrant workers to be protected, whether or not they are in a regular situation, or with or without documents. This overarching principle set out in Convention No. 143 is accompanied by specific principles relevant to good practice on irregular labour migration.¹⁴⁵

The ILO instruments on fundamental principles and rights at work and the Declaration on Fundamental Principles and Rights at Work¹⁴⁶ provide further guidance on the rights of migrant workers in an irregular situation and, in particular, abusive and exploitative situations. As instruments of general application, these instruments cover all workers irrespective of nationality, citizenship or immigration status. Their provisions concern States’ obligations, regardless of whether they have ratified the instruments concerned, to respect, promote and realize the fundamental principles and rights at work of all workers to 1) freedom of association and the effective recognition of the right to collective bargaining; 2) the elimination of forced or compulsory labour; 3) the abolition of child labour; and 4) the elimination of discrimination in respect of employment and occupation.¹⁴⁷

The 2014 Protocol (P029) to the Forced Labour Convention, 1930 (No. 29) and its accompanying Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203) complement the aims of the forced labour and migrant-specific instruments and provide guidance on suppression of movements of workers through irregular migration channels and of trafficking in persons. The measures for the prevention of forced and compulsory labour under the Protocol include “protecting, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process” and providing victims access to remedy and rehabilitation.¹⁴⁸

¹⁴⁵ See Convention 143, Part I, Articles 1–9.

¹⁴⁶ ILO Declaration on Fundamental Principles and Rights at Work (ILO 2010a). The Preamble states that “the ILO should give special attention to the problems of persons with special social needs, particularly migrant workers”.

¹⁴⁷ The ILO Committee on the Application of Conventions and Recommendations (CEACR) has addressed irregular migration, including in their manifestations of trafficking and forced labour of migrant workers, quite extensively under the ILO forced labour and child labour standards, in particular, Convention 29 and to some extent under Convention 182 (universally ratified).

¹⁴⁸ Preventive measures include targeted awareness raising campaigns on fraudulent or abusive recruitment or employment practices; coordinated inter-agency efforts among States; and elimination of such practices as the charging of recruitment fees to workers. Recommendation 203, paras 4(b), 4(i), 8.

The fundamental principles and rights recognized in eight fundamental Conventions and one Protocol apply to all migrant workers, irrespective of status

- The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Forced Labour Convention, 1930 (No. 29)
- Protocol of 2014 to the Forced Labour Convention, 1930
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)
- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

For the universal application of these fundamental instruments to all persons including migrant workers in an irregular situation, see ILO 2012b.

Other international labour standards address the rights of migrant workers in specific ways, or apply provisions to the situation of all workers and articulate specific measures for the equal enjoyment of such protections in the case of migrant workers, including those in an irregular situation.¹⁴⁹ Some standards focus on sectors where migrant workers are concentrated, such as agriculture, construction, domestic work, health care, hospitality, services, and mining,¹⁵⁰ or on subjects such as equality of treatment in social security;¹⁵¹ the informal economy;¹⁵² private employment agencies;¹⁵³ terms and conditions of work, including wages and occupational safety and health,¹⁵⁴ violence and harassment at work,¹⁵⁵ HIV and AIDS¹⁵⁶ and labour governance.¹⁵⁷

Notably, ratifying States are to take measures to protect migrant workers and prevent abuses in the recruitment process under the Private Employment Agencies Convention, 1997 (No. 181).¹⁵⁸ The Domestic Workers Convention, 2011 (No. 189) provides that, in recruiting a migrant domestic worker, national laws and regulations must require a written job offer or contract of employment enforceable in the country of employment and provide for certain terms and conditions of employment and repatriation.¹⁵⁹ The

149 For a review of comments of ILO supervisory processes in more than 50 cases, see Andrees et al. 2015.

150 For example, Domestic Workers Convention, 2011 (No. 189); Safety and Health in Agriculture Convention, 2001 (No. 184); Plantations Convention, 1958 (No. 110); Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172); Occupational Health Services Convention, 1985 (No. 161), Nursing Personnel Convention, 1977 (No. 149), and Safety and Health in Construction Convention, 1988 (No. 167).

151 The Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Maintenance of Social Security Rights Convention, 1982 (No. 157); Convention on Social Security (Minimum Standards), 1957 (No. 102). See ILO 2016a, para. 303 (considering Article 9(1) of Convention 143 to refer to equality of treatment with lawfully employed migrants in a regular situation, not with nationals).

152 Transition from the Informal to the Formal Economy Recommendation, 2016 (No. 204).

153 Private Employment Agencies Convention, 1997 (No. 181), and Employment Service Convention, 1948 (No. 88). Convention 181 emphasizes “the importance of including private agencies in the protection of workers in the trans-boundary mediation of labour”, para. 366. See also ILO 2010b.

154 Protection of Wages Convention, 1949 (No. 95); Minimum Wage Fixing Convention, 1970 (No. 131); and Occupational Safety and Health Convention, 1981 (No. 155).

155 Violence and Harassment Convention, 2019 No. 190 and its accompanying Recommendation 206.

156 Recommendation concerning HIV and Aids and the world of work, 2010 (No. 200).

157 Labour Inspection Convention, 1947 (No. 81); Employment Policy Convention, 1964 (No. 122).

158 Convention 181, Article 8(1).

159 Convention 189, Article 8.

Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205) recognizes that migrants, refugees and other persons forcibly displaced across borders are among the population groups and individuals most vulnerable to situations of crisis (para. 7(h)). Ratifying and implementing Convention Nos 97 and 143 and their accompanying Recommendations Nos 86 and 151, as well as other Conventions and Recommendations of key importance to migrant workers in an irregular situation are therefore important steps in the context of an overall strategy to ensure effective labour migration governance and protect the rights of all migrant workers, regardless of status. Table 2 provides an overview of the ILO standards that are most relevant in this regard, and some of which have received high rates of ratification.

Table 3 presents more specifically some of the issues that are most critical for migrant workers in an irregular situation and that are addressed by international labour standards.

► **Table 2. ILO Conventions and Recommendations directly or indirectly relevant to migrant workers in irregular or abusive situations**

Specific topical category	Convention or Recommendation, Protocol or Declaration
Migrant workers	<ul style="list-style-type: none"> ► Migration for Employment Convention (Revised), 1949 (No. 97) ► Migration for Employment Recommendation (Revised), 1949 (No. 86) ► Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) ► Migrant Workers Recommendation, 1975 (No. 151)
Instruments with specific provisions on migrant workers	<ul style="list-style-type: none"> ► Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) ► Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121) ► Social Protection Floors Recommendation, 2012 (No. 202) ► Private Employment Agencies Convention 1997, (No. 181) ► Private Employment Agencies Recommendation 1997, (No. 188) ► Domestic Workers Convention, 2011 (No. 189) ► Domestic Workers Recommendation 2011, (No. 201) ► Violence and Harassment Convention 2019, (No. 190) ► Violence and Harassment Recommendation (No. 206), 2019 ► Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204) ► Decent Work and Employment for Peace and Resilience Recommendation, 2017 (No. 205)
Fundamental principles and rights at work	<ul style="list-style-type: none"> ► Forced Labour Convention, 1930 (No. 29) ► Protocol of 2014 to the Forced Labour Convention, 1930 ► Abolition of Forced Labour Convention, 1957 (No. 105) ► Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) ► Right to Organise and Collective Bargaining Convention, 1949 (No. 98) ► Minimum Age Convention, 1973 (No. 138) ► Worst Forms of Child Labour Convention, 1999 (No. 182) ► Discrimination (Employment and Occupation) Convention, 1958 (No. 111) ► Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111) ► ILO Declaration on Fundamental Principles and Rights at Work and its Follow up, 1998
Governance instruments	<ul style="list-style-type: none"> ► Labour Inspection Convention, 1947 (No. 81) ► Labour Inspection (Agriculture) Convention, 1969 (No. 129) ► Employment Policy Convention, 1964 (No. 122) ► Employment Policy (Supplementary Provisions) Recommendation, 1984 (No.169) ► Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
Instruments of general application	<ul style="list-style-type: none"> ► Protection of Wages Convention, 1949 (No. 95) ► Minimum Wage Fixing Convention, 1970 (No. 131) ► Plantations Convention, 1958 (No. 110) ► Maternity Protection Convention, 2000 (No. 183) ► Work in Fishing Convention, 2007 (No. 188) ► Occupational Safety and Health Convention, 1981 (No. 155) ► Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) ► Safety and Health in Construction Convention, 1988 (No. 167)

► **Table 3. Critical issues for migrant workers in irregular situations addressed by ILO standards**

Critical issue	Protection and rights	ILO standard
Fundamental rights	<ul style="list-style-type: none"> ► Respect basic human rights of all migrant workers ► Freedom from forced labour and child labour, non-discrimination in employment and occupation, freedom of association and effective recognition of collective bargaining 	C143 C29/105/P29 C100/111; C87/98 C138/182
Violence and harassment	<ul style="list-style-type: none"> ► Violence and harassment in the world of work should be addressed in relevant national policies, including those on migration ► Protection from violence and harassment in the world of work, through legislative and other measures, of migrant workers, particularly women migrant workers, regardless of migrant status, in origin, transit and destination countries ► Protection against all forms of abuse, harassment, and violence (domestic workers) 	C190/R206 C189
Equality of treatment and rights arising out of past employment	<ul style="list-style-type: none"> ► Equality of treatment, including for family members with regard to rights arising out of past employment in respect of outstanding remuneration, including severance payments normally due; social security contribution and benefits due (including work injury), trade union membership and exercise of trade union rights. 	C143/R151
Protection of wages	<ul style="list-style-type: none"> ► Regular payment of wages; Full and swift final settlement of all wages within a reasonable time, upon termination of employment, including for domestic workers ► Regardless of status, upon leaving the country, right to outstanding remuneration for work performed, including severance pay normally due 	C95/C189 C151/C187
Minimum wage fixing	<ul style="list-style-type: none"> ► Minimum wage fixing should take account of the principle of equal treatment, including for domestic workers, for whom remuneration should be established without discrimination based on sex. 	C131/C189
Work injury and access to health care	<ul style="list-style-type: none"> ► Equality of treatment, without any conditions of residence, between nationals and foreign workers and their families of any ratifying member State, with regard to compensation in cases of work injury ► Equality of treatment between non-nationals and nationals as regards employment injury benefits ► Regardless of status, when leaving the country of employment, entitlement to employment injury benefits due ► All in need should have access to essential health care. Social security extension strategies should ensure support for disadvantaged groups and people with special needs ► Extending social protection for migrant workers in informal economy 	C19/C121 R151 R202 R204
Occupational safety and health	<ul style="list-style-type: none"> ► Right of all workers to a safe and healthy work environment ► Every domestic worker has the right to a safe and healthy working environment ► Take all appropriate measures to prevent any special health risks to which migrant workers may be exposed 	C155 C189 R151
Fair Recruitment	<ul style="list-style-type: none"> ► Protection of migrant domestic workers against fraudulent and abusive recruitment practices by private employment agencies (PEAs) ► Protection of migrant workers against fraudulent and abusive practices by PEAs – no recruitment fees and related costs directly or indirectly charged to the worker ► Fees charged by PEAs shall not be deducted from remuneration of domestic workers 	C189 C181 C189
Labour inspection	<ul style="list-style-type: none"> ► Primary duties of labour inspections are to enforce provisions on conditions of work and protection of workers (firewall between labour inspection and immigration enforcement) 	C81/C129
Access to justice	<ul style="list-style-type: none"> ► Present the case to competent body and equality of treatment regarding legal assistance. ► Effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally. Effective and accessible complaint mechanisms. ► All victims of forced or compulsory labour, irrespective of their presence or residence status in the national territory, should have access to appropriate and effective remedies, such as compensation ► The lawful exercise of rights enjoyed as resident cannot be a reason for non-renewal of residence permit or for expulsion, and not inhibited by the threat of such measures. 	C143/R151 C189 C29/R203 R151
	<ul style="list-style-type: none"> ► Speedy decisions in case of irregular situation 	R151
Protection in case of expulsion	<ul style="list-style-type: none"> ► Waiver of costs of expulsion – right to appeal (that should stay execution of expulsion order); legal assistance 	C143/R151
Irregularity and loss of employment	<ul style="list-style-type: none"> ► Loss of employment should not lead to automatic loss of residence, with equal treatment with regard to alternative employment, relief and re-training; appeal against termination ► Allowed sufficient time to find alternative employment or await final decision, in case of appeal against termination of employment ► Refrain from removing from their territory, on account of lack of means or the state of the employment market, a migrant worker regularly admitted thereto 	C143/R151

United Nations and other international instruments

Under international human rights law, everyone, without discrimination, must have access to the protection of basic human rights. The United Nations human rights instruments, together with a wide range of ILO instruments, provide the normative framework for protection, also applicable to migrant workers in an irregular situation (see also Table 4).

► Table 4. UN human rights instruments related to irregular labour migration

UN Instrument	Text and context related to irregular labour migration
The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMRW)	The ICMRW specifically articulates human rights and freedoms of migrant workers, including in irregular situations, and recognizes the principle of non-discrimination with respect to rights (Chapter III). Provisions are considered complementary and mutually reinforcing with the ILO migrant worker instruments (UN-OHCHR 1990). States parties also agree to common action relating to exchange of information between States; provision of information to migrant workers; prevention of trafficking and irregular migration; state-to-state cooperation for orderly return of migrants and their reintegration; and equality of treatment regarding working and living conditions.
Committee on the Protection of Rights of All Migrant Workers and Members of Their Families (CMW)	The Committee on the Protection of Rights of All Migrant Workers and Members of Their Families (CMW), which oversees application of the treaty, has affirmed that the right of non-discrimination applies to migrant workers in an irregular situation (UN-CMW 2013) and has provided specific guidance on the vulnerabilities of migrant domestic workers and how to bridge gaps in legal and practical protection (UN-CMW 2011). Specific measures and treatment of migrant children must conform to the best interest of the child (UN-CMW 2017a). The CMW oversees: the application of the CRC; interpreted State party obligations regarding the human rights of migrant children, including migrant children in an irregular situation; determines the scope of their right to liberty, due process guarantees, access to justice, right to a name and a nationality and right to family life, and to protection from all forms of violence and abuse and exploitation, child labour and abduction as well as rights to an adequate standard of living, health care and education (ibid.).
International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights	Under these two Covenants rights apply to all persons without discrimination and are subject to derogations or limitations only as expressly provided. ¹⁶⁰
International Convention on the Elimination of All Forms of Discrimination against Women	Undocumented women migrant workers are expressly included in the finding that “all categories of women migrants fall within the scope of the obligations of State parties to the Convention and must be protected against all forms of discrimination by the Convention”. ¹⁶¹
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Under this Convention no State party shall expel, return or extradite a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, ¹⁶² a provision which implicitly includes irregular-status migrants.
Convention on the Rights of the Child	This Convention sets out the principle of non-discrimination irrespective of the child's or his or her parent's status, and States parties to the CRC are to give primary consideration to the best interests of the child in all actions concerning children. ¹⁶³

¹⁶⁰ See AA-ICJ 1985; and a Note Verbale on the Sircusa Principles at UN Doc. E/CN.4/1985/4 (28 September 1984), at: <https://www.refworld.org/docid/4672bc122.html>; and UN-ESC 1987: The Limburg Principles on the Implementation of the International Covenant on Economic, Social and cultural Rights, UN Doc. E/CN.4/1987/17, Annex, para. 30 (UN-ESC 1987).

¹⁶¹ International Committee on the Elimination of Discrimination Against Women has published two relevant documents (UN-OCHR-CEDAW 2009 and UN-OCHR-CEDAW 2010, para. 26) and covers a number of countries of origin and destination to protect the rights of women migrant workers.

¹⁶² UN Convention Against Torture, Article 3, para. 1.

¹⁶³ UN Convention on the Rights of the Child, UNGA Res. 44/25 (20 Nov. 1989), entry into force 2 September 1990, Articles 2(1) and 3(1).

Some UN human rights special procedures provide guidance relevant to treatment of migrant workers in irregular situations. The Special Rapporteur on the human rights of migrants, for example, has submitted a report to the Human Rights Council on labour exploitation of migrants including those in situations of irregular migration (UN-HRC 2014). His reports have also addressed the impact of trade agreements on the human rights of migrants, including irregular-status migrants (UN-HRC 2016) and a survey of good practices and initiatives on gender-responsive migration legislation, policies, and practices that he had conducted. The Special Rapporteur recommended to “provide gender-sensitive human rights training to immigration officials, border police, social workers, health-care providers, educators, judicial officers and media workers to raise their awareness of the human rights of migrant women and girls” (UN-HRC 2019, para. 80(1)). The Special Rapporteur on trafficking in persons, especially women and children, also urged companies to engage with workers and their representatives to develop grievance mechanisms in cooperation with governments, business and social actors (UN-HRC 2020). The UN Working Group on Arbitrary Detention has clarified that “(a)rbbitrary detention can never be justified” for undocumented migrants; alternatives to detention must be sought and detention can only be ordered/approved as an exceptional measure by a judicial authority (ibid.). The deprivation of liberty of migrant children is prohibited altogether, “the irregular entry and stay in a country by migrants should not be treated as a criminal offence” (UN-HRC 2018, paras 8, 10–11,16, sec 8(a)).

Box 14 presents a summary of the Joint Guidance Note by the UN Committee on Migrant Workers and the Special Rapporteur on the human rights of migrants on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants (UN-CMW 2020).

► Box 13. Human rights of migrants and the COVID-19 Pandemic

This guidance highlights the contributions of migrants, including those in an irregular situation, in sectors considered essential. It calls on States to protect the human rights of migrants and their families, irrespective of their status, including in particular the following:

- Guarantee the labour rights of migrant workers in essential sectors;
- Include migrants and their families, regardless of their migration status, in economic recovery policies, taking into account the need for the recovery of remittance flows;
- Promote the regularization of migrants in an irregular situation, which includes adopting other regular pathways for migrants in a vulnerable situation, measures to allow extensions of work visas and other appropriate measures to reduce the challenges faced by migrants and their families due to business closures to ensure the continued protection of their human rights;
- Guarantee the right of all migrants and their families to return to the country of which they are nationals; and
- Consider the temporary suspension of deportations or enforced returns during the pandemic.

Source: UN-CMW 2020.

Also relevant to efforts against trafficking in persons and forced labour, the UN Convention against Transnational Organized Crime and its Protocols address smuggling of migrants and trafficking in

persons.¹⁶⁴ The protocols on trafficking in persons, especially women and girls, and on smuggling by land, sea and air both seek to investigate and prosecute perpetrators of trafficking in persons and smugglers and to assist victims and protect their rights, irrespective of their migration status. The ILO forced labour instruments complement and strengthen these instruments (ILO 2016a, para. 298, note 57).

2- International policy guidance on irregular migration

ILO policy

Since 1917, ILO mandate and policy has been concerned with the necessity for the “protection of the interests of workers when employed in countries other than their own” (from the Preamble of the ILO Constitution). Over the years, ILO policy progressively addressed the issue of irregular labour migration, culminating in 1974, in the adoption ILO standards specifically addressing the phenomenon. In a resolution preceding the adoption of Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Migrant Workers Recommendation, 1975 (No. 151), ILO Constituents requested the Office to “examine with other competent international organizations measures that might be taken to ensure that migrant workers and their families might no longer be subject to expulsions, forced residence and arbitrary refusal of entry at the frontier”.¹⁶⁵

At the 1992 Labour Conference, ILO constituents continued to expressed concern that migration could “embody practices which are not in keeping with the principles embodied in relevant ILO standards” and called for effective means to eliminate irregular migration for employment, including through effective measures against labour-recruiting agents, intermediaries and employers of migrant workers in irregular situations.¹⁶⁶

During the last two decades, however, the issue of irregular labour migration acquired growing prominence in ILO policymaking. The *Conference Resolution and Conclusions on the General Discussion on Migrant Workers* (ILO 2004a, b, c) recognized that the number of migrants in an irregular situation was rising. This increase is believed to be driven by the growth of informal forms of employment, shortages of workers for dirty, demeaning and dangerous jobs (“3D-jobs”) and lack of opportunities and agreements for regular labour migration. The absence of formal management for migration and national policies in some countries has also contributed to the increasing number of migrants in irregular situations. Additionally, the increase in trafficking, especially of women and children, posed a particular threat to human rights protections and created new challenges for governments and the international community. The 2004 resolution and plan of action led to adoption of the ILO’s Multilateral Framework on Labour Migration (MFLM) (ILO 2006).

The MFLM contains 15 principles for policies to manage labour migration that are “coherent, effective and fair” and draws upon international labour standards and other international instruments and “best practices carried out in countries”. It recommends that such policies address specific vulnerabilities faced by workers in an irregular situation, protect them from forced labour and provide them social security coverage and benefits as appropriate (ILO 2006, Principles, sec. 4.4, 8.4.2 and 9.9). The MFLM also and highlights the importance of consultation with the social partners in adopting and implementing laws

164 UN Convention against Transnational Organized Crime and the Protocols Thereto, UNGA Res. 55/25 (15 November 2000), including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx> and the Protocol against the Smuggling of Migrants by Land, Sea and Air (2000) at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TransnationalOrganizedCrime.aspx>.

165 Resolution concerning Future ILO Action in the Field of Migrant Workers [Committee on Migrant Workers] (ILC, 59th session, 1974).

166 Resolution concerning the role of the ILO in the protection and promotion of the rights of migrant workers and their families [Resolutions Committee] (ILC, 79th session)

and policies to prevent irregular migration and eliminate abusive migration conditions and in promoting social integration and inclusion (ibid., sec. 11, 11.1, 14 and 14.4).

In 2013, tripartite discussions on labour migration addressed the issue of irregular migration in the context of an ILO Tripartite Technical Meeting on Labour Migration. Tripartite constituents considered that “all ILO standards apply to migrant workers unless specified otherwise” and “all migrant workers regardless of status have the right to exercise their human rights, including the fundamental rights at work” (ILO 2013b, para 4). With a view to increasing the protection of migrant workers, the meeting conclusions recognized the need to “analyse modalities for cooperation and/or exchange of information among national authorities, including labour inspectorates, to identify practices in line with international labour standards for the protection of the rights of migrant workers, including those in an irregular situation. This could also include “identification of measures to secure access to remedies in the case of abuse and to improve enforcement of labour protection” (ibid.). In cooperation with governments, social partners, international organizations and other stakeholders, the Office should also seek to promote positive public perceptions of migrant workers and raise awareness of the positive social and economic contributions of migrants, while combatting xenophobic and discriminatory attitudes.

In 2014, the ILO Director-General’s report on the Fair Migration Agenda to the International Labour Conference considered migration, “a key feature of today’s world of work and one which raises complex policy challenges”. The report called for “constructing an agenda for fair migration which not only respects the fundamental rights of migrant workers but also offers them real opportunities for decent work” (ILO 2014a).

In 2017, the International Labour Conference Conclusions noted the growth in irregular labour migration, particularly of low-skilled workers, and the problems it could present for migrant workers, local communities and governments. It observed the increased vulnerability to exploitation and human rights violations for migrant workers and the undercutting of established wages and working conditions in some cases. Along with encouraging the sharing of good practices, the ILC identified priorities for action to promote respect for migrant workers’ rights in an irregular situation and encouraged government action to ensure that such migrant workers can safely report abusive working conditions and have access to justice. This Compendium is part of the Plan of Action approved by the Governing Body in 2017 to follow up on the Conference priorities.

Other guidance relating to law, policy and practice on irregular-status migrant workers, is found in ILO tripartite discussions on labour migration. Discussion of governance, development and protection aspects of labour migration led to the adoption of the *General Principles and Operational Guidelines for Fair Recruitment*, and the *Definition of Recruitment Fees and related Costs* (2016b, 2019e). Related policy guidance is available in the *Guiding Principles on access of refugees and other forcibly displaced persons to the labour market* (2016e); and the conclusions of the tripartite Meeting of Experts on Cross-border Social Dialogue which recommended the use of cross-border dialogue methods and tools to address fair labour migration policies (ILO 2019f, para. 16).

In addition, the conclusions of the tripartite meeting on the promotion of decent work for migrant fishers noted the deficit in complaints mechanisms, and the need for better collaboration between countries to ensure fair recruitment of migrant fishers and safe, regular and orderly migration. The 2018 guidelines concerning statistics on international labour migration made important advances in defining terms and methods for measuring international migration to help countries develop their national statistical systems with comparable statistics that will assist, in future, with building more accurate and efficient regional and global estimates, including on irregular labour migration (ILO 2016a, para.10; ILO 2017g; 2018e).

The *ILO Centenary Declaration on the Future of Work* (ILO 2019a) has given the ILO a clear mandate to continue to work on labour migration, stating, that in further developing its human-centred approach to the future of work, the ILO must direct its efforts to deepening and scaling up its work on international

labour migration in response to constituents' needs and taking a leadership role in decent work in labour migration (ibid., para. II, A(xvi)).

In 2021, the ILO global call to action for a human-centred recovery from the COVID-19 recognized that the crisis affected the most disadvantaged and vulnerable disproportionately, including migrants. To build forward better from the crisis, constituents committed to execute across the public and private sectors a transformative agenda for equality, diversity and inclusion aimed at eliminating violence and harassment in the world of work and discrimination on all grounds, including race, colour, sex, religion, political opinion, national extraction and social origin, and taking into account the specific circumstances and vulnerabilities of particular groups, including migrants (ILO 2021b, paras 3 and 11(b–h)).

UN Policy on irregular migration

In the first ever UN common approach to international migration in all its dimensions, the Global Compact for Safe, Orderly and Regular Migration (GCM) adopted on 11 December 2018 (UN 2019) guides local, national, regional and global efforts to govern migration. (ibid., para. 16). Among its 23 objectives, the GCM focuses on pathways for regular migration that may help reduce irregular labour migration. It also affirms the overarching commitment to respect, promote and fulfil the human rights of migrants and commits to helping to develop incentives to stay home, and to reduce the risks and vulnerabilities that migration entails (ibid., para. 16). In preventive steps, it commits to minimizing the adverse drivers and structural factors that compel people to leave their country of origin (Objective 2), and to providing accurate and timely information at all stages of migration (Objective 3). Objective 7 commits to reducing vulnerabilities in migration in particular in relation to women and children. Objective 15 commits to ensuring that “all migrants, regardless of their migration status, can exercise their human rights through safe access to basic services” (ibid., para. 31). The Global Compact on Refugees assists in managing mixed migration flows including refugees and migrant workers (UNHCR 2018).

International policy processes hosted by the UN guide States in their cooperation and national action on migration, including the balance between addressing irregular migration and promoting the rights of migrants concerned. Consultative and discussion processes for UN organizations and UN Member States include the UN Network on Migration, which succeeded the Global Migration Group (GMG) of executive heads of concerned UN entities and specialized agencies, including the ILO, with its multi-stakeholder working group on bilateral labour migration agreements. Principles and guidelines for protecting the human rights of vulnerable migrants were developed by these partners, *Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations* (UN-OHCHR 2018).

The UN High-level Dialogues on International Migration and Development in 2006 and 2013¹⁶⁷ led to the recognition of the “need for international cooperation to address, in a holistic and comprehensive manner, the challenges of irregular migration to ensure safe, orderly and regular migration, with full respect for human rights” (UN 2014a, 2014b).

The 2030 Agenda for Sustainable Development goals address the need to protect migrant workers in precarious employment (target 8.8). Nothing in the SDGs explicitly distinguishes between migrant workers in regular and irregular situations, and migrant workers in an irregular situation suffer precariousness of employment by virtue of their irregular status along with those migrant workers win a regular situation whose conditions create precarious employment (UNDESA 2015b).

Other UN and multilateral agencies adopt policies and manage consultative processes that address irregular migration and the human rights of irregular-status migrant workers. These agencies include, among others, the IOM, UNDP, UN Women, and the UNODC, which runs an Inter-Agency Coordination

¹⁶⁷ See the UN-OHCHR website: <https://www.ohchr.org/en/issues/migration/pages/hld2013.aspx>.

Group against Trafficking in Persons in which the ILO is active.¹⁶⁸ At multilateral level, the OECD contributes to migration statistics¹⁶⁹ and policy-oriented research. In addition, the International Centre for Migration Policy Development (ICMPD), while not a UN agency, supports relevant regional consultative processes such as the Budapest and Prague Processes, and the Rabat and Khartoum Processes.¹⁷⁰

Legal and policy frameworks at regional level¹⁷¹

Legally binding regional frameworks that address human rights, free movement, and other migration issues offer avenues for harmonizing national law and practice on irregular migration and migrants' rights, to the extent they are consistent with or more favourable than applicable international standards. For example, free movement agreements within regional and subregional communities provide opportunities to advance fair migration with guarantees of regular pathways and migrants' rights and reduction of irregular movements. A number of these arrangements, in some cases are coupled with free trade agreements, grant free movement. This is given to migrant workers of all skills levels, with gradual lifting of barriers to the facilitation of movement; others limit free movement for specific categories of workers and/or grant visa reciprocity for short-term mobility and exchange of information (ILO 2017c, sec. 4.1.3 and table 1). Other relevant processes include inter-governmental regional consultative processes and the operation of parallel regimes for labour protection in trade agreements (ibid., tables 4.2 and 4.3.1).

This Annex presents specific regional and subregional instruments and agreements, and policy processes that can contribute to cooperation at regional levels in reducing irregular migration and protecting the rights of migrants as well as local residents. In particular, principles for good practice encourage RECs to grant free movement for all skills levels, and decision-making and implementation rooted in social dialogue (ACHPR 1986).

Africa – Legal Frameworks

For the 55 countries of the African Union, important safeguards for migrants in an irregular situation are found in the African Charter of Human and Peoples' Rights (ACHPR 1986) and the African Charter on the Rights and Welfare of the Child (ACHPR, 1999) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (ACHPR 2003), including guarantees against arbitrary expulsion (that is, without a stay for review of claims relating to deportation and employment)¹⁷² as well as rights to work, in the workplace and trade union rights and rights to health, education and an adequate standard of living.¹⁷³ The African Commission on Human and Peoples' Rights has held that measures depriving non-nationals of rights under the Charter which are not expressly guaranteed only to citizens (such as the right to vote) constitute arbitrary discrimination.¹⁷⁴

168 For more information on the Inter-agency Coordination Group against Trafficking in Persons (ICAT) see: <https://www.unodc.org/unodc/en/human-trafficking/2010/inter-agency-coordination-group-against-trafficking-in-persons-icat.html>.

169 See the OECD International Migration Database and labour market outcomes of immigrants at <https://www.oecd.org/els/mig/keystat.htm>.

170 See more information on this at the ICMPD website at: <https://www.icmpd.org/our-work/migration-dialogues/>.

171 **In-text citations in parentheses in this Annex can be found in the Compendium's Bibliography.**

172 See *Good vs Republic of Botswana*, AfCHPR; *IHRDA v. Angola*, AfCHPR., as cited in ICJ 2014.

173 See *SERAC and the CESR v. Nigeria*, ACommHPR, op. cit., fn. 29, para. 68. In the *Socio-Economic Rights Accountability Project (SERAP) v. Nigeria*, ACommHPR, Communication No. 300/2005, 5th Extraordinary Session, 21–29 July 2008, para. 65, the Court said that the "African Charter [...] constitutes a normative base for socio-economic rights claims which allow any claim brought under the Charter to be litigated before national courts." ICJ, note 922.

174 *IHRDA v Angola*, id., para. 80: under Article 2 of the African Charter, rights "are to be enjoyed by all, without discrimination...."

► **Box 14. Objective 5: Enhance availability and flexibility of pathways for regular migration**

We commit to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration.

To realize this commitment, we will draw from the following actions:

- a. Develop human rights-based and gender-responsive bilateral, regional and multilateral labour mobility agreements with sector-specific standard terms of employment in cooperation with relevant stakeholders, drawing on relevant International Labour Organization (ILO) standards, guidelines and principles, in compliance with international human rights and labour law;
- b. Facilitate regional and cross-regional labour mobility through international and bilateral cooperation arrangements, such as free movement regimes, visa liberalization or multiple-country visas, and labour mobility cooperation frameworks, in accordance with national priorities, local market needs and skills supply;
- c. Review and revise existing options and pathways for regular migration, with a view to optimizing skills-matching in labour markets and addressing demographic realities and development challenges and opportunities, in accordance Global Compact for Safe, Orderly and Regular Migration A/RES/73/195 18-22354 13/36 with local and national labour market demands and skills supply, in consultation with the private sector and other relevant stakeholders;
- d. Develop flexible, rights-based and gender-responsive labour mobility schemes for migrants, in accordance with local and national labour market needs and skills supply at all skills levels, including temporary, seasonal, circular and fast-track programmes in areas of labour shortages, by providing flexible, convertible and non-discriminatory visa and permit options, such as for permanent and temporary work, multiple-entry study, business, visit, investment and entrepreneurship;
- e. Promote effective skills-matching in the national economy by involving local authorities and other relevant stakeholders, particularly the private sector and trade unions, in the analysis of the local labour market, identification of skills gaps, definition of required skills profiles, and evaluation of the efficacy of labour migration policies, in order to ensure market-responsive contractual labour mobility through regular pathways;
- f. Foster efficient and effective skills-matching programmes by reducing visa and permit processing time frames for standard employment authorizations, and by offering accelerated and facilitated visa and permit processing for employers with a track record of compliance;
- g. Develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations for migrants compelled to leave their countries of origin owing to sudden-onset natural disasters and other precarious situations, such as by providing humanitarian visas, private sponsorships, access to education for children, and temporary work permits, while adaptation in or return to their country of origin is not possible;
- h. Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible;
- i. Facilitate access to procedures for family reunification for migrants at all skills levels through appropriate measures that promote the realization of the right to family life and the best interests of the child, including by reviewing and revising applicable requirements, such as on income, language proficiency, length of stay, work authorization, and access to social security and services;
- j. Expand available options for academic mobility, including through bilateral and multilateral agreements that facilitate academic exchanges, such as scholarships for students and academic professionals, visiting professorships, joint training programmes and international research opportunities, in cooperation with academic institutions and other relevant stakeholders.

Most of the cross-border labour migration in the African region is intra-continental, due in part to the context of high levels of informality, with porous borders and absence of border controls, and in part to efforts to promote increased integration of labour markets between neighbouring States. The African Economic Community Protocol on free movement of persons, adopted in 2018 on the basis of the 1991 Treaty Establishing the African Economic Community (Abuja Treaty) confirms free movement of nationals of AU Member States to work “without discrimination in any other Member State in accordance with the laws and policies of the host Member State” (AU 1994 and AU 2018b; see also Okunade 2021).

While the Protocol, signed by 60 percent of the AU Member States, does not prevent the subregions’ implementation of free movement regimes, barriers remain with visa requirements in 55 per cent of African countries (Popova and Panzica 2019). The eight regional economic communities (RECs), collectively comprising the African Union, have treaties that envision the free movement of people with a gradual removal of immigration and other barriers at varying degrees (Oucho 2015; AU 2018b; ILO 2017b). In most African regional economic treaties, free movement encompasses a right to free entry, residence, and establishment in Member States. The most significant progress toward this aim is in ECOWAS and East African Community (EAC) with removal of visa requirements and reducing border formalities.¹⁷⁵ At the same time the African Continental Free Trade Area Agreement (AfCFTA) was signed by 80 percent of the AU Member States, and aims to create a single pan-African market for goods and services, with free movement of business persons and investments.¹⁷⁶ A multilateral convention on social security was revised in 2013 by ECOWAS member countries, based on the principles of equal treatment between migrant workers and nationals of the host country (ILO 2019i).

Africa – Policy cooperation

In 2018, the African Union Commission (AUC) adopted the Migration Policy Framework for Africa and Plan of Action (2018–2030) (AUC 2018), building on its 2006 predecessor. It guides African Union Member States and RECs to govern migration in the context of the current migration dynamics in Africa. ILO supported the AU in the development of the Migration Policy Framework and helps support implementation via the Joint Labour Migration Programme with the African Union and the IOM.

Irregular migration is one of eight key thematic pillars of the Framework and consists of four sub-pillars: smuggling; trafficking in persons; return, readmission and reintegration; and national and international security and stability. Strategic recommendations under the four sub-themes encourage AU Member States and RECs to adopt policies to, among others:

- implement mechanisms for non-custodial alternatives to detention and consider abolishing administrative detention of migrants;
- expand pathways for regular entry; develop public information campaigns in schools, the media and social networks on the dangers and risks of smuggling and trafficking in persons and irregular migration;
- strengthen knowledge through enhanced research and data collection;

¹⁷⁵ Common Market of Eastern and Southern Africa (COMESA) Treaty, Article 4(6) (e); the Protocol of 1979 (A/P1/5/79) adopted by the Economic Community of West African States (ECOWAS); the Protocol on Freedom of Movement and Rights of Establishment of Nationals of Members States of the Economic Community of Central African States (ECCAS); the Inter-governmental Authority on Development (IGAD) endorsed its Protocol on the Freedom of Movement of persons (Ministerial Meeting 26 February 2020); the 2005 Protocol on the Facilitation of Movement of Persons adopted by Members of the Southern African Development Community (SADC); the Protocol on the Establishment of the East African Community (EAC) Common Market which entered into force on 1 July 2010, Article 7. The SADC Protocol is not yet in force so SADC Member States continue to make bilateral migration agreements for visa free entry. See also ILO 2016a, para. 146.

¹⁷⁶ Global Forum on Migration & Development (GFMD), *Continent-wide free movement in the African Union*, posted Oct. 10, 2018. The free movement protocol has not entered into force as of July 2021(see also Okunade 2021).

- ensure protection and assistance to trafficked persons in line with the UN Protocol on Trafficking in Persons;
- ensure due process and respect for human rights of irregular-status migrants in case of mandatory return; and
- develop enhanced security measures that uphold the rights of all migrants as paramount (AUC 2018, Pillar 5, sections 5.1–5.4; ILO 2016a, para. 37).

Some regional and subregional initiatives promote intra-regional mobility under conditions that assist the integration of migrant workers through regular pathways (OECD and ILO 2018), in principle reducing irregular migration. The Youth and Women Employment Pact for Africa encourages the adoption of policies for regional and subregional labour mobility to open up job opportunities on the continent and, in collaboration with the RECs, to harmonize and coordinate labour, employment and social protection policies and legal frameworks (AUC 2013, para. 43). In addition to the free movement agreements and protocols, the RECs advance policies toward harmonization in a number of relevant areas of priority in the AU Migration Policy Framework, including data collection.¹⁷⁷ For example, ECOWAS adopted a Common Approach on Migration in 2008 setting priorities for free movement (ECOWAS 2008). IGAD adopted a Regional Migration Policy Framework (IGAD 2012) and the Protocol on the Freedom of Movement of Persons in February 2020, and has developed policy and guidance for the negotiation and implementation of BLAs in 2021. Another consultative process includes the Migration Dialogue for Southern Africa (MIDSA) among the South African Development Community (SADC) member countries¹⁷⁸, the ECOWAS Social Dialogue Forum and the IGAD Regional Consultative Process on Migration.

Americas and the Caribbean – Legal Frameworks

For the 35 Member States of the Organization of American States (OAS), principles of good practice require adherence to the right of non-discrimination and the right to equality of all persons, regardless of their migration status, including the right of undocumented migrant workers to all rights related to employment that are recognized for authorized workers.¹⁷⁹ Under the regional court jurisprudence, the due process rights of migrants in irregular situations must be observed at all procedural stages of an action by the State, whether administrative, legislative or judicial,¹⁸⁰ including due process rights to consular notification¹⁸¹ and to freedom from arbitrary immigration detention (that is, without judicial or other independent review).¹⁸² In addition, the Protocol of San Salvador guarantees non-discrimination

177 For example, SADC Member countries adopted a common labour migration module in 2014 for data collection. A new plan was announced in Jan 2021.

178 Migration Dialogue for Southern Africa (MIDSA) is an information platform available at: <https://www.iom.int/migration-dialogue-southern-africa-midsa>.

179 Juridical Condition and Rights of Undocumented Migrants, Advisory Opinion OC-18/03, Inter-American Court of Human Rights (ser. A) No. 18, 17 Sep. 2003. The Court interpreted duties under the OAS Charter, the American Declaration on the Rights and Duties of Man, and the American Convention on Human Rights. The opinion, while advisory only, has authoritative effect for all Member States of the OAS as a function of their obligations under the Charter and the American Declaration and, for those who are States parties to the American Convention on Human Rights, under that treaty as well.

180 Inter-American Court of Human Rights (IACt.HR), Pacheco Tineo family v. Plurinational State of Bolivia, Judgment of November 25, 2013, paras 128-136 (including expulsion).

181 Consular protection is part of guarantees of due process and in particular due process for migrants, para. 269. Adv Op. 16 (1999) and Adv Opinion 21, later cited by ICJ in its Avena and Other Mexican Nationals (Mexico v USA) Judgment, March 31, 2004. This consular protection has developed in constitutional and legislation of the region (under Trindade, 2007). For a critique that the Court has not always applied this principle in practice, see Helena María Olea Rodríguez No 9 (2016).

182 IACHR, Vélez Loo v Panama, Report No. 95/06, Judgement of 23 October 2006.

in the enjoyment of economic, social and cultural rights, including on grounds of economic status.¹⁸³ Institutional regional mechanisms also guide Members in fulfilling their human rights obligations under the OAS Charter with regard to migrants, including the Rapporteurship on the rights of migrants, and the Special Sessions of the Committee on Juridical and Political Affairs open to all Member States.¹⁸⁴

Countries in the Americas and the Caribbean engage in subregional arrangements on labour migration through RECs. For example, an agreement among Southern Common Market (MERCOSUR) and associated countries provides that migrants from the participating States have the right to the same labour protection as nationals. Citizens of participating countries enjoy visa free movement and can take up employment in another Member State provided that they have not had a criminal record for the past five years. In addition, migrants enjoy equal access to the labour market in conditions of equal treatment. As a result, there is significant labour mobility within the MERCOSUR region.¹⁸⁵ Countries of the Caribbean Community (CARICOM) Single Market and Economy countries have an agreement to recognize the free movement of workers in specified categories (ICJ 2014);¹⁸⁶ and El Salvador, Guatemala, Honduras and Nicaragua participate in the Convention on a Central American visa for free movement.¹⁸⁷

Americas and the Caribbean – Policy Cooperation

Consultative and political processes in the region offer Member States the opportunity for cooperation and exchange of experience to guide good practice on reducing irregular migration and protecting migrant rights. The Summits of the Americas discuss and report priorities on migration issues,¹⁸⁸ as does the Standing Committee on Migration Issues (CAM), of the Inter-American Council for Integral Development (CIDI) of the OAS, and the Committee on Hemispheric Security – Trafficking in Persons, and the Continuous Reporting System on International Migration in the Americas.¹⁸⁹ The RECs also offer policy guidance to their participating members on international migration, in addition to the binding arrangements for freedom of movement (MERCOSUR 2014; ILO 2016a, para. 38). In 2018, the ILO Member States of the region, at their 19th regional meeting, issued a Declaration which called for, among other action, the setting of “(l)abour migration policies that respect the human and labour rights of migrant workers, including in particular the prevention of forced labour, trafficking in persons and modern slavery, and that facilitate the procedures for migrant workers sending remittances to their family members in their countries of origin” (ILO 2018f, para. 11(xvii)).

183 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), Article 3.

184 The Charter-based mechanisms in the OAS system interpret the human rights duties of all Member States of the Charter of the Organization of American States, under which States’ performance is reported to the OAS General Assembly. (See for example, <http://www.cidh.org/Migrantes/defaultmigrants.htm>; and http://www.oas.org/dil/migrant_workers_special_sessions.htm).

185 MERCOSUR, Agreement on the Residence of Nationals of the Member Countries of MERCOSUR, Plurinational State of Bolivia and Chile, adopted Dec 2002, entered into effect 2009. This is available in ILO’s Labour Migration Good Practice database

186 The CARICOM Free Movement of Persons Act lists ten categories of workers that benefit from free movement (also known as Caribbean Single Market and Economy (CSME)). The 2009 agreement of CARICOM Heads of Government added the category of household/domestic workers to make such persons eligible to move freely for employment in the region.

187 *Convenio Centroamericano de libre movilidad* is a treaty signed in June 2006 between the Central American nations of El Salvador, Guatemala, Honduras, and Nicaragua, establishing the free movement across borders between the four signatory states of their citizens without any restrictions or checks. [English: Convention on a Central American visa for free movement between El Salvador, Guatemala, Honduras and Nicaragua, Central America-4 Free Mobility Agreement].

188 See a follow-up document on this at: <http://www.summit-americas.org/sisca/mig.html>.

189 See ILO 2016a, para. 147, see <http://www.summit-americas.org/sisca/mig.html>. Also: see the OAS website at: <http://www.oas.org/en/topics/migration.asp>.

Asia and the Pacific and Arab States – Legal frameworks

A number of legally binding frameworks guide countries in Asia and the Pacific and the Arab States in subregional and other groupings. In the ASEAN Economic Community (AEC), a mutual recognition arrangement (MRA) provides for ASEAN members to facilitate the free movement of skilled workers in eight employment categories through common licensing and access to work visas. However, low-skilled workers represent 87 per cent of intra-ASEAN migration, thus producing a heavily unbalanced migration flow in the region. (For a comparison of the ASEAN regime with the EU's free movement of labour at all skills levels, and CARICOM's free entry visas to high-skilled workers within the region, see Paweenawat and Vechbanyongratana, 241,245). Among the Pacific States, the Trans-Pacific Strategic Economic Partnership regulates labour issues as part of free trade agreement between Brunei Darussalam, Chile, Singapore, and New Zealand is the first free trade agreement linking Asia, the Pacific and the Americas.¹⁹⁰

For the 22 members of the League of Arab States, the Arab Charter on Human Rights provides for the enjoyment of human rights by all human beings on a basis of equality and free from discrimination on the basis of race, colour, sex, language, religion, political opinion, national or social origin, wealth, birth or other status. (Article 2). A number of the rights in the Charter are expressly limited to citizens. For countries who are members of the Arab Labour Organization, Convention No. 4 of 1975 on the mobility of the labour force (Lauterpacht et al. 2000)¹⁹¹ provides guiding standards for worker remittances and conflict dispute mechanisms. A regional economic community arrangement among the States of the Gulf Cooperation Council (GCC) facilitates movement for specific categories of workers, and the States of the Arab Maghreb Union have committed to sharing visa reciprocity and regular exchange of information (ILO 2017c, sec. 4.1.3 and Table 4.1).

Asia and the Pacific and Arab States – Policy Cooperation

In 2016, the ILO Member States from Asia and the Pacific and Arab States issued a Declaration of policy priorities at their 16th regional meeting, including the aim of

- ... enhancing labour migration policies based on relevant international labour standards that: (a) recognize the labour market needs of all; (b) are based on the general principles and operational guidelines on fair recruitment ... (c) provide adequate protection to all migrant workers, including through better portability of skills and social security benefits; (d) take into account the ILO MFLM (ILO 2006); and (e) redress employer-worker relationships that impede workers' freedom of movement, their right to terminate employment or change employers, taking into account any contractual obligations that may apply, and their right to return freely to their countries of origin" (ILO 2016g, para. 8).

Implementation of the policy priorities by tripartite partners and States is subject to biennial review by the Governing Body (*ibid.*, para. 14; ILO 2019g, sec. 2.3.4(b)). Steps taken by tripartite partners and States are reported relating to implementation of fair recruitment principles and the protection of migrant workers, especially in the domestic work sector in GCC countries. Regional Model Competency Standards, which assist low to medium-skilled workers that are often neglected in formal qualifications framework models, are being piloted for applications that will encourage regular migration (ILO 2015b).

In ASEAN countries, action on migrant workers is governed by a non-binding Consensus on the Protection and Promotion of the Rights of Migrant Workers, 2017 which calls on Member States to "... collaborate to take concrete measures to prevent and eliminate any illegal or clandestine movement involving migrant

190 Trans-Pacific Strategic Economic Partnership, 2006, available at: <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/trans-pacific-strategic-economic-partnership-p4/>.

191 More information on Arab Convention 4 (1975) is available on ILO's NATLEX database at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=67635. It covers the Egypt-Iraq dispute before the UN Compensation Commission (Egyptian Workers' Claims).

workers and employment of migrant workers in an irregular situation, with due regard to the safety, welfare, and access to justice of migrant workers” (ASEAN 2018, para. 48).

A committee established in 2017 to oversee implementation of the ASEAN Declaration (2012) coordinated the 2016–2020 action plan aiming at, among other things, promoting full employment, expanding social protection, and enhancing initiatives and participation in promoting the elimination of all forms of discrimination among migrant victims of exploitation and trafficking (ASEAN 2016). According to UN Women, the Declaration gives national-level frameworks precedence over the regional level mandate, leaving a loophole in the rights-based protection framework for migrant workers. UN Women recommends that when a “gender aspect to promote unconditional employment protection, payment of wages and decent work and living conditions for all migrant workers” is adopted across sectors in line with international labour standards, that the existing standard providing for “fair and appropriate employment protection” would be greatly enhanced. (UN Women 2017b, 81–83).

Annual meetings of the tripartite ASEAN Forum on Migrant Labour, take place in which international and civil society organizations participate with governments share experiences and build consensus on the protection of migrant workers.¹⁹² In South Asia, the 2014 Kathmandu Declaration of the 18th Summit of the Heads of State of South Asian Association for Regional Cooperation (SAARC) guides policies of the SAARC countries and includes the commitment to “cooperate on safe, orderly and responsible management of labour migration from South Asia to ensure safety, security and well-being of their migrant workers in the destination countries outside the region” (SAARC 2014). Regional coordination among the trade unions of SAARC countries played a key role in the migration-related achievements of the Kathmandu Declaration.

Policy coordination along labour migration corridors that cross-cut regions of Asia and the Pacific contribute significantly to trends of exemplary practice. Two inter-governmental regional consultative processes address issues of protection, welfare and well-being of migrant workers in the significant flows along the labour migration corridor between Asia and the Gulf States, notably the Colombo Process and the related Abu Dhabi Dialogue (ILO 2017b). The countries of origin in South and South-East Asia in the Colombo Process aim to coordinate policy, exchange information, and engage on mutual concerns. The Colombo Process Road Map includes ethical recruitment among its thematic areas of work (Wickramasekara and Ruhunage 2018, 13). The countries in the Abu Dhabi Dialogue, which cover both countries of origin in the Colombo Process and destination countries in the GCC, have pledged to “work together to prevent and sanction exploitative recruitment practices that place workers at great risk and undermine their fundamental rights” (ILO 2017c, para. 126).¹⁹³ The use of technology in fair recruitment, system for mutual skills certification and recognition, development of core domestic worker competency standards, the future of work, and delivery of comprehensive information and orientation to migrant workers are among the themes in the collaborative agenda for the next two years (Wickramasekara and Ruhunage 2019). In another tripartite process on labour migration launched with ILO support, the Arab States and Asian countries (the Gulf States, Jordan and Lebanon) held a tripartite interregional experts’ meeting in Nepal in 2014 (ibid.). A 2017 interregional consultation involving migration corridors of Africa, Asia and the Middle East, convened with ILO support, included a focus on preventing migrant workers from falling into irregularity.¹⁹⁴

192 For example, see the information on the 11th [ASEAN Forum on Migrant Labour](#) (AFML), 29-30 October 2018, Singapore.

193 Kuwait Declaration, [Third Ministerial Consultation of the Abu Dhabi Dialogue](#)

(20 November 2014) para. 6. Participating countries are: Afghanistan, Bahrain, Bangladesh, India, Indonesia, Kuwait, Malaysia, Nepal, Oman, Pakistan, the Philippines, Saudi Arabia, Sri Lanka, Thailand, United Arab Emirates and Vietnam. The [Abu Dhabi Dialogue](#), 2014, adopted the Kuwait Declaration in 2014 which stresses the importance of fair recruitment and the [ILO Fair Migration agenda](#).

194 ILO [Interregional Consultation on Labour Migration and Mobility from Asia and Africa to the Middle East](#) – Concept Note, Beirut, 4–5 October 2017, Session 6.

Europe – Legal framework

For the 47 countries of the Council of Europe, a regional human rights framework recognizes certain fundamental rights of migrants in an irregular situation. The European Convention on Human Rights (ECHR) is of general application unless otherwise specified. As such, due process guarantees apply for criminal proceedings through Article 6 of the ECHR, and for immigration rulings through the right to an effective remedy Article 13 and Article 1 of Protocol 7. Safeguards for the treatment of migrants deprived of liberty and from expulsion to a country with a real risk of torture, cruel, inhuman or degrading treatment are provided for in Article 3. Expulsion is also restricted when it would unduly interfere with the right to respect private and family life.¹⁹⁵ In addition, the European Social Charter, which has a limited scope excluding migrants in irregular situations in principle,¹⁹⁶ nonetheless has been held to protect the entitlement to medical assistance, regardless of legal status in the country,¹⁹⁷ and the right to shelter to children unlawfully present in the territory. The European Convention on the Legal Status of Migrant Workers (1977) provides a framework to ensure the rights of authorized migrant workers and their family members and promote their social advancement and well-being;¹⁹⁸ read together with international human rights and labour obligations, the treaty can influence thresholds of treatment for migrants with irregular status where equality of treatment with those of regular status applies.

The 27 countries of the European Union cooperate in the longest-lasting modern free movement regional agreement which recognizes freedom for all skills levels. The overarching right of third-country nationals¹⁹⁹ to move and to work within the EU is governed by EU agreements and regulations, while individual EU members transpose related directives into their national law and policy as they decide is best to achieve the objectives. The EU seeks to balance the governance of economic migration in order to enhance the integration of non-EU nationals in EU societies, curb irregular migration, and partner with non-EU countries to help govern migration.²⁰⁰

In the area of human rights, the Charter of Fundamental Rights of the European Union applies to areas covered by Union law.²⁰¹ Many of the Charter rights and principles are accorded to everyone, regardless of migration status but the right to social security benefits is limited to those “residing and moving legally” within the EU (article 34(2)).²⁰²

However, the mandate under the Treaty on the Functioning of the European Union (TFEU) to develop a common immigration policy aims to prevent and combat “illegal immigration and trafficking in human beings” including by “removal and repatriation of persons residing without authorization” but has no direct reference to protecting the dignity or rights of persons who are subject to these measures.²⁰³

195 For example, *Berrehab v. The Netherlands*, No. 10730/84, 21 June 1988, and *Boultfi v. Switzerland*, No. 54273/00, 2 August 2001 (criteria to assess a fair balance between the interest of the State in maintaining public order and the right to family life) (as cited in EU-FRA 2011, 23).

196 The text of the European Social Charter extends its application to “foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned”. [European Social Charter \(Revised\)](#), Strasbourg).

197 European Committee on Social Rights (ECSR), *International Federation of Human rights (FIDH) v. France*, Collective complaint No. 14/2003, 8 September 2014; ECSR, *Defense for Children International v. the Netherlands*, Complaint No. 47/2008, 27 October 2009.

198 As of December 2019, 11 Member States of the Council of Europe had ratified the treaty, including France, Italy, the Netherlands, and Spain.

199 See Annex I for definition of third-country national.

200 See generally https://ec.europa.eu/home-affairs/what-we-do/policies/legal-migration_en

201 This is related to EU regulation of labour migration from third countries generally (EU 2012a). See also ILO 2016a, para. 35.

202 *Ibid.*, Article 34(2), available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

203 [Treaty on the Functioning of the European Union \(TFEU\)](#). EU 2012b. Articles 79(1), 79(2)(c). The TFEU ensures “fair treatment” only to “third-country nationals residing legally in the Member States”, Article 79(1).

EU secondary law demonstrates the close relationship in practice between immigration control and enforcement measures and the protection of fundamental rights of the migrants affected. While minimum safeguards apply to persons in return proceedings who have not yet been removed under the Return Directive (EP 2008), no such recognition of rights applies directly to undetected migrants in an irregular situation. The rights of such migrants are primarily subject to policies and measures developed by the EU in other fields and are not expressly restricted to nationals or migrants in regular situations, such as the social policy measures to combat exclusion and to protect the rights of workers.²⁰⁴ For example, the 1989 Directive on Safety and Health at Work has no restriction on the basis of migration status to its definition of “worker” as “any person employed by an employer”.²⁰⁵

Moreover, the Employers Sanctions Directive explicitly provides for the rights of migrant workers in an irregular situation in relation to claims for withheld remuneration arising from past unauthorized employment, complaints against employers, and access to residence permits.²⁰⁶ In addition, the Directive against trafficking in persons imposes on States the responsibility to identify, protect and support victims of trafficking, with effective mechanisms in cooperation with supporting organizations, without limitation to migration status.²⁰⁷ Other protections apply to migrants in an irregular situation in the area of health where measures taken to pursue public health objectives for “a high level of human health protection” are not barred by the status of the person to whom they are addressed (EU-FRA 2011, 25).

A visa-free system similar to the EU and associated States under the Schengen agreement is practiced within some countries of the Commonwealth of Independent States (including all post-Soviet States, except for the Baltic States and Georgia). Many migrants from Afghanistan and other Central Asian countries use this means to come to Russia or Ukraine as a final destination, or as transit countries to the EU.²⁰⁸

Europe – Policy Cooperation

Member States of the Council of Europe (which includes EU countries), the Committee of Ministers, and the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe (PACE) have issued numerous recommendations relating to migration, including irregular migration.²⁰⁹ The Assembly has expressed concern for the human rights of migrants in irregular situations, including migrant children.²¹⁰ In observing the lack of national legislation and guidance on the protection of undocumented children, the PACE called on the Council of Europe’s Member States to implement appropriate legislative measures and to remove barriers such as administrative obstacles, discrimination or lack of information to ensure the full enjoyment of these rights in practice.

204 TFEU, EU 2012b, Articles 151 and 152.

205 [Council Directive 89/391/EEC](#) of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ 1989 L 183/1.

206 [Directive 2009/52/EC](#) of the European Parliament and of the Council of 18 June 2009 on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, (2009/52/EC) OJ 2009 L 168/24.

207 [European Parliament and Council Directive 2011/36/EU](#) of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing [Council Framework Decision 2002/629/JHA](#), OJ L 101, 15.4.2011. However, the Directive provides assistance and services to victims through the criminal proceedings against the perpetrator in which the victim is required to participate. [Directive 2004/81/EC](#) provides for the issuance of a residence permit to victims of trafficking who are third-country nationals. See also the EU measures aimed at addressing [migrant smuggling](#).

208 See the websites of the [Migration and Home Affairs](#) of the European Commission and that of the [Council of Europe](#) on migration.

209 Council of Europe, Committee of Ministers (CoM) [Recommendations on migration](#).

210 [Recommendation CM/Rec\(2011\)13](#) of the Committee of Ministers to Member States on mobility, migration and access to health care, and Parliamentary Assembly of the Council of Europe (PACE) [Undocumented migrant children in an irregular situation: a real cause for concern](#), and PACE Resolution 1509 (2006) [Human rights of irregular migrants](#).

For EU countries, the European Agenda on Migration (2015–2020) contains four pillars to address migration, including reducing the incentives for irregular migration and a new policy on “legal migration” (EC 2015).

The EU’s Global Approach to Migration and Mobility (GAMM) aims at four equally important objectives with respect to human rights as a cross-cutting priority. The four objectives are:

- better organizing “legal” migration, and fostering well-managed mobility;
- preventing and combatting irregular migration, and eradicating trafficking in human beings;
- maximizing the development impact of migration and mobility and promoting international protection; and
- enhancing the external dimension of asylum.²¹¹

A review of the European Agenda on Migration (EAM) concluded that the EU’s upcoming priority should be to deepen partnerships with third countries in areas like “legal migration” and the fight against smuggling (EC 2019, 21). EU Member States engage in dialogue along regional labour migration corridors that prioritize the Africa–EU Partnership on Migration, Mobility and Employment and the Rabat Process (in the South), the Prague Process, and the Eastern Partnership panel on Migration and Asylum (in the East), the migration dialogue with Latin America and dialogue with the countries along the Silk-route, including in the framework of the Budapest Process.²¹² Other important processes include the Tripoli Process and the Khartoum Process.²¹³ Among the outcomes is the Joint Valletta Action Plan established an Emergency Trust Fund for Africa launched in 2015 to implement commitments of the Plan for addressing the diverse causes of instability, irregular migration and forced displacement in the African region; the Fund’s resources (EUR 4.6 billion at time of writing) are devoted to a wide range of development projects.²¹⁴

A *New Pact on Migration and Asylum*, presented by the European Commission in 2020, aims to put in place a comprehensive and sustainable policy, providing a humane and effective long-term response to the current challenges of irregular migration, developing “legal migration pathways”, better integration of refugees and other newcomers, and deepening migration partnerships with countries of origin and transit (EC 2020). The Roadmap to Implement the Pact²¹⁵ provides for the adoption of a new EU Action Plan against Migrant Smuggling for 2021–2025; an assessment how to strengthen the effectiveness of the Employers Sanctions Directive; and building action against migrant smuggling into partnerships with third countries.

On 14 April 2021, the European Commission issued a new strategy on human trafficking 2022–2025 with an overall focus on ensuring and improving effective implementation of existing legislation, preventing demand for human trafficking, breaking the criminal model of operation of criminal organizations and protecting and empowering victims (EC 2021). The strategy emphasizes the significant role of labour inspectors and social partners in the identification of victims, the role of employers and business in preventing abuse of vulnerable workers.

211 European Commission, [Global Approach to Migration and Mobility](#). The GAMM is implemented through several political instruments (bilateral and regional policy dialogues and action plans), legal instruments (such as visa facilitation and readmission agreements), operational support and capacity building as well as programme and project support made available to third countries and other stakeholders, e.g. civil society and international organizations.

212 Sponsored by the International Centre for Migration Policy and Development (ICMPD) on their [website](#).

213 See the [Tripoli Process](#) sponsored by IOM; and the [Khartoum Process](#) at the EU/Horn of Africa Migration Route Initiative website.

214 For details on the Emergency Trust Fund for Africa, see <https://www.intracen.org/yep/about-trust-fund/>.

215 See the EC website on the Roadmap, which has information as well on the migrant smuggling action plan, available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12544-New-Pact-on-Migration-and-Asylum_en.

Bilateral labour migration agreements

Bilateral labour migration arrangements (BLMAs) represent significant tools for cooperation on labour migration governance when they are aligned with internationally recognized principles on labour migration and actively implemented, as noted in the *Global Compact for Safe, Orderly and Regular Migration* (UN 2019, Objective 5).²¹⁶ BLMAs can be effective tools to address irregular migration when the parties adopt aims that seek to create regular pathways while also protecting the rights of migrant workers. BLMAs provide for coordination of efforts to monitor and protect the rights of migrant workers in countries of destination and to ensure that potential migrant workers at home are aware of their rights if they go abroad.

Extending regular pathways to reduce irregular migration and the abuses associated with it, balancing labour market needs, and protecting the human rights of local communities and migrant workers, provide a balanced foundation for cooperation. Such provisions cross-cut a variety of BLMAs, from agreements dedicated to labour migration to broader framework agreements for cooperation.²¹⁷ For example, a bilateral labour agreement between India and Denmark provides for four objectives: “i) labour market expansion; ii) employment facilitation; iii) organized entry and orderly migration; and iv) exchange of information and cooperation”.²¹⁸ In a bilateral arrangement between the United Arab Emirates and India, the parties seek to integrate their information technology systems for transparent labour recruitment.²¹⁹

As a basic principle of good practice in developing and using BLAs, governments should identify, in consultation with the social partners, the relevant matters of common concern and their regulation in alignment with relevant principles of international labour standards and other international norms.²²⁰ Codified good practice is available for this purpose in a model set of provisions for bilateral agreements on labour migration adopted as an annex to Recommendation No. 86 by the International Labour Conference.²²¹ In a multi-stakeholder working group of the UN Network on Migration co-led by ILO and IOM, with participation of the social partners as well as UN agencies, CSOs and other stakeholders, the UN system has developed comprehensive global guidance on rights-based bilateral labour migration agreements (UNMN 2022). The guidance is in line with the principles and objectives of the GCM and aims to assist countries of origin and destination to design, negotiate implement, monitor and evaluate rights-based and gender responsive BLMAs based on a cooperative and multi-stakeholder approach.

216 While bilateral Memoranda of Understanding within Asia, particularly in South-East Asia, have proliferated since 2000 (Wickramesekara and Ruhunage 2019, 11), the current growth of BLAs is particularly notable in the African region, where a number of countries have concluded or are negotiating bilateral agreements or MoUs with the GCC and Middle Eastern countries (ILO 2016a, para. 156).

217 UN registration of a bilateral treaty permits its publication for transparency, avoidance of misunderstandings, and mutual enforcement within the UN dispute settlement framework (the International Court of Justice or other UN organ). *UN Treaty Handbook*, 2012.

218 See *Memorandum of Understanding on Labour Mobility Partnership between the Republic of India and the Kingdom of Denmark* (signed on 29 September 2009) (*India-Denmark MoU*), Article 2.

219 *Memorandum of Understanding between the Government of the United Arab Emirates and the Government of India in the field of Manpower*, 13 September 2011, available at: https://www.ilo.org/global/topics/labour-migration/policy-areas/measuring-impact/agreements/WCMS_379032/lang--en/index.htm.

220 Convention 97, Article 10.

221 See ILO Recommendation No. 86, Annex (model), and para. 21 (BLA as supplement to international labour standards).

► **Box 15. Elements of good practice in relation to BLMAs and irregular labour migration**

Coordination relevant to irregular labour migration

Joint consultation with social partners in development of BLMAs and social dialogue with concerned stakeholders, as well as coordinated efforts to implement BLMAs:²²²

- Social partners and other entities provide training and services to migrant workers, information collection, and awareness-raising and organizing to help implement BLAs. Trade unions can provide advice on how rights of migrant workers and their families can be protected through BLMAs.
- Cross-border agreements between trade unions in countries of origin and destination on protection of migrant workers facilitate social dialogue in the development and implementation of BLMAs.

Transparency and public accessibility of bilateral agreements

UN Global Guidance on BLMA recommends that a well-defined BLMA, and any amendments thereto, incorporates a provision requesting its translation in the local languages and its dissemination to all concerned stakeholders, including through publication of the text, in collaboration with representative organizations of employers and workers (UNMN 2022).

Effective and operationalized procedures for implementation and evaluation

Follow-up procedures include tasking joint committees with information exchange, and monitoring and reporting on existing laws and systems for access to basic rights and dispute settlement to prevent labour disputes and submitting the BLMA to national-level procedures for legal effect. Under the India-Denmark MoU,²²³ a Joint Working Group meets once a year to conduct studies on employment opportunities and suggesting means for enhancing cooperation. The Joint Working Group creates guidance material on rights and duties of employers and workers in order to minimize labour disputes and recommends measures to prevent misuse of visit visas by unscrupulous employers and recruiting agencies.²²⁴

Exchange of information, including on labour markets, mobility, and trade arrangements

Coordination of information and assistance to migrants in country of destination and potential migrants in country of origin.

- In the agreement between Spain and Cabo Verde, the parties agree to awareness-raising campaigns in the country of origin on the risks of irregular migration and of trafficking in persons.²²⁵

Coordination of regularization, amnesty, or voluntary return at no cost to migrants

- Regularization through BLAs is most notable among countries in the Latin American region, as reflected in BLAs between Peru and Colombia (2012), Paraguay and Bolivia (2006), Peru and the Republic of Bolivia (2002), and Argentina and the Republic of Bolivia (1998).

[...]

²²² For further details, see UN global guidance on bilateral labour migration agreements.

²²³ [India-Denmark MoU](#).

²²⁴ [India-Denmark MoU](#), Article 12.

²²⁵ [Framework Agreement of Cooperation on the Subject of Immigration](#) between the Kingdom of Spain and the Republic of Mali, 2007, Article 8(g).

[...]

Fair recruitment:

Parties to BLAs should ensure fair recruitment by providing for action to:

- ▶ Prohibit the charging of fees to workers which applies in both countries of origin and destination, and call for itemization of recruitment fees and related costs;
- ▶ Require use model employment contract in line with international standards and clear terms in advance communicated to the potential migrant worker and prohibit contract substitution as well as gender-specific information for prospective women migrant workers in line with international instruments (UN-OCHCR-CEDAW 2009);
- ▶ Regulate, investigate and, where necessary, prosecute organizers of trafficking in persons, wherever found, and perpetrators of abusive and fraudulent recruitment and forced labour;
- ▶ Legislate and enforce employer sanctions on unauthorized employment; and
- ▶ Require employer to pay the direct costs of recruitment and placement of workers.

Trends in exemplary practice that give effect to such principles include:

- ▶ Saudi Arabia provides in its BLAs for use of a model employment agreement that includes some of the requirements of the ILO Domestic Workers Convention, 2011 (No. 189).
- ▶ The MoU between Bangladesh and the Republic of Korea requires the agency of the country of origin to explain the content of the employment contract to the worker to enable his/her signature (Wickramasekara and Ruhunage 2018.)
- ▶ Under its MoU with Saskatchewan (Canada), the Philippines Government requires recruitment agencies to conduct mandatory orientation for workers on the contents of the employment contract (ibid.).
- ▶ Under the 1998 Agreement on migration between Argentina and Bolivia, each of the parties establish employer sanctions for unauthorized employment without prejudice to the worker concerned.²²⁶

Equality of treatment and services for migrant workers in an irregular situation

- ▶ guarantee equal treatment, including for rights arising out of employment such as wage protection, social security, employment injury and health care.
- ▶ Require employment contracts and workplace protections; prohibition of confiscation of travel and identity documents.
- ▶ Ensure rights of women migrant workers in an irregular situation and irregular-status migrant workers with particular vulnerabilities.
- ▶ Provide accessible mechanisms for filing complaints and dispute resolution procedures, with guarantees of due process rights, including consular notification.

²²⁶ Agreement on migration between the Argentine Republic and the Republic of Bolivia (16 February 1998), article 14.

Cross-border trade union agreements can assist consultation in development of BLAs. For example, a cooperation agreement between Senegalese and Spanish trade unions led to consultation involving social partners from both countries in the development of a BLA.²²⁷

Ensuring implementation in practice is equally critical to effectiveness and depends on a number of factors, including the BLA's legal nature, its transparency, and its oversight mechanisms. About three-quarters of BLAs in Africa, Europe and the Americas are legally binding agreements (ILO 2017c, para. 68 and Table 3.1). Some 145 bilateral cooperation arrangements, primarily from these regions, are available online in an ILO database (ILO 2016a, para. 158).²²⁸ In a review of these, concrete procedures for implementation, monitoring, and evaluation were found in more than 70 percent of BLAs.²²⁹ How parties apply these procedures in practice, including in relation to bilateral and regional trade agreements, is a key area for further research and exchange of practice.

Policy cooperation – bilateral level

Informal policy cooperation at bilateral and other levels offers a recommended means of exchange of information and good practice, cooperation with placement and recruitment agencies, consultations between experts and ministers, and other interaction between representatives of countries of origin and countries of destination (ILO 2019h; UN 2019).

In the EU context, for example, the most developed bilateral cooperation frameworks under the GAMM are the bilateral Mobility Partnerships (MPs) and the Common Agendas for Migration and Mobility (CAMM).²³⁰ Both address mobility issues, including visa issues where appropriate, and the need to facilitate return and readmission of irregular-status migrants. An MP leads to negotiation of visa facilitation and readmission agreements and is mainly used in relation to neighbouring countries. A CAMM, which does not lead to such agreements, is used for other third countries.

Due to the COVID-19 pandemic, many migrant workers are facing economic hardship after losing their jobs and cannot afford the cost of the journey home. Future bilateral agreements should include clauses regarding safe return and other measures, in situations of crisis, in line with ILO standards. BLAs could be more explicit on the responsibilities of governments, employers, employment agencies, and other stakeholders regarding support for migrants temporarily laid off due to economic or health crises. This includes provisions regarding portability of social security, costs of return, and the possibility of migrant workers with a valid work permit to return to their employment in the country of destination without penalty or further payment, or find a new employer.

227 See Centres for migrants in Senegal and Mauritania at the ILO's Labour Migration Good Practice database at: https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=141.

228 See Bilateral labour arrangements (BLAs) on labour migration at: <http://www.oit.org/global/topics/labour-migration/policy-areas/measuring-impact/agreements/lang--en/index.htm>.

229 ILO 2016a, see Box: *Bilateral Agreements and Memoranda of Understanding on Migration of Low-Skilled Workers: Outcomes of ILO research in 2014–15*, at para.158, page 53.

230 Nine Mobility Partnerships have been signed between the EU and Armenia, Azerbaijan, Belarus, Cabo Verde, Georgia, Jordan, the Republic of Moldova, Morocco, and Tunisia. Two Common Agendas on Migration and Mobility have been signed between the EU and Ethiopia and Nigeria. For details on these CAMMs and MPs, see [Global Approach to Migration and Mobility](#).

Considering the prevalence of COVID-19 in detention centres and dormitories in countries of destination, agreements with countries of destination could ensure that migrants are not detained at this time for administrative immigration breaches; that all institutions or dormitories immediately implement health guidance for safety taken from the World Health Organization (WHO 2021) and local health ministries. Future bilateral agreements on labour migration must include measures that protect migrants from conditions which pose a threat to the health of migrants (*ibid.*, 9).

Clear and comprehensive social protection provisions in BLAs and model employment contracts, or specific reference within BLAs to separate social security agreements, is key to address social protection needs in crisis contexts. BLAs can serve to outline responsibilities in terms of health care, income support measures and other measures for ensuring the welfare of migrant workers, both during their time in the country of employment and upon return to their country of origin. Some BLAs already include provisions covering access to health care and work injury benefits, but important protection gaps remain in terms of scope and benefits (ILO 2020d; van Panhuys et al. 2017).

This Compendium highlights practices within and among States to address irregular labour migration and protect migrant workers in irregular situations, including through pathways toward regular migration. The practices selected are in line with ILO instruments and other international norms, and guidance. While not intended to be exhaustive, the Compendium identifies a variety of practices of States, social partners, and others that can facilitate improvements in labour migration processes, ensure migrant workers' rights, and increase the benefits of migration for countries of origin and destination, their nationals, and migrant workers and their families alike.

► **Contact:**

Bureau international du travail

Route des Morillons 4

CH-1211 Genève 22

Suisse

T: +41 22 799 61 11

ilo.org