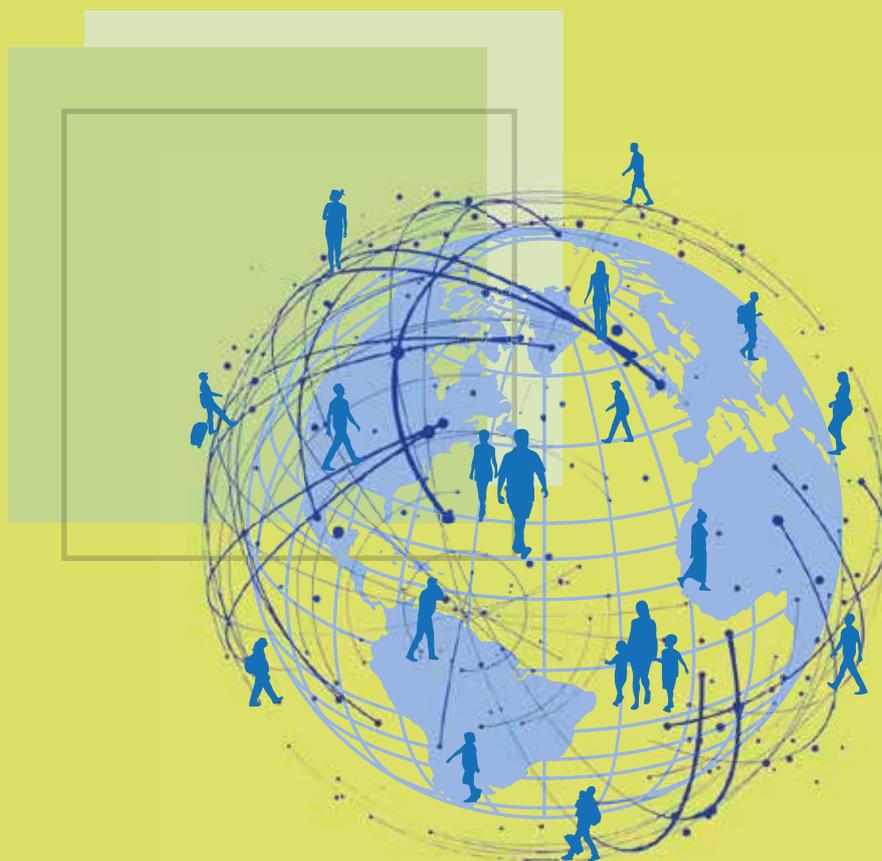




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Labour
Office
Geneva

Report IV

Addressing governance challenges in a changing labour migration landscape



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Report IV

Addressing governance challenges in a changing labour migration landscape

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Abbreviations

| | |
|---------|--|
| ACTRAV | ILO Bureau for Workers' Activities |
| ASEAN | Association of Southeast Asian Nations |
| AU | African Union |
| CARICOM | Caribbean Community |
| CAN | Andean Community |
| CAS | Committee on the Application of Standards |
| CEACR | Committee of Experts on the Application of Conventions and Recommendations |
| ECOWAS | Economic Community of West African States |
| EU | European Union |
| GCC | Cooperation Council for the Arab States of the Gulf |
| ICLS | International Conference of Labour Statisticians |
| ILC | International Labour Conference |
| IMF | International Monetary Fund |
| IOE | International Organisation of Employers |
| IOM | International Organization for Migration |
| ITUC | International Trade Union Confederation |
| KNOMAD | Global Knowledge Partnership on Migration and Development |
| MoU | memorandum of understanding |
| OECD | Organisation for Economic Co-operation and Development |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| SAARC | South Asian Association for Regional Cooperation |
| SADC | Southern African Development Community |

Introduction

1. At its 325th Session (November 2015), the Governing Body of the International Labour Office agreed to hold a general discussion on labour migration at a future session of the International Labour Conference (ILC), with particular reference to effective labour migration governance at the national, bilateral, regional and interregional levels, and to fair recruitment,¹ which are key components of the ILO Fair Migration Agenda.² This discussion can provide important and timely guidance to strengthen the ILO's work and impact in the field of labour migration, and enhance the capacity of ministries of labour and employers' and workers' organizations to influence policy formulation and implementation, and engage in the promotion of fair migration.³
2. The current political debate surrounding migration, however, is often based on misperceptions about the relationship between migration, jobs and development, which have been exacerbated by large movements of refugees, other forcibly displaced persons and irregular migrants in various parts of the world, particularly in the Mediterranean region. These misperceptions have made it more difficult to make the case for well-governed labour migration as a positive force for sustainable development. Despite the difficulties, it is even more urgent to discuss the governance of labour migration in the light of the rapidly changing nature of work, widening economic and demographic disparities, and the need for skills and jobs matching to meet labour market needs.
3. While migration is seen as a critical dimension of ongoing debates on the future of work (one of the ILO's seven Centenary Initiatives),⁴ the challenges in governing labour migration will grow due to trends such as technological changes, evolutions of the employment relationship and erosion of the social contract between the State and other actors.⁵
4. At the same time, in the 2030 Agenda for Sustainable Development, member States of the United Nations resolved to create the conditions for "decent work for all", recognized "the positive contribution of migrants for inclusive growth and sustainable

¹ ILO: *Minutes of the 325th Session of the Governing Body of the International Labour Office*, November 2015, GB.325/PV, para. 32.

² ILO: *Fair migration: Setting an ILO agenda*, Report of the Director-General, Report I(B), ILC, 103rd Session, 2014, Geneva.

³ ILO: *Agenda of the International Labour Conference*, Governing Body, 325th Session, Geneva, November 2015, GB.325/INS/2, Appendix III, paras 22–23.

⁴ ILO: *The future of work centenary initiative*, Report of the Director-General, Report I, ILC, 104th Session, 2015, Geneva, para. 61; ILO: *Towards the ILO centenary: Realities, renewal and tripartite commitment*, Report of the Director-General, Report I(A), ILC, 102nd Session, 2013, Geneva.

⁵ See ILO: *The future of labour supply: Demographics, migration, unpaid work*, The Future of Work Centenary Initiative Issue Note Series 2, Nov. 2016, p. 5, as well as other notes in this series available at: <http://www.ilo.org/global/topics/future-of-work/facet/lang--en/nextRow--0/index.htm>.

development”, and pledged that “no one will be left behind”.⁶ Indeed, decent work and migration cut across the whole 2030 Agenda, but are bound up specifically in Goal 8 on economic growth and decent work, particularly target 8.8, and in Goal 10 on reducing inequality within and among countries, particularly target 10.7. Decent work and labour migration is also expected to feature strongly in the Global Compact for Safe, Orderly and Regular Migration, which UN member States committed to adopt in 2018, along with a separate Global Compact on Refugees (box 0.1).⁷ These global developments, therefore, make the general discussion on labour migration ever more relevant for the ILO’s constituents.

Box 0.1
Towards a global compact for safe, orderly and regular migration

In response to concerns relating to large movements of refugees and migrants, in September 2016 the UN General Assembly adopted the New York Declaration for Refugees and Migrants, which commits member States to adopt two global compacts in 2018: one on refugees and the other for safe, orderly and regular migration.

The purpose of the global compact for migration is to set out a range of principles, commitments and understandings among UN member States regarding international migration in all its dimensions, and to address all aspects of international migration, including the humanitarian, developmental, human rights-related and other aspects of migration. The compact is to be guided also by the 2030 Agenda, and may include actionable commitments, means of implementation and a framework for follow-up and review of implementation.

The President of the General Assembly appointed two co-facilitators (the Permanent Representatives of Mexico and Switzerland in New York) to lead the intergovernmental consultations and negotiations, which will occur in three phases.

Phase I comprises a series of consultations and informal meetings supported by the Secretary-General and drawing on the expertise of the International Organization for Migration (IOM) and other members of the Global Migration Group (April–November 2017) around six thematic areas: (1) human rights of migrants; (2) irregular migration and regular pathways, including decent work, labour mobility and recognition of skills and qualifications; (3) international cooperation and governance of migration; (4) contributions of migrants and diasporas to all dimensions of sustainable development, including remittances and portability of earned benefits; (5) addressing drivers of migration, including adverse effects of climate change, natural disasters and human-made crises; and (6) smuggling of migrants, trafficking in persons and contemporary forms of slavery. Multi-stakeholder regional and subregional consultations are also envisaged.

Phase II envisages stock-taking of the inputs at a preparatory meeting convened by the co-facilitators in Mexico in late November 2017. The chairperson’s summary of this meeting will form the basis of the zero draft of the Compact.

⁶ United Nations (UN): *Transforming our world: the 2030 Agenda for Sustainable Development*, General Assembly, 70th session, A/RES/70/1, 21 Oct. 2015.

⁷ This report, however, focuses on migration governance in respect of migrant workers and not refugees and other forcibly displaced persons, in line with the Governing Body decision on the scope of the discussion.

Phase III consists of intergovernmental negotiations on the Compact, beginning in February 2018 at UN Headquarters in New York. These will culminate in an intergovernmental conference to adopt the Compact immediately prior to the opening of the general debate of the 73rd session of the General Assembly.

Source: UN: *New York Declaration for Refugees and Migrants*, General Assembly, 71st session, A/RES/71/1, 3 Oct. 2016; idem.: *Modalities for the intergovernmental negotiations of the global compact for safe, orderly and regular migration*, A/71/L.58, 30 Jan. 2017.

Objectives and structure of the report

5. This report aims to contribute to an informed and balanced discussion of the issues surrounding migration and work. It examines the role of the ILO and its constituents in attaining a fair and effective governance of labour migration that benefits societies of origin and destination, protects the rights of migrant workers and their families, and enhances social cohesion.

6. Chapter 1 provides an overview of the main global and regional trends relating to labour migration. Chapter 2 focuses on key challenges for labour migration governance and emphasizes the linkages between reducing decent work deficits and labour migration costs, creating strong and functional labour market institutions and active labour market policies, and strengthening international cooperation. Chapter 3 focuses on bilateral agreements relating to labour migration, an important aspect of international cooperation on migration, and considers how they can contribute to improved labour migration governance, including fair recruitment. Chapter 4 examines the challenges in facilitating labour migration and mobility⁸ at the subregional and regional levels, particularly in regional economic communities in Africa, the Arab States, Asia and the Pacific and Latin America, as well as in interregional cooperation, with reference to ILO interventions. Chapter 5 discusses the fair recruitment of migrant workers, with particular reference to the ILO general principles and operational guidelines for fair recruitment, the internationally agreed commitment to reduce the costs of labour migration, and implementation of the ILO Fair Recruitment Initiative. Chapter 6 considers the way forward and proposes some points for discussion.

7. Throughout the report, references are made to the ILO's standards and policy frameworks, previous discussions at the International Labour Conference and the Governing Body, and ILO development cooperation activities, as well as related discussions at the global level, including in the UN General Assembly, the Global Forum on Migration and Development and the Global Migration Group.

⁸ The report uses "labour mobility" to refer to temporary or short-term movements of persons for employment-related purposes, particularly in the context of the free movement of workers in regional economic communities. See Chapter 4.

Chapter 1

Global and regional labour migration trends

8. Migration today is linked, directly or indirectly, to the quest for decent work opportunities. Even if employment is not the primary driver for the initial movement, it usually features in the migration process at some point. Family members joining migrant workers abroad may also take up work, either as employees or in self-employment.¹

9. Labour migration is an increasingly complex and dynamic phenomenon taking place within and between all regions of the world. In certain migration corridors, such as between Asia and the Arab States and within South-East Asia, the number of international migrants, the large majority of whom are migrant workers, has tripled since 1990. Temporary labour migration, particularly of low-skilled workers, is exceeding permanent flows, and this presents a significant governance challenge in terms of ensuring decent work and reducing migration costs for this category of migrant workers (see Chapter 2).

1.1. Migrants in the world of work today: Global and regional trends

10. Recent years have witnessed wide-ranging efforts to produce reliable and comparable data on labour migration. However, the data gap remains significant, as noted by the ILO² and the international community.³ In response, the ILO has produced global and regional estimates on migrant workers.⁴ It has also established a working group on labour migration statistics to set global guidance and promote consistent collection and harmonization of labour migration data that can better support evidence-based policy-making (box 1.1). The need for better-quality data on labour migration is also underscored in the 2030 Agenda, notably Goal 17 on strengthening the means of implementation and revitalization of the Global Partnership for Sustainable Development.⁵

¹ ILO, OECD and World Bank: *The Contribution of Labour Mobility to Economic Growth*, joint paper for the G20 Labour and Employment Ministers' Meeting, Ankara, Turkey, 3–4 September 2015, pp. 3–4.

² See the outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning the migrant workers instruments, ILC, *Provisional Record No. 16-1*, 105th Session, 2016, para. 106(12).

³ UN: *New York Declaration for Refugees and Migrants*, General Assembly, 71st session, A/RES/71/1, 3 Oct. 2016, para. 40; idem.: *Declaration of the UN General Assembly High-level Dialogue on International Migration and Development*, 68th session, A/RES/68/4, 21 Jan. 2014, para. 28.

⁴ ILO: *ILO global estimates on migrant workers: Results and methodology*, Geneva, 2015.

⁵ UN: *Transforming our world: the 2030 Agenda for Sustainable Development*, General Assembly, 70th session, A/RES/70/1, 21 Oct. 2015, target 17.18.

Box 1.1**ILO working group on labour migration statistics**

In October 2013, the 19th International Conference of Labour Statisticians, the ILO's statistical standard-setting mechanism, adopted resolution IV concerning further work on labour migration statistics, which recommended that the Office establish a working group "with the aim of sharing good practices, [and] discussing and developing a workplan for defining international standards on labour migration statistics that can inform labour market and migration policy". The working group comprises representatives of tripartite constituents and senior labour migration statistics experts, and has held two meetings, in Istanbul in October 2015 and in Turin in November 2016. Its focus has been to identify the main conceptual issues and to recommend the concepts and definitions to be used in building national statistics on international labour migration. The results of these efforts will contribute to the next discussion of the International Conference of Labour Statisticians in 2018 and the development of international concepts and standards on labour migration statistics agreed worldwide.

Source: 19th International Conference of Labour Statisticians, *Report of the Conference*, Report III, 2–11 October 2013, Geneva, ICLS/19/2013/3, p. 68.

1.1.1. Global trends

11. The current estimates show that, in 2015, the stock of international migrants reached 244 million,⁶ having risen by 71 million or 41 per cent since 2000, and now amounts to 3.3 per cent of the global population.⁷ While the proportion of global population remained essentially the same over that period, there has been dynamic change in patterns of movements. While migration to developed economies and the recent increase of low-skilled labour migration to the Arab States continue to account for a large share of international migrants globally, 57 per cent of the increase in total migration between 2000 and 2013 was due to higher levels of South–South migration.⁸

12. Slightly less than half of all international migrants (48.2 per cent) are women. Children (aged 0–14 years) comprise 10.4 per cent of international migrants, and a further 21.2 per cent are young people between the ages of 15 and 29.⁹

13. According to the ILO global estimates, in 2013 there were 150 million migrant workers: 83.7 million men (55.7 per cent) and 66.6 million women (44.3 per cent).¹⁰ Migrant workers represent 4.4 per cent of the global workforce, higher than the proportion of international migrants in the global population. More migrant women than non-migrant women (67 per cent as compared to 50.8 per cent) participate in the labour force, whereas participation rates of migrant and non-migrant men are essentially the same (78 per cent as compared to 77.2 per cent).¹¹

⁶ UN Department of Economic and Social Affairs (UN-DESA), Population Division: *Trends in International Migrant Stock: The 2015 Revision*, UN database, POP/DB/MIG/Stock/Rev.2015.

⁷ UN-DESA Population Division: *International Migration Report 2015: Highlights*, New York, 2016, pp. 5 and 21.

⁸ ILO: *World of Work Report 2014: Developing with Jobs*, Geneva, 2014, p. 189.

⁹ UN-DESA Population Division: *Trends in International Migrant Stock: Migrants by Age and Sex*, UN database, POP/DB/MIG/Stock/Rev.2015.

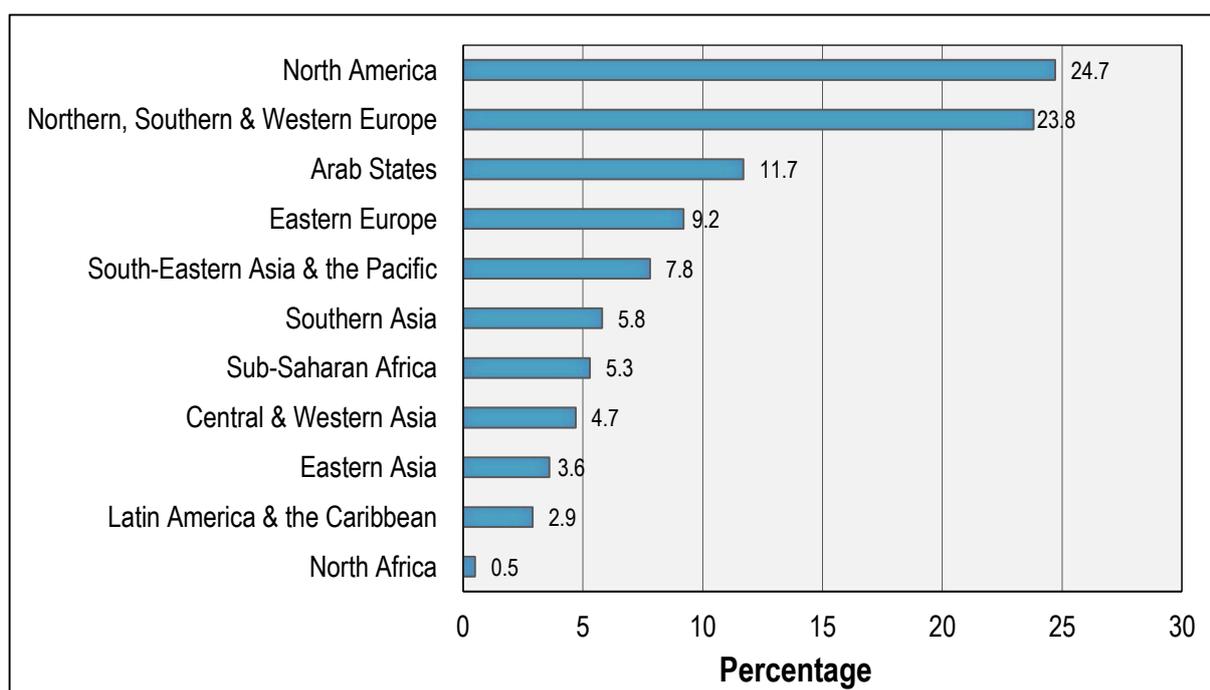
¹⁰ *ILO global estimates*, op. cit., pp. 5–6. For the purpose of these estimates, the term "migrant worker" refers to all international migrants who are currently employed or are unemployed and seeking employment in their country of current usual residence, *ibid.*, p. 28.

¹¹ *ibid.*, pp. 6, 7 and 8 (table 2.3).

1.1.2. Regional and subregional trends

14. Almost half of all migrant workers (48.5 per cent) are concentrated in North America and Northern, Southern and Western Europe, while just over one fifth (21.9 per cent) are in Asia (all subregions) and the Pacific. The Arab States account for over one tenth of the global population of migrant workers (figure 1.1). This is a trend that has changed in the past two decades. The largest proportion of migrant workers as a share of all workers in the labour force is found in the Arab States (one third), followed by North America (one fifth) and Northern, Southern and Western Europe (one sixth).¹²

Figure 1.1. Distribution of migrant workers living in each subregion, as a percentage of total migrant workers (men and women), 2013



Source: ILO global estimates, op. cit., p. 17, figure 2.17.

15. When disaggregated by sex, 52.9 per cent of all women migrant workers and 45.1 per cent of all men migrant workers work in North America and Northern, Southern and Western Europe, whereas 17.9 per cent of all men migrant workers globally are employed in the Arab States as compared to only 4 per cent of all women migrant workers. Over one tenth of all women migrant workers (11.1 per cent) are employed in Eastern Europe. Given this distribution, it is not surprising to find that nearly 75 per cent of all migrant workers are in high-income countries. Indeed, one in six workers in high-income countries is a migrant.¹³ Nonetheless, as noted in section 1.1.1 above, South–South migration is the fastest-growing trend.

16. International migration has grown significantly in some key migration corridors. For example, the number of international migrants from Asia to the Arab States, many of whom are migrant workers, has more than tripled, from 5.7 million in 1990 to 19 million in 2015.¹⁴ Within the ten countries belonging to the Association of Southeast Asian

¹² *ibid.*, pp. 6, 7 and 19.

¹³ *ibid.*, p. 10.

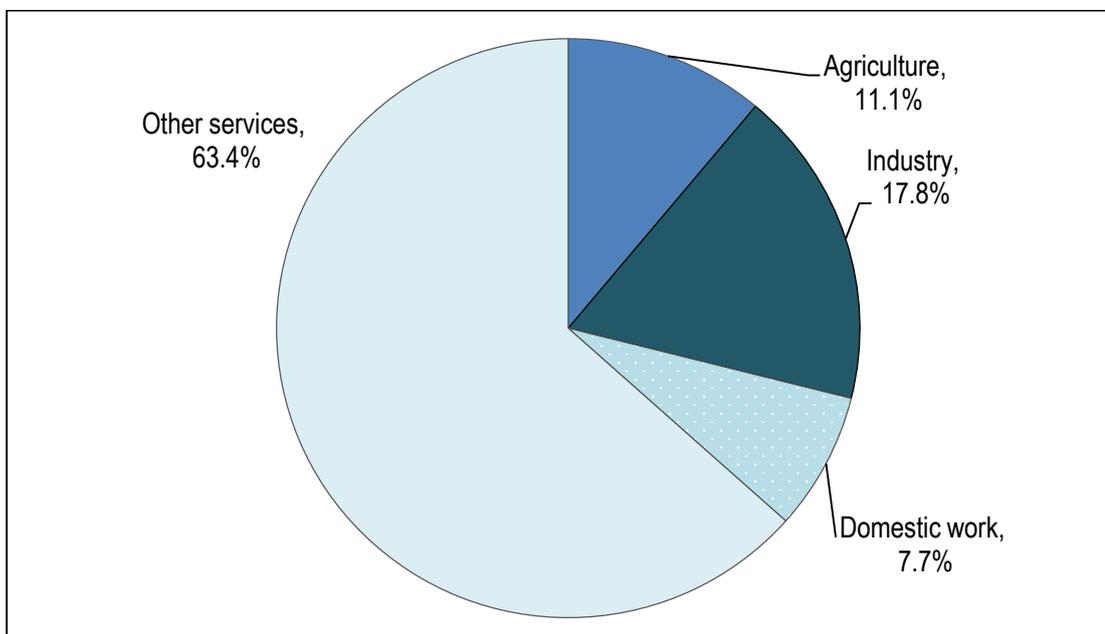
¹⁴ UN-DESA: *Trends in International Migrant Stock: The 2015 Revision*, op. cit.

Nations (ASEAN), the number of migrants has also tripled since 1990, with nearly two thirds coming from another ASEAN member State.¹⁵ In addition, persons forcibly displaced by persecution, conflict-induced situations, poverty and environmental or climate impacts numbered over 65 million at the end of 2015.¹⁶ These trends have created enormous challenges for governance.

1.1.3. Distribution of migrant workers by sector

17. According to the ILO estimates, migrant workers are concentrated in certain economic sectors. In 2013, 106.8 million migrants were employed in the services sector, representing 71.1 per cent of all migrant workers.¹⁷ Of these, 7.7 per cent were employed as domestic workers. The remainder work in industry, including manufacturing and construction, and in agriculture (figure 1.2).

Figure 1.2. Global distribution of migrant workers, by broad branch of economic activity, 2013 (percentage)



Source: *ILO global estimates*, op. cit., p. 9 (figure 2.6).

18. There are some notable gender differences in the distribution of migrant workers by sector. Both sexes account for almost exactly the same proportion (around 11 per cent) in agriculture. In industry, there is a greater proportion of men than women migrants (19.8 per cent of men as opposed to 15.3 per cent of women), while more women than men migrants work in the services sector (73.7 per cent to 69.1 per cent). This difference in the services sector, however, is accounted for by a markedly greater engagement of women in domestic work, which, as discussed in section 1.2 below, is set to grow in the light of demographic changes. Consequently, in relative terms, a higher proportion of men

¹⁵ *ibid.*

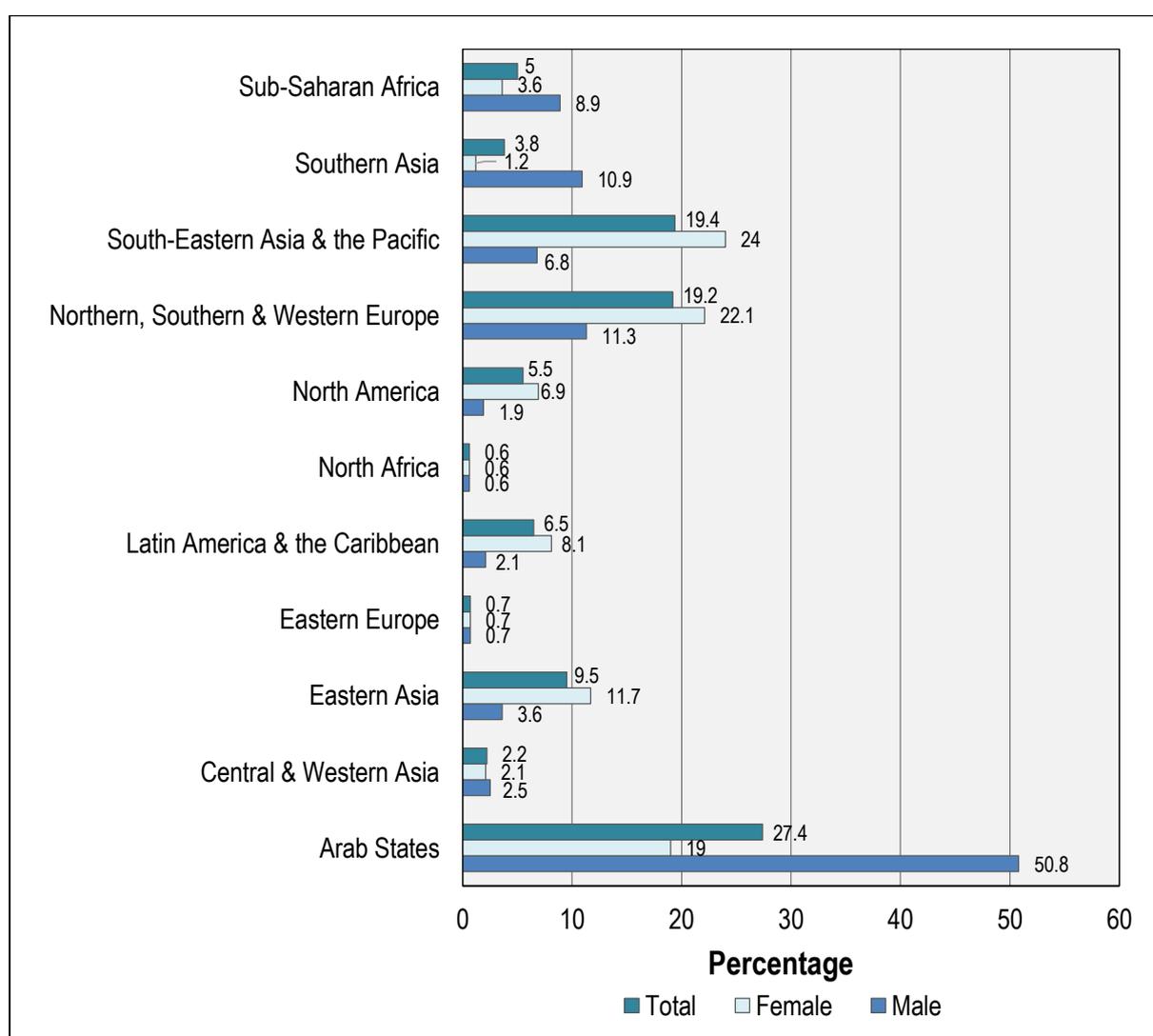
¹⁶ Office of the United Nations High Commissioner for Refugees: *Global Trends: Forced Displacement in 2015*, Geneva, 2016, p. 2; Internal Displacement Monitoring Centre, <http://www.internal-displacement.org/>.

¹⁷ *ILO global estimates*, op. cit., p. 8.

migrant workers are engaged in services other than domestic work compared to women migrant workers (65.4 per cent of men as compared to 61 per cent of women).¹⁸

19. With regard to domestic work, of the estimated 67.1 million domestic workers in the world in 2013, 11.5 million or 17.2 per cent were migrant workers, with 79.2 per cent concentrated in the high-income group of countries. Around 73.4 per cent (or 8.45 million) of all migrant domestic workers are women.¹⁹ The Arab States host the largest share (27.4 per cent) of the global total of migrant domestic workers, and just over half (50.8 per cent) of the global number of men migrant domestic workers, amounting to over 10.4 per cent of all men migrant workers in that region. Concerning the global number of women migrant domestic workers, South-Eastern Asia and the Pacific host the largest share, at just under one quarter (figure 1.3).²⁰

Figure 1.3. Distribution of migrant domestic workers, by sex and broad subregion



Source: *ILO global estimates*, op. cit., figures 2.21 and 2.22.

¹⁸ *ibid.*

¹⁹ *ibid.*, pp. 6–7, 10–11.

²⁰ *ibid.*, p. 20. For additional data and analysis on migrant domestic workers globally, see M.-J. Tayah: *Decent work for migrant domestic workers: Moving the agenda forward*, ILO, Geneva, 2016.

1.2. Demographic change and labour migration

20. Ageing populations and declining national labour forces in most advanced economies and some large emerging economies suggest that migrant workers will play an important role in maintaining labour supply and filling labour shortages, as well as in contributing to social protection funds in these countries.²¹ Indeed, this is already occurring, as in recent years migrants represented 47 per cent of the increase of the labour force in the United States and 70 per cent in Europe.²² In advanced economies, one fifth of the population is already aged 60 or older, and the expectation is that this share will rise to more than 30 per cent by 2050; meanwhile in many developing countries, less than 10 per cent of the population is aged 60 or older. Labour migration could, therefore, leverage this difference in population age structures, potentially benefiting both developed and developing economies.²³ However, while international migration contributes significantly to population growth in North America, Oceania and Europe – where the size of the population would have declined during the period 2000–2015 in the absence of positive net migration – and can also play a role in modifying old-age dependency ratios, it cannot reverse the trend of population ageing.²⁴ Given that during the period from 2015 to 2050, old-age dependency ratios are projected to increase significantly in Europe, North America, Latin America and the Caribbean, and Oceania,²⁵ migration for domestic and care work is also set to grow, thus reinforcing the global care chain (box 1.2).

Box 1.2 The global care chain

The feminization of domestic and care labour creates a global care chain, a term coined by Arlie Hochschild to describe “a series of links between people across the world based on the paid and unpaid work of caring”. Ageing populations and women’s increasing participation in the global labour force create more demand for paid domestic work and care work by private households which, in a context of shrinking public budgets for care services, need to seek private solutions to care needs. The migrant women and men who fill those positions then rely on relatives or informal and low-paid workers to care for their own families, creating a chain effect. Migrants’ families (particularly female relatives such as mothers or eldest daughters) who take over unpaid domestic and care work may find that doing so limits their own ability to take up economic or education opportunities. This phenomenon results in the transfer of caring responsibilities from women to other women in often unprotected and precarious conditions, perpetuating labour market segregation, gender inequalities and discrimination.

Source: Adapted from T. O’Neill et al., *Women on the move: Migration, gender equality and the 2030 Agenda for Sustainable Development*, Overseas Development Institute Briefing, July 2016, p. 6.

1.3. Characteristics of labour migration

21. In general, migration for employment can be highly skilled or less skilled, permanent or temporary. Over one third (60 million) of all migrant workers are considered to be

²¹ ILO, OECD and World Bank: *The Contribution of Labour Mobility to Economic Growth*, op. cit., p. 4.

²² OECD: *Is migration good for the economy?*, Migration Policy Debates, May 2014, p. 2.

²³ ILO: *World of Work Report 2014*, op. cit., p. 189.

²⁴ UN-DESA: *International Migration Report 2015: Highlights*, op. cit., pp. 21 and 23.

²⁵ *ibid.*, p. 23.

skill-based migrants.²⁶ Permanent migration for work is largely a feature in high- and middle-income countries and is being surpassed by temporary labour migration, particularly in those corridors characterized by increasing migration flows, as noted in section 1.1.2 above. Permanent migrants normally settle in the destination country, where some choose to become naturalized citizens, while temporary migrants stay and work in the country for a defined period of time, which may range from a few months to several years.²⁷ Migrant workers with a higher level of skills find it generally easier to settle in the destination country than low-skilled workers.²⁸

22. As discussed in Chapter 2, less-skilled migrant workers are more frequently exposed to decent work deficits and bear higher labour migration costs. They constitute the large majority of migrant workers worldwide and their share in total labour migration has been growing in recent years, giving rise to serious concerns regarding the efficiency and equity of labour migration. They are also more likely to be in an irregular status. While irregular migration is by definition difficult to measure, one recent estimate maintains that approximately one fifth (50 million) of all international migrants are unauthorized.²⁹

1.3.1. Permanent labour migration

23. Permanent labour migrants primarily go to countries belonging to the Organisation for Economic Co-operation and Development (OECD), some middle-income countries in South America, and the Russian Federation. Overall permanent migration flows to OECD member countries reached 4.3 million entries in 2014, with an increase of around 10 per cent to 4.8 million in 2015 according to preliminary data. Just over 1 million new permanent migrants went to the United States and 2.1 million migrants, half of whom were non-European Union (EU) nationals, went to EU member States. In 2014, Germany remained the second-largest immigration country after the United States, receiving more than 13 per cent of all permanent immigrants to the OECD countries. Family migration accounts for over one third of overall permanent migration flows to OECD countries. Although migration for work of third-country nationals to OECD countries represents only 14 per cent of total permanent migration flows, free-movement migration, which represents the second-largest category of permanent migration (32 per cent), also involves labour mobility (figure 1.4).³⁰ In South America, in addition to Chile, Argentina saw a steady increase in permanent immigration flows, from 81,000 in 2008 to 139,000 in

²⁶ A.T. Fragomen, Jr.: *The Business Case for Migration: The GFMD Business Mechanism's Position Paper and Recommendations for Presentation at the Ninth GFMD Summit*, Global Forum on Migration and Development, Bangladesh, December 2016, p. 4.

²⁷ The Organization of American States (OAS) and the OECD define the broader categories of temporary and permanent (im)migrants as follows: "A temporary immigrant is a person of foreign nationality who enters a country with a visa or who receives a permit which is either not renewable or only renewable on a limited basis. Temporary immigrants are seasonal workers, international students, service providers, persons on international exchange, etc. A permanent immigrant... is a person who enters with the right of permanent residence or with a visa or permit which is indefinitely renewable. Permanent immigrants would generally include marriage immigrants, family members of permanent residents, refugees, certain labor migrants, etc." See OAS and OECD: *International Migration in the Americas: Third Report of the Continuous Reporting System on International Migration in the Americas (SICREMI)*, Washington, DC, 2015, p. 3 (box 1).

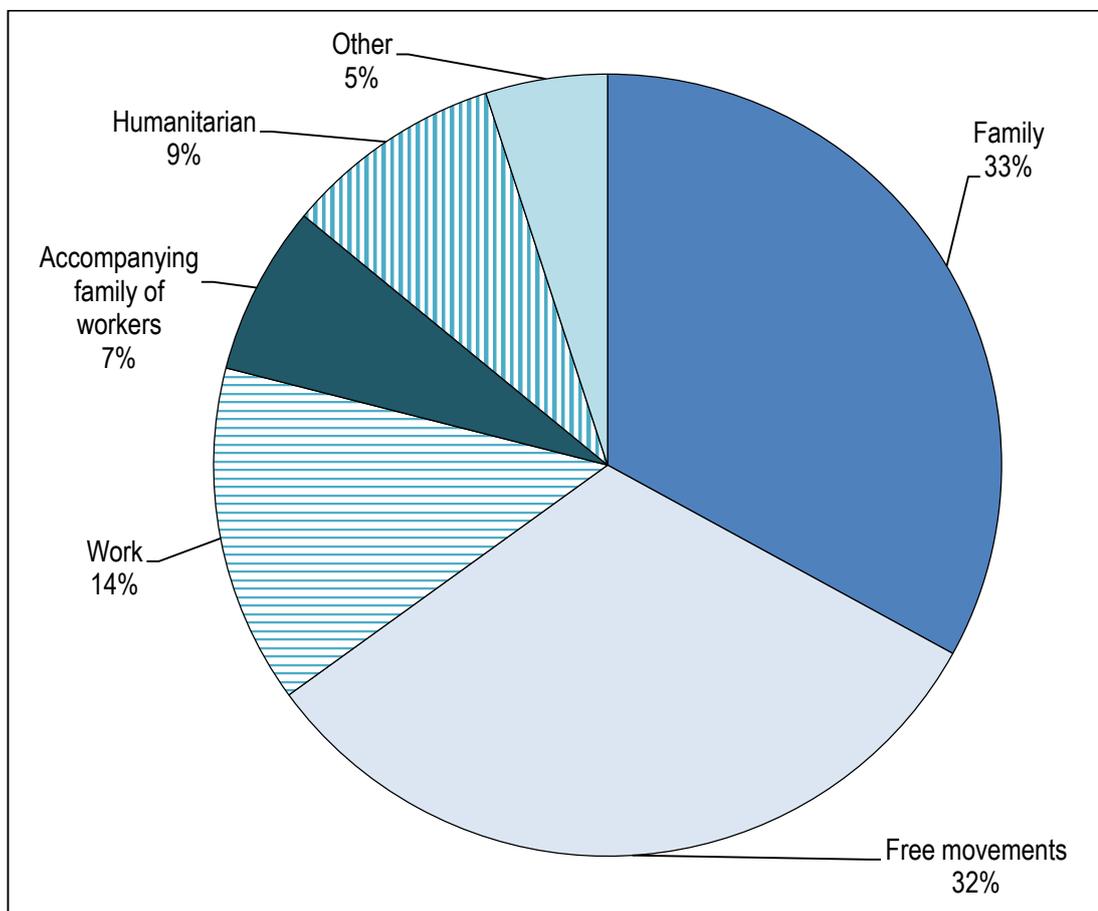
²⁸ ILO: *Fair migration: Setting an ILO agenda*, Report of the Director-General, Report I(B), ILC, 103rd Session, 2014, Geneva, paras 72–74.

²⁹ J. Chamie: "Understanding Unauthorized Migration", Inter Press Service, New York, 15 Nov. 2016.

³⁰ OECD: *International Migration Outlook 2016*, Paris, 2016, pp. 15–18 (and table 1.1).

2013,³¹ and in the Russian Federation the Federal Migration Service issued 149,000 permanent residence permits in 2015.³²

Figure 1.4. Permanent migration flows to OECD countries by category of entry, 2014 (percentages)



Source: OECD, *International Migration Outlook 2016*, op. cit., p. 19, figure 1.2, panel B.

1.3.2. Temporary labour migration

24. Temporary labour migration occurs in all parts of the world. In some regions and subregions, such as South-East Asia, Africa and the Arab States, labour migration flows are largely of a temporary nature, while permanent migration is complemented by temporary labour migration in established countries of immigration (such as Australia, Canada, New Zealand and the United States) as well as in a number of European countries. The perceived value of temporary labour migration to countries of destination is its flexibility to meet short-term demand for high- and low-level skills, thus allowing host country labour markets to adjust to shifting economic conditions.³³ Positive consequences

³¹ OAS and OECD: *International Migration in the Americas*, op. cit., p. 5 (table 1).

³² OECD: *International Migration Outlook 2016*, op. cit., p. 296.

³³ OECD: *International Migration Outlook 2015*, Paris, 2015, p. 21; ILO: *Labour migration and development: ILO moving forward*, Background paper for discussion at the ILO Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013, p. 4.

for origin countries include remittances and the return of migrants with knowledge and initiatives that assist with their development.³⁴

25. In the OECD area, temporary migrant workers comprise a number of different categories at varying skill levels, including highly skilled engineers, IT consultants, intra-company transferees and posted workers, and lower-skilled seasonal workers and working holidaymakers.³⁵ Other groups of temporary migrants, such as students and trainees, are also normally permitted to access the labour market to a certain degree. In 2014, over 1 million temporary work visas were issued in Canada and the United States alone (365,750 and 732,000, respectively).³⁶ Other significant recipients of temporary migrant workers among OECD countries are Australia, Republic of Korea, Mexico, New Zealand and Poland.³⁷

26. With regard to non-OECD countries, Brazil experienced an increase in temporary migration flows (generally for work or study) from 51,000 in 2009 to 103,500 migrants in 2013.³⁸ Temporary labour migration to the Russian Federation is also significant, with 3.7 million licenses issued to nationals of visa-free States and work permits granted in 2014.³⁹ In 2013, the Gulf States hosted over 22 million migrant workers, with Saudi Arabia and the United Arab Emirates ranked as the fourth and fifth largest destinations for migrant workers in the world. The proportion of migrants in the total population is over 50 per cent in four of the six countries of the Cooperation Council for the Arab States of the Gulf (GCC), with proportions of migrants particularly pronounced in the United Arab Emirates (88 per cent), Qatar (86 per cent) and Kuwait (69 per cent). Most migrant workers to the GCC today come from the South Asian countries of Bangladesh, India and Pakistan; Egypt, Ethiopia and the Philippines are some of the other important countries of origin.⁴⁰ South Africa is also a country that receives more temporary than permanent migrants. Between 2010 and 2013, over 91,000 applications for work-related temporary residence visas were received, with nationals from China, Zimbabwe, India, Pakistan and Nigeria accounting for 65 per cent of these applications.⁴¹

1.3.3. Highly skilled migration

27. Highly skilled labour migration can be both temporary and permanent, and many high-income countries have policies in place to attract highly skilled migrants. For example, in 2014–15, two thirds of Australia's Migration Programme involved visas granted through the Skill stream (127,800 visas), while in 2014 more than half (52 per cent) of permanent residents between 25 and 64 years of age admitted to Canada had completed post-secondary studies.⁴² In the United States, 161,400 visas were issued in 2014 to temporary migrant workers in speciality occupations (H-1B visas), mostly to

³⁴ C. Dustmann and J.-S. Görlach: *The Economics of Temporary Migrations*, London, Centre for Research and Analysis of Migration, Discussion Paper 03/15, p. 35.

³⁵ OECD: *International Migration Outlook 2015*, op. cit., pp. 21–22.

³⁶ OECD: *International Migration Outlook 2016*, op. cit., pp. 246 and 312.

³⁷ *ibid.*, pp. 238, 274, 282, 286 and 290 respectively.

³⁸ OAS and OECD: *International Migration in the Americas*, op. cit., p. 5 (table 1).

³⁹ OECD: *International Migration Outlook 2016*, op. cit., p. 296.

⁴⁰ M.-J. Tayah and H. van de Glind: *The Situation of Migrant Workers in the Countries of the Gulf Cooperation Council*, ILO Internal Briefing, Oct. 2015 (unpublished), pp. 13–15.

⁴¹ Government of South Africa, Department of Home Affairs: *Green Paper on International Migration*, 24 June 2016, p. 27.

⁴² OECD: *International Migration Outlook 2016*, op. cit., pp. 238 and 246 respectively.

nationals from India (67 per cent) and China (9 per cent), and 164,600 intra-company transferees were accepted in 2015.⁴³

28. While worldwide skills deficits require a range of policy measures that also address human resource development at the national level, temporary highly skilled migration can be part of the overall response. In this regard, identifying skills needs through bilateral and regional cooperation, as discussed in Chapters 3 and 4, is one policy response. Fair recruitment practices that effectively match migrants' skills to available jobs is another (Chapter 5). There is also a need to better understand skills needs today in light of the changing nature of work. Some analysts estimate a potential global shortage of up to 85 million highly skilled and medium-skilled workers in 2020.⁴⁴ The European Commission has identified that by 2020, 16 million jobs in the EU will require a high level of qualifications.⁴⁵ In some sectors, such as nursing, the shortages are particularly acute in both developed and developing countries.⁴⁶ Business leaders view "having the right talent as the most critical factor for their business growth".⁴⁷ Innovative solutions will therefore be needed to attract, retain and deploy key skilled workers globally, which companies are already undertaking through support for worker training from pre-school through to post-graduate education, and bureaucratic regulations and procedures must be eased to facilitate the admission of highly skilled migrant workers.⁴⁸ At the same time, improved labour migration policies, covering all skill levels, cannot be a substitute for effective domestic education and training reforms. Labour migration policies should be complementary and stimulate further innovation in education systems, at both national and regional levels.

1.4. Conclusion

29. Current global and regional trends demonstrate the dynamism and complexity of labour migration. South–South migration flows, including migration to neighbouring countries, are as significant as South–North flows and are indeed the faster-growing trend. Meanwhile, countries that used to be countries of origin have also become, in a very compressed period of time, countries of destination and transit.

30. Given these changing dynamics of labour migration, new opportunities – and also new challenges – have materialized.

⁴³ *ibid.*, p. 312.

⁴⁴ R. Dobbs et al.: *The world at work: Jobs, pay, and skills for 3.5 billion people*, McKinsey Global Institute, Sep. 2012, Executive Summary, p. 2.

⁴⁵ European Commission: *Europe 2020: A strategy for smart, sustainable and inclusive growth*, communication from the Commission, 3 Mar. 2010, p. 18.

⁴⁶ M.A. Clemens: *Global Skill Partnerships: A Proposal for Technical Training in a Mobile World*, Center for Global Development, Policy Paper 040, Washington, DC, May 2014, p. 2.

⁴⁷ International Organisation of Employers (IOE): *Position Paper: International Labour Migration*, Nov. 2014, p. 2.

⁴⁸ *ibid.*, pp. 2–3.

Chapter 2

Labour migration governance challenges

31. This chapter discusses the principal benefits and costs of labour migration, especially those borne by less-skilled workers. It draws particular attention to the crucial role national labour market institutions, active labour market and employment policies, and social dialogue mechanisms can and should play to protect migrant workers from abuse and unfair treatment, while also protecting national workers and ensuring that the labour market needs of countries of destination and employers' requirements are met. It also highlights the importance of cooperation across borders.

2.1. Benefits of labour migration and costs for migrant workers

2.1.1. Benefits of labour migration

32. Labour migration brings benefits to migrant workers and their families. The World Bank observes that “[m]igrants from the poorest countries, on average, experienced a 15-fold increase in income, a doubling of school enrollment rates, and a 16-fold reduction in child mortality after moving to a developed country”.¹ Remittances are an important source of poverty alleviation for migrant households and communities. Migrant remittance flows were estimated at around US\$441 billion to developing countries in 2015, nearly three times the amount of official development assistance.² The top three recipient countries of remittances were India, China and the Philippines, while as a share of gross domestic product (GDP) smaller countries such as Tajikistan (42 per cent), Kyrgyzstan (30 per cent), Nepal (29 per cent), Tonga (28 per cent) and the Republic of Moldova (26 per cent) were the largest recipients.³ Remittances can help to reduce child labour and to finance schooling and health-care costs where they are not fully covered at the national level.

33. International migration has both direct and indirect effects on economic growth. Given the age structure of inflows, migration tends to expand the workforce, thereby contributing to aggregate GDP growth.⁴ Working-age immigrants tend to contribute positively to public finances, provided they are integrated in the labour market. This is largely due to their relatively young age and thus years of expected contributions and limited need to draw from education and health services. If migrants are properly integrated into the labour market, migration can boost the income per capita of recipient

¹ World Bank: *Migration and Development: A Role for the World Bank Group*, Washington, DC, Sep. 2016, p. 15.

² World Bank: *Migration and Remittances Factbook 2016*, Washington, DC, 2016, p. v.

³ *ibid.*, pp. v–vi.

⁴ ILO, OECD and World Bank: *The Contribution of Labour Mobility to Economic Growth*, op. cit., p. 12.

economies by increasing the employment-to-population ratio and labour productivity.⁵ Labour productivity can also be enhanced through increasing the diversity of skills – skills complementarity and specialization – and fostering the upskilling of national workers by providing new opportunities. On their return home, migrants at all skill levels also have the potential to make a positive contribution to economic development in their countries of origin through financial investments, as well as human and social capital acquired abroad, such as new skills, ideas and know-how.⁶

34. In most destination countries, migrants pay more in taxes and social contributions than they receive, thus easing the strain on pension systems in ageing developed societies, and contribute substantively to destination countries' economies by providing the labour and skills needed in critical occupations and sectors,⁷ such as agriculture, construction, domestic work, hospitality, health care, engineering and information technology. The increasing number of highly educated immigrants has important implications for productivity, innovation and entrepreneurship. Migrants can also play a role in facilitating trade and investment flows and in transferring knowledge and technology across borders; as consumers of goods and services, they also boost internal market demand.⁸

35. Studies focusing on high-income destination countries find that migration has only a limited effect on the average wages and employment of national workers.⁹ The fiscal impact of migration also tends to be small in most countries, although employment is the single greatest determinant of migrants' net fiscal contribution, particularly in countries with generous welfare systems.¹⁰ This contribution depends on migrants' income and their labour market integration, and also on the functioning of the social security system in host economies.¹¹ Preliminary findings of ILO–OECD research measuring the economic impact of labour migration in low- and middle-income countries show that, while the impact may be similar to that in advanced economies, it depends on labour market structures, adjustments in the broader economy, and the investment environment (box 2.1).

⁵ See, for example, International Monetary Fund (IMF): “Spillovers from China’s Transition and from Migration”, in *World Economic Outlook October 2016*, Washington, DC, 2016; F. Jaumotte et al.: *Impact of Migration on Income Levels in Advanced Economies*, IMF Spillover Notes, Issue 8, Washington, DC, Oct. (revised Dec.) 2016.

⁶ ILO, OECD and World Bank: *The Contribution of Labour Mobility to Economic Growth*, op. cit., p. 1.

⁷ *ibid.*, pp. 1 and 11.

⁸ *ibid.*, p. 1; World Bank: *Migration and Development*, op. cit., p. x and pp. 15–26.

⁹ See OECD, ILO, World Bank and IMF: *Towards a Framework for Fair and Effective Integration of Migrants into the Labour Market*, Paper for the G20, forthcoming 2017, p. 9.

¹⁰ OECD: “The fiscal impact of immigration in OECD countries”, in *International Migration Outlook 2013*, Paris, 2013, p. 161; OECD: “Is migration good for the economy”, op. cit., p. 3.

¹¹ OECD, ILO, World Bank and IMF: *Towards a Framework for Fair and Effective Integration of Migrants into the Labour Market*, op. cit., pp. 9–10.

Box 2.1**ILO–OECD project: Assessing the economic contribution of labour migration in developing countries as countries of destination**

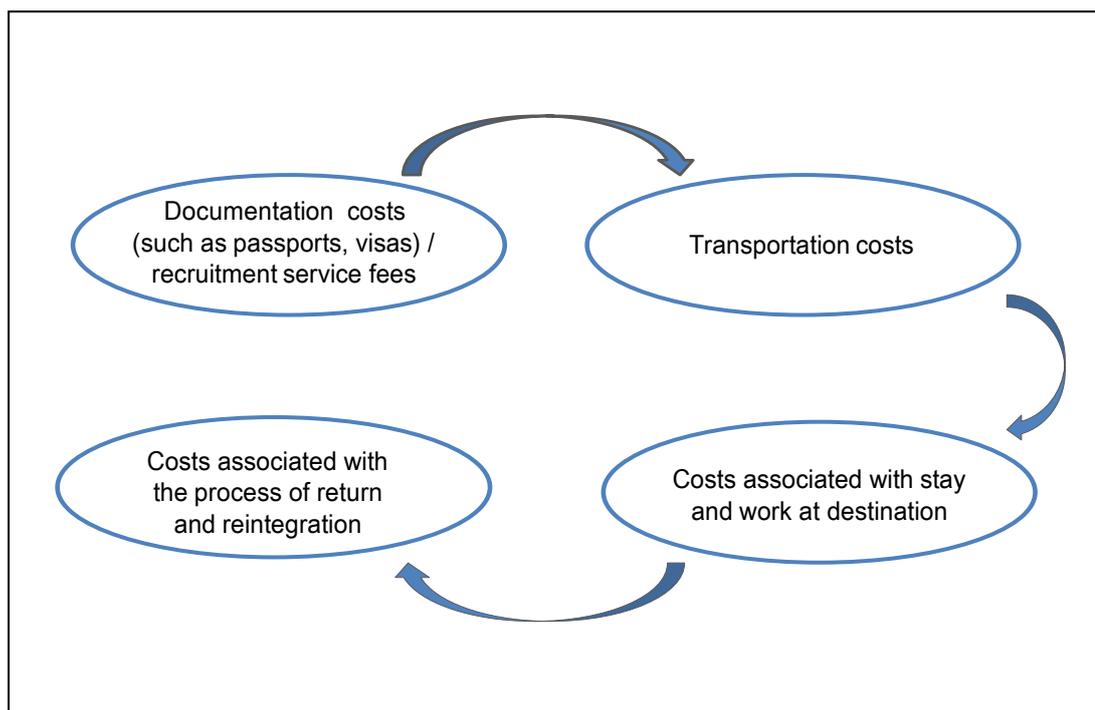
Assessing the economic impact of migration in destination countries, particularly in developing countries, whose labour markets and other social infrastructures are often not as well developed as in richer economies, can be a difficult task. Often, short- and long-term economic impacts of migration are very different. For instance, according to theory, in the short term, labour markets respond to labour supply shocks either by an adjustment in employment rates or an adjustment in wages, which, over the long term, will dissipate as the resident labour force and firms adjust to a new equilibrium. However, even short-term effects are difficult to isolate empirically. Existing research has shown that immigration can have both negative and positive impacts on the employment prospects of national workers, but findings depend heavily on the choice of methodology and on the time frame which is being examined. Further, most findings on impacts of labour migration are based on studies in high-income countries with relatively well-developed labour market structures. These studies show that certain labour market structures, such as minimum-wage regulations or opportunities for educational advancement, can serve to temper impacts of labour migration on national labour markets. The existence and quality of such structures, however, differ greatly among developing countries, and from those in more developed economies, meaning that there remains much to be studied in terms of ideal policy mixes for maximizing the benefits of labour migration to developing countries.

The ILO–OECD project employs a range of different methodologies in order to study the impact of labour migration to developing countries, looking at economic and labour market impacts, among others. For instance, in the case of Thailand, the project’s research findings on migration impacts tend to be in line with those of existing research, namely that there are mild positive effects on the paid employment rate at the national level, but at the same time there is a high concentration of migrant workers in low-skilled jobs.

2.1.2. Decent work deficits and labour migration costs

36. Despite the benefits of labour migration, migrant workers, especially the less-skilled, continue to suffer from significant decent work deficits, including violations of fundamental principles and rights at work and other infringements, when seeking to obtain employment abroad and during their stay in the country of employment. These can be categorized generally as “labour migration costs” (figure 2.1; see also Chapter 5). Low-skilled migrant workers are more likely to be subject to higher labour migration costs than the highly skilled, who are viewed as a scarce resource and for whom there is competition among countries. In contrast, the much larger supply of less-skilled workers in relation to available jobs abroad means that they tend to be recruited under temporary migration schemes, often after paying fees to labour recruiters, and into sectors characterized by non-standard forms of employment and greater informality and where decent work deficits are most prevalent.

Figure 2.1. Typology of labour migration costs in the migration process



Source: Adapted from M. Aleksynska et al.: *Deficiencies in conditions of work as a cost to labour migration: Concepts, extent and implications*, ILO, forthcoming, 2017.

Denial of fundamental principles and rights at work

37. Although they represent only 4.4 per cent of the global workforce, migrant workers are at much higher risk of being victims of forced labour than other workers. According to the 2012 ILO global estimate, 44 per cent of all victims of forced labour (9.1 million of a total 20.9 million) had moved either internally or internationally.¹² Forced labour may be more prevalent in certain sectors, such as agriculture, domestic work,¹³ fishing¹⁴ and the electronics industry.¹⁵ The conditions under which children in developing countries migrate render them particularly vulnerable to child labour. Moreover, migrant child labourers are generally worse off than local child labourers in terms of conditions of work and access to education and health care.¹⁶ Many child migrants also end up in agriculture

¹² ILO: *ILO Global Estimate of Forced Labour: Results and methodology*, Geneva, 2012, p. 17.

¹³ ILO: *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 CEACR, ILC, 101st Session, 2012, Geneva, paras 294–295.

¹⁴ ILO: *Employment practices and working conditions in Thailand's fishing sector*, ILO Country Office for Thailand, Cambodia and Lao People's Democratic Republic, 2013.

¹⁵ In 2014, a report by the non-governmental organization Verité found that one third of migrant workers in the electronics industry in Malaysia worked in conditions of forced labour, which led to the Electronics Industry Citizenship Coalition (EICC), a global non-profit coalition of leading electronics companies dedicated to supply chain responsibility, piloting a factory worker protection programme in Malaysia. See, respectively, Verité: *Forced Labour in the Production of Electronic Goods in Malaysia: A Comprehensive Study of Scope and Characteristics*, Sep. 2014; and EICC: "Electronics Industry Pilots Factory Worker Protection Program in Malaysia". However, the allegations of forced labour against migrant workers are continuing. See K. Hodal and A. Kelly: "Malaysia: forced labour casts dark shadow over electronics industry", in *The Guardian*, 21 Nov. 2016.

¹⁶ H. van de Glind and A. Kou: "Migrant children in child labour: A vulnerable group in need of attention", in IOM: *Children on the Move*, Geneva, 2013, pp. 28–43, p. 30.

or services such as domestic work, and some become victims of trafficking in persons and forced labour, which are among the worst forms of child labour.¹⁷

38. While the majority of countries recognize the right to freedom of association and collective bargaining for migrant workers, in practice migrant workers experience restrictions in exercising this right, based on nationality or residence.¹⁸ Low-wage migrant workers are often denied the right “because of their irregular status or by structural barriers in legal channels that systematically disempower workers”.¹⁹

39. Migrant workers also suffer from discrimination in employment, including discrimination on multiple grounds such as race, ethnicity, religion and nationality.²⁰ The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized the importance of taking specific steps to combat xenophobia and social and cultural stereotypes that contribute to discrimination against migrants, including in employment and occupation.²¹ Migrant workers in an irregular situation are particularly vulnerable to exploitation and discrimination, especially with respect to conditions of work and occupational safety and health.²² They also experience obstacles to asserting their labour rights because of fears of deportation and other consequences. This emphasizes the need for improved cooperation in this area among interior/immigration and labour ministries.

40. Women migrant workers are more likely than men to experience discrimination on account of their sex, nationality and migrant status, among other prohibited grounds of discrimination.²³ Migrant women, particularly young migrant domestic workers, are especially vulnerable to physical and sexual violence in the workplace.²⁴ Furthermore, women migrant workers “face a double penalty in terms of labour market segregation and discrimination; they are more likely to work in less-paid and rewarded sectors of the economy because of their sex, and are more likely to work in lower-skilled positions in that sector because of their ethnicity and migrant status”.²⁵ This is supported by a recent ILO study, which demonstrates that migrants – especially migrant women – are over-represented in non-standard employment such as temporary agency work and part-time jobs, which is also the result of discrimination, poor transferability of skills and low bargaining power.²⁶ Sample surveys carried out by the ILO and the World Bank under the auspices of the Global Knowledge Partnership on Migration and Development (KNOMAD) examining migration costs experienced by migrant workers demonstrate that

¹⁷ ILO International Programme on the Elimination of Child Labour: *Migration and child labour*; ILO Worst Forms of Child Labour Convention, 1999 (No. 182), Art. 3(a).

¹⁸ ILO: *Giving globalization a human face*, op. cit., para. 79; ILO: *Promoting fair migration*, General Survey concerning the migrant workers instruments, Report of the CEACR, ILC, 105th Session, 2016, Geneva, para. 289.

¹⁹ UN: *Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, General Assembly, 71st session, A/71/385, 14 Sep. 2016, para. 28.

²⁰ ILO: *Equality at work: The continuing challenge*, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, Report of the Director-General, Report I(B), ILC, 100th Session, 2011, Geneva, para. 129.

²¹ ILO: *Promoting fair migration*, op. cit., paras 290–292.

²² ILO: *Giving globalization a human face*, op. cit., para. 778.

²³ Cf. ILO: *Equality at work: The continuing challenge*, op. cit., paras 69–75 and 129.

²⁴ O’Neill et al., op. cit., p. 7 (box 2).

²⁵ *ibid.*, p. 9.

²⁶ ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, Geneva, 2016, pp. 144–152.

migrant women domestic workers work substantially more hours than other workers. For example, in the Africa–GCC corridor, some migrant women domestic workers reported working an average of about 115 hours per week, as compared to 70 hours for migrant men in the construction sector.²⁷

41. Certain laws and regulations relating to the employment of workers at all skill levels can also result in discrimination against migrant workers, such as employment permit systems and sponsorship systems that severely restrict the possibility for migrant workers to change workplaces, employers or sponsors, thus placing them in a particularly vulnerable situation and providing employers with an opportunity to exert disproportionate power over them.²⁸ Moreover, such laws and regulations may also enable employer preferences for migrant workers over national workers, thus facilitating “social dumping” and a race to the bottom.

42. Limits on internal labour market mobility not only hinder the protection of migrant workers’ rights, they also result in inefficient labour markets and contribute to high recruitment costs (see Chapter 5), which are exacerbated by the inability of businesses to promptly obtain workers with appropriate skills from a local labour pool. Greater internal labour market mobility could also reduce “labour hoarding” whereby firms hold onto their workers for as long as possible, and employer practices that are designed to prevent “absconding”, including withholding wages, confiscating passports and preventing migrant domestic workers from leaving the house on a day off.²⁹ In the Bali Declaration, adopted at the 16th ILO Asia and the Pacific Regional Meeting, constituents identified as one of the priorities for national policy and action the enhancement of labour migration policies based on relevant international labour standards, including the need to “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”.³⁰

Wage penalties

43. In addition to gender-based wage penalties, there continue to be significant wage gaps between migrant workers and nationals in relation to both high- and low-wage earners, which are only partly explained by differences in experience, education (including language knowledge), occupation, skill level and other labour market characteristics. The unexplained part of such wage gaps could be attributed to a number of factors: employer discrimination against migrants; differences in returns to education acquired abroad; the misperception that migrants, particularly single migrants, have lower income needs than national counterparts with families to support; or under-representation or a lack of

²⁷ M. Aleksynska et al.: *Deficiencies in conditions of work as a cost to labour migration: Concepts, extent and implications*, ILO, forthcoming, 2017.

²⁸ ILO: *Giving globalization a human face*, op. cit., para. 779.

²⁹ ILO: *Employer–migrant worker relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration*, ILO Regional Office for the Arab States, White Paper, forthcoming 2017. With regard to the *kafala* system specifically, proposals for reform include: (a) delinking the employer–worker relationship from the immigration status of the migrant worker; (b) ensuring that the employment relationship is governed by standardized employment contracts grounded in labour law; (c) spelling out contract termination conditions in standardized contracts; and (d) respecting basic labour rights in all cases. See ILO: *Realizing a Fair Migration Agenda: Labour Flows between Asia and Arab States – Summary Report of the Interregional Experts’ Meeting, 3–4 December 2014*, Kathmandu, RO–Arab States and RO–Asia and the Pacific, 2015, p. 10.

³⁰ ILO: *Bali Declaration*, adopted at the 16th Asia and the Pacific Regional Meeting in Bali, Indonesia, on 9 December 2016, para. 8(e).

representation through collective representation structures.³¹ In Europe, there is an overall wage gap of 17.5 per cent between nationals and migrants, of which 11.3 per cent is unexplained and may be due to discrimination. In Cyprus, Greece, Italy, Portugal and Spain, the wage gap between migrants and nationals is above 25 per cent, with unexplained wage gaps of 17 per cent and over in Cyprus, Denmark, Poland and the Netherlands.³² In some countries, such as Argentina and Germany, the wage gap between migrant and national high-wage earners is wholly unexplained.³³ These findings show that further investigation is warranted into the effectiveness of policies supporting the labour market integration of migrants, which are considered in section 2.2 below. The explained wage gaps, however, would be expected to decline for those migrants with longer residency, since, with time, they are more likely to acquire the necessary education, diplomas and language skills and to establish social networks.

Poor conditions of work

44. The ILO–KNOMAD surveys show that working conditions such as contractual status, level of wages, periodicity of wage payments, hours worked and occupational safety and health issues as well as trade union participation and equality of treatment are all areas in which migrant workers report substantial decent work deficits. In monetary terms, the aggregate losses represent at least 30 per cent of the total wage promised to migrants prior to their departure and 27 per cent of the actual wage.³⁴

45. Migrant workers are often disproportionately affected by occupational injuries compared to the non-migrant population. The CEACR has repeatedly noted that, in a range of countries, migrant workers in dangerous sectors such as construction may not be provided with sufficient training, protective equipment, medical supervision and insurance in case of an occupational accident.³⁵ For example, according to data from the Foreign Employment Promotion Board of the Government of Nepal, a total of 4,322 Nepalese migrant workers died across 24 destination countries between 2008–09 and 2014–15, of whom 4,235 were men and 85 were women.³⁶ This amounted to an increase from 90 deaths in the year 2008–09 (when almost 220,000 labour permits were granted) to a total of 1,004 deaths in 2014–15 (when nearly half a million labour permits were granted).³⁷ While the death rate of Nepalese migrant workers abroad is similar to that of workers of the same age group in Nepal, migrant workers have to undergo a medical test before their labour permits are approved and should therefore be generally healthier and fitter than the average population.³⁸

³¹ ILO: *Global Wage Report 2014/15: Wages and income inequality*, Geneva, 2015, pp. v and 50–52.

³² *ibid.*, pp. 52–53 (and figure 40).

³³ *ibid.*, p. 52. One exception to this pattern is Brazil, where high-wage migrants earn more than high-wage nationals for both explained and unexplained reasons.

³⁴ Aleksynska et al., *op. cit.*

³⁵ See, for example, the comments adopted by the CEACR with regard to the Safety and Health in Construction Convention, 1988 (No. 167): *China*, observation 2013, *Brazil*, observation 2012; *Dominican Republic*, observation 2012 and direct request 2014; *Norway*, observation 2015; and *Serbia*, direct request 2016.

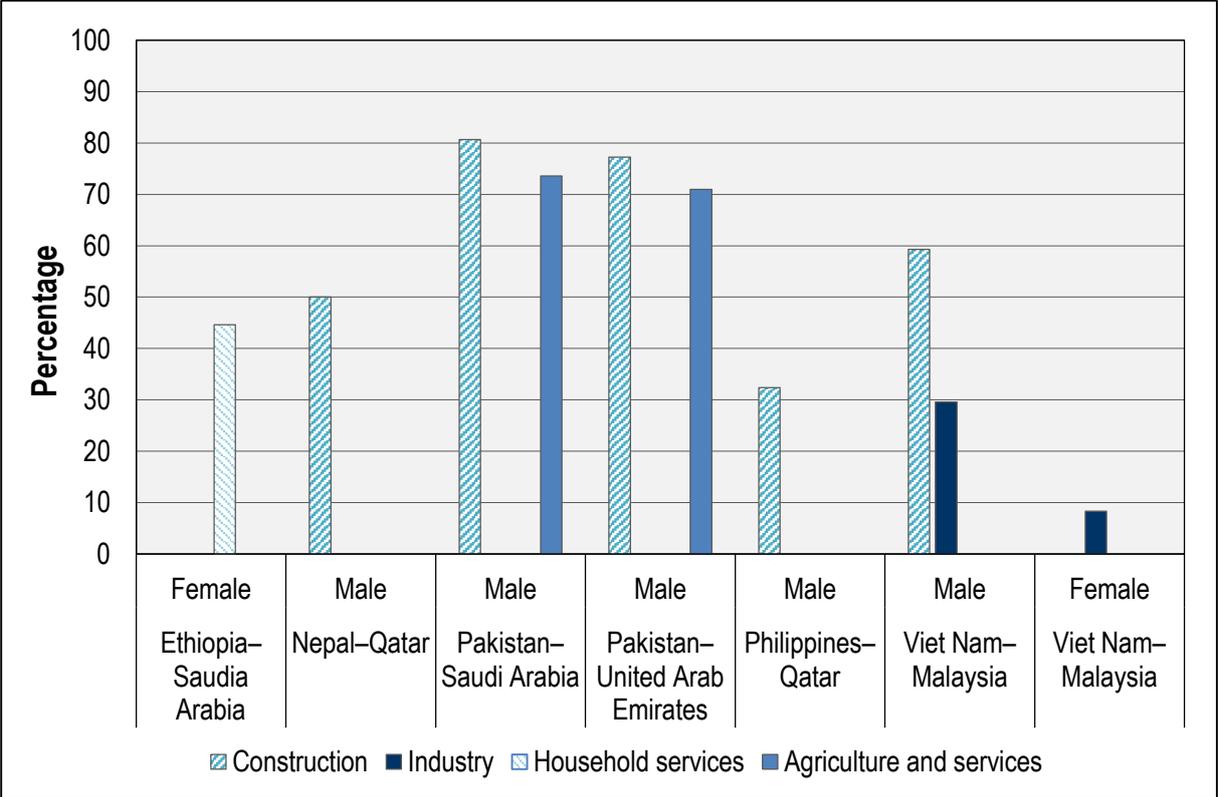
³⁶ ILO: *When the safety of Nepali migrant workers fails: A review of data on the numbers and causes of the death of Nepali migrant workers*, ILO Kathmandu, 2016, p. 9. According to the report, the sex of two migrant workers for the year 2014–15 was not specified. Equivalent data (but citing only figures for 2013–14) was also provided by the Government of Nepal to the CEACR. See ILO: *Promoting fair migration*, *op. cit.*, para. 48.

³⁷ *ibid.*, p. 9 (table 1).

³⁸ *ibid.*, p. 10.

46. The ILO–KNOMAD surveys also found that payments for sick days, including for job-related illness or injury, varied widely. Approximately 30 per cent of migrant workers interviewed reported that they had been sick or injured during their stay abroad, and two out of five of those workers said that they had not been paid for the days when they were unable to work because of sickness or injury. The highest proportion of non-remunerated migrants was observed in the South Asia–GCC corridor, with male construction workers most affected (figure 2.2).³⁹

Figure 2.2. Percentage of migrants not paid for the days that they were unable to work because of injury or illness



Source: Aleksynska et al., op. cit.

47. Many migrants also experience indecent living conditions in overcrowded housing, which can lack basic infrastructure and services, such as sanitation, electricity and potable water.⁴⁰

Skills mismatch

48. Access to skills recognition processes, especially for low- and medium-skilled migrant workers, is often very limited. Poor skills matching or the non-recognition of qualifications can result in deskilling or “brain waste”, which is another specific cost of labour migration.⁴¹ Migrants encounter difficulties in translating their experiences from destination countries into better human resources development opportunities on their

³⁹ Aleksynska et al., op. cit.

⁴⁰ UN: *Report of the Special Rapporteur on the human rights of migrants, François Crépeau: Labour exploitation of migrants*, Human Rights Council, 26th session, A/HRC/26/35, 3 Apr. 2014, para. 43.

⁴¹ R. Cholewinski and M.-J. Tayah: *Promoting decent work for migrant workers*, ILO discussion paper, Feb. 2015, p. 7.

return. A 2014 ILO study found poor skills matching across all workers in at least half of the European countries assessed. For example, between 25 and 45 per cent of workers in Europe are either over- or under-qualified for their job, leading to a substantial mismatch between supply and demand in the region's labour markets⁴² and a reduction in business productivity. This trend is likely to become even more pronounced for migrant workers in sectors of the economy highly dependent on them, such as domestic work, other parts of the service industry and construction. Those sectors may experience "social dumping", particularly in wages, and increased labour market segmentation, with low-skilled and low-paid jobs becoming the exclusive domain of migrants.⁴³

49. As low- to medium-skilled workers often lack formal qualifications, there is a need for systems that allow their skills to be readily assessed. A good example of such a system is reflected in the EU Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning.⁴⁴ Recognition of the prior learning and skills and competencies of migrant workers allows them to access better employment opportunities while reducing the risk of deskilling. The ILO is developing a users' guide covering low- and medium-skilled workers for this purpose.⁴⁵ Skills recognition will also help to improve the development potential of countries of origin, allowing returnees to successfully reintegrate into the domestic labour market.

50. Work on improving skills identification and matching should be combined with broader efforts to enhance coherence among employment, skills and migration policies, with the active participation of government institutions and the social partners. These coordinated efforts will also result in improved information exchange between the education system and the labour market, thus providing the basis for up-to-date skills information and forecasting.

Lack of social protection

51. Migrant workers face significant challenges in accessing social protection, including health care and other social security benefits. Although "everyone, as a member of society, has the right to social security",⁴⁶ migrants experience considerable difficulties in exercising this right, as compared to nationals working their entire lives in one country. Migrants may be denied access or have limited access to social security coverage in their host country because of their nationality, status or insufficient periods of employment and residence,⁴⁷ which can also amount to direct or indirect discrimination, particularly in the context of temporary or seasonal labour migration. Their access may also be curtailed due to a lack of awareness of their rights and obligations. At the same time, they can lose entitlements to social security benefits in their country of origin because of their temporary absence. The principles of territoriality and nationality are inherent and problematic

⁴² ILO: *Skills mismatch in Europe: Statistics brief*, Geneva, 2014, p. 12.

⁴³ G. Lemaître: "The demography of occupational change and skill use among immigrants and the native-born", in OECD: *Matching Economic Migration with Labour Market Needs*, Paris, 2014, p. 113.

⁴⁴ Council of the European Union: *Council Recommendation of 20 December 2012 on the validation of non-formal and informal learning* (2012/C 398/01).

⁴⁵ ILO: Users' guide and facilitators' notes on "Facilitating transitions to decent work: The importance of recognizing prior learning of migrant workers", forthcoming, 2017.

⁴⁶ UN: Universal Declaration of Human Rights, General Assembly, resolution 217A, 10 Dec. 1948, Arts 22 and 25; see also UN: International Covenant on Economic, Social and Cultural Rights, General Assembly, resolution 2200A (XXI), 16 Dec. 1966, Art. 9.

⁴⁷ G. Binette et al.: *Migrant access to social protection under selected bilateral labour arrangements*, ILO, forthcoming, 2017, p. 10.

features of the national legislation of many countries. In addition, the lack of coordination mechanisms between countries, as discussed in Chapters 3 and 4, can prevent migrants from obtaining coverage under social security schemes. Moreover, where bilateral and multilateral social security agreements exist, they mostly cover formal workers, leaving migrant workers in the informal economy unprotected.

52. In some parts of the world, and particularly in the South Asia–Arab States migration corridor,⁴⁸ migrant workers are required to undergo mandatory medical tests, including HIV and pregnancy testing as a condition to enter or remain in the destination country. Mandatory HIV testing or disclosure of HIV status for employment purposes is prohibited under the ILO HIV and AIDS Recommendation, 2010 (No. 200).⁴⁹ Requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment is prohibited under the ILO Maternity Protection Convention, 2000 (No. 183).⁵⁰ Furthermore, studies show that many migrants, especially women migrant workers, are discriminated against in health-care settings and lack access to maternity protection and other measures to support their family responsibilities.⁵¹

2.2. Role of labour market institutions and active labour market policies

53. Preventing exploitation of migrant workers and ensuring their positive contribution to host and home societies requires fair and effective labour migration governance at all levels, and national labour market institutions have an important role to play. The governance system is most effective when public employment services, labour ministries, business, and employers’ and workers’ organizations are strong and all stakeholders have the capacity to contribute to national dialogue. This itself can improve public trust and support for labour migration policies.

54. Migrant workers are best protected in law and practice when they are covered by labour market institutions – such as inclusion in collective bargaining, minimum wages, social security provision and employment protection legislation – on an equal footing with national workers.⁵² Globally, there are examples where national labour laws exclude certain sectors from coverage, such as agriculture and domestic work,⁵³ with a disproportionate impact on the large numbers of migrant workers in those sectors (many of whom are working in the informal economy). There are also examples where

⁴⁸ Joint United Nations Initiative on Migration, Health and HIV in Asia: *Three Country Assessment on Health Screening of Migrant Workers and its Impact on Right to Health and Right to Work*, 2014.

⁴⁹ Paras 25, 27–28.

⁵⁰ Art. 9.

⁵¹ ILO: “*Meeting the needs of my family too*”: *Maternity protection and work–family measures for domestic workers*, Domestic Work Policy Brief No. 6, Geneva, 2013, p. 6; M. Bandyopadhyay and J. Thomas: “Women migrant workers’ vulnerability to HIV infection in Hong Kong”, in *AIDS Care*, Aug. 2002, Vol. 14(4), pp. 509–521.

⁵² C. Kuptsch: “Inequalities and the impact of labour market institutions on migrant workers”, in J. Berg (ed.): *Labour Markets, Institutions and Inequality: Building Just Societies in the 21st Century*, Edward Elgar and ILO, Cheltenham, UK, and Geneva, 2015, pp. 340–360.

⁵³ *ibid.*, pp. 352–353.

minimum-wage legislation does not apply to migrant workers or certain sectors, or sets a lower rate for migrant workers.⁵⁴

55. An important consideration is the formulation and implementation of coherent active labour market policies that are aligned with migration policies with regard to strengthening the role of public employment services, assessing actual and future skills needs, and vocational training and education. The adaptation of public employment services to provide more inclusive services and support to newly arrived migrants is one factor that could assist in their integration into the labour market and upward mobility.⁵⁵ Public employment services can also contribute to fair recruitment of migrant workers and reduce the costs of labour migration (see Chapter 5). Other labour market institutions, such as labour market observatories, can play an important role in collecting, processing and analysing labour migration data. In a number of destination countries, such as Australia and New Zealand, skills assessment and forecasting information is used to create skills shortage lists that provide a fast track for the admission of migrant workers with skills that are in high demand.⁵⁶ These examples also highlight good collaboration between different ministries (such as education and labour) and with social partners.⁵⁷

2.2.1. Labour inspection and access to justice

56. Labour inspection services and grievance mechanisms are crucial. Labour inspection systems that conduct regular inspections, provide guidance and advice to both employers and workers, including migrant workers, and ensure effective enforcement in cases of non-compliance have a key role to play in reducing decent work deficits. The CEACR has drawn specific attention to the particularly vulnerable situation of migrant workers in an irregular situation, who may be unwilling to cooperate with labour inspection services where they fear negative consequences, such as losing their job or expulsion from the country. In this context, the CEACR has underscored that the main objective of the labour inspection system is to protect the rights and interests of all workers, and to improve their working conditions, rather than to enforce immigration law, and therefore any cooperation between the labour inspectorate and immigration authorities should be carried out cautiously.⁵⁸

57. Migrant workers need to be able to file grievances with the ministry of labour, for example to recoup unpaid wages owed and recruitment fees paid, without fear of intimidation or retaliation and with the assurance that proactive measures will be taken to make inquiries and verify allegations through credible investigation. In this regard, they should receive information on their rights and how to access and navigate grievance and dispute settlement procedures, and should be offered free or affordable legal assistance and adequate language translation services. To ensure that access to justice is real and effective, migrant workers with an insecure immigration status should be able to remain in the country on a valid visa until their claims have been resolved. Moreover, if the employer is found to be at fault, the workers concerned have the right to reinstatement and

⁵⁴ ILO: *Labour protection in a transforming world of work: A recurrent discussion on the strategic objective of social protection (labour protection)*, Report VI, ILC, 104th Session, 2015, Geneva, para. 115; Kuptsch, op. cit., pp. 348–349.

⁵⁵ M. Benton et al.: *Aiming Higher: Policies to Get Immigrants into Middle-Skilled Work in Europe*, Migration Policy Institute and International Labour Office, Washington, DC, Nov. 2014.

⁵⁶ OECD: *Getting Skills Right: Assessing and Anticipating Changing Skills Needs*, Paris, 2016, p. 61.

⁵⁷ *ibid.*, pp. 74–75. The questionnaire supporting this research, however, revealed that the lack of consultation with stakeholders in identifying skill needs is still considered a barrier by 75 per cent of social partners (*ibid.*, p. 67).

⁵⁸ ILO: *Promoting fair migration*, op. cit., para. 482.

back pay and to seek other positions within the same sector in which they were previously employed, or within the labour market more broadly.⁵⁹

2.3. Social dialogue

58. Social dialogue lies at the heart of the ILO’s mandate and is seen as key to “the development of rights-based, transparent and coherent labour migration legislation and policies, taking account of labour market needs”.⁶⁰ In its 2016 General Survey, the CEACR emphasized the “pivotal role” played by social partners in effective labour migration governance, including in “the development, implementation and ongoing adaptation of legislation and policy in relation to the regulation of labour migration and promotion of equality of opportunity and treatment for migrant workers”.⁶¹ The CEACR provided examples where employers’ and workers’ organizations are engaged in national tripartite forums, governmental bodies and advisory committees on labour migration, and participate in specific consultation procedures and mechanisms addressing such matters as legislative and policy reform concerning migration, integration of migrant workers and unauthorized employment of foreign nationals.⁶²

59. However, policies around migration in many countries, including those focusing on labour migration, are largely the domain of ministries of the interior, immigration or foreign affairs, which focus more generally on the criteria for admission of foreigners and related security issues but have less of a culture of regular and systematic engagement with social partners and other non-governmental actors. Despite the clear stake of business in migration policy,⁶³ a 2016 survey of migration and mobility professionals from over 210 global organizations across all regions and representing a wide range of industries found that only 27 per cent of respondent organizations participate in public policy debates, while a mere 17 per cent reported that they had been able to influence national migration policies.⁶⁴

60. Institutionalized social dialogue on migration therefore remains the exception rather than the rule. Bridging this policy lacuna requires a much greater involvement of labour ministries in the design, implementation and monitoring and evaluation of policies relating to labour migration; the establishment of coherent whole-of-government approaches to migration which bring together all relevant parts of government, workers’ and employers’ organizations and other non-governmental actors; and a recognition that collaboration with social partners can bring legitimacy to the labour migration policies adopted and counteract negative perceptions by building public trust and support for such policies.

⁵⁹ ILO: *Employer–migrant worker relationships in the Middle East*, op. cit.

⁶⁰ ILO: *Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013, Conclusions*, para. 8. See also: *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, Geneva, 2006, p. 13, Principle 6: “Social dialogue is essential to the development of sound labour migration policy and should be promoted and implemented”.

⁶¹ ILO: *Promoting fair migration*, op. cit., paras 131 and 189, respectively.

⁶² *ibid.*, paras 133–136.

⁶³ IOE: *Position Paper*, op. cit., p. 2.

⁶⁴ A.T. Fragomen, Jr.: *The Business Case for Migration: The GFMD Business Mechanism’s Position Paper and Recommendations for Presentation at the Ninth GFMD Summit*, Bangladesh, Dec. 2016, pp. 3 and 21.

2.4. International cooperation

61. While governments are responsible under international law for the protection of everyone within their jurisdiction, including migrant workers, no country can effectively govern migration alone. International cooperation is therefore essential. This is recognized in ILO standards and policy frameworks and has been underscored in global migration discussions (box 2.2).

Box 2.2

The importance of international cooperation on migration

In addition to specific provisions relating to cooperation at the bilateral level (see Chapter 3), the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations contain provisions emphasizing the importance of international cooperation, for example with regard to preventing misleading propaganda, establishing public employment services, addressing irregular migration and providing social security. ¹ The 2006 Multilateral Framework on Labour Migration supports, where appropriate, the promotion of “bilateral and multilateral agreements between destination and origin countries addressing different aspects of labour migration, such as admission procedures, flows, family reunification possibilities, integration policy and return, including in particular gender-specific trends”. ²

The New York Declaration for Refugees and Migrants, adopted by the UN General Assembly in September 2016, reiterated the need for improved cooperation on migration at all levels. Member States committed to “build on existing bilateral, regional and global cooperation and partnership mechanisms, in accordance with international law, for facilitating migration in line with the 2030 Agenda”, and recognized the importance of such cooperation in ensuring safe, regular and orderly migration and the protection of the human rights of migrants. ³

Notes: ¹ Convention No. 97, Arts 3 and 7; Convention No. 143, Part I; Recommendation No. 151, Para. 34(1)(c)(ii). ² *ILO Multilateral Framework on Labour Migration*, op. cit., p. 7, Guideline 2.3. ³ *New York Declaration for Refugees and Migrants*, op. cit., para. 54 and Annex II, para. 5.

62. Despite this call for improved cooperation on international migration, political, economic and labour market conditions at the national level can have an adverse impact on its effectiveness. Political and economic pressures in many low-income countries to send nationals abroad for employment can stimulate unhealthy competition among origin countries, resulting in the acceptance of lower levels of treatment for migrant workers at destination. Moreover, bilateral and multilateral cooperation on labour migration among high- and middle-income destination countries and low-income origin countries rarely takes place on an equal footing, given that the former hold most of the bargaining power regarding access to their labour markets. Even where there are evident labour market needs for migrant workers, restrictive migration policies, based more on public misperceptions and xenophobia than actual evidence, create an environment that is hardly conducive to good cooperation on migration. Finally, international cooperation does not always involve the most appropriate government actors, with foreign and interior ministries often taking up labour issues, and there is no or limited space for social partners, particularly in intergovernmental forums such as the Global Forum on Migration and Development and regional consultative processes (see Chapter 4).

63. International cooperation at the bilateral and regional levels regarding the whole spectrum of labour migration governance issues discussed above is specifically addressed in Chapters 3 and 4. Chapter 5 focuses on a unique and pressing governance challenge, namely how to ensure fair recruitment, which requires multifaceted action by a range of actors at various levels and their cooperation across migration corridors. Cooperation on

migration, including labour migration, is also the focus of inter-agency efforts under the auspices of the Global Migration Group (box 2.3).

Box 2.3
Global Migration Group

The Global Migration Group, an inter-agency group comprising 21 UN entities and meeting at the level of heads of agencies, was established by the UN Secretary-General after the first UN General Assembly High-level Dialogue on International Migration and Development in 2006. Its aim is to promote the wider application of all relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to international migration.

The Group facilitates inter-agency collaboration, including in developing joint tools and guidance on such issues as national development planning (UN Development Assistance Framework guidance), irregular migration and crisis response. It works across a spectrum of international migration issues through its five working groups and task forces on: data and research; mainstreaming migration into national development strategies; migration, human rights and gender equality; capacity development; and migration and decent work. This last task force is co-chaired by the ILO and IOM, and has begun work on fair recruitment. The ILO chaired the Global Migration Group in 2014; the current chair is the United Nations University.

The Global Migration Group has been mandated by the General Assembly to provide inputs to the thematic consultations on the Global Compact for Safe, Orderly and Regular Migration (box 0.1).

The Special Representative of the Secretary-General for International Migration will play a key role in coordinating the UN system follow-up to the New York Declaration and inputs to the Global Compact, working closely with the Global Migration Group and fostering closer collaboration between it and the Global Forum on Migration and Development, which will also contribute substantively to the Global Compacts. The ILO has provided technical support to the Global Forum, at which ILO constituents can share standards, practices, tools and guidance with member States and other stakeholders. As labour mobility is gaining increasing importance in the Forum, the ILO constituents could play a larger role in contributing to the issues and dialogue it addresses.

Sources: <http://www.globalmigrationgroup.org/>; Modalities for the intergovernmental negotiations of the Global Migration Compact, op. cit., para. 15.

2.5. Conclusion

64. Labour migration brings benefits to migrants and their families, as well as to origin and destination countries. However, it also incurs costs, particularly for low-skilled migrant workers. Indeed, low-skilled migration is essentially of a temporary nature. While temporary and circular labour migration schemes are viewed as a flexible means of filling short-term labour and skills gaps, careful consideration needs to be given to their formulation, implementation and monitoring, in collaboration with ministries of labour and workers' and employers' organizations, to ensure that they fulfil the specific purpose for which they were designed, are not used to fill long-term or permanent jobs, and that workers who migrate under such schemes are not unfairly disadvantaged in terms of equality of treatment in respect of trade union rights, wages, working conditions and social protection.⁶⁵

⁶⁵ ILO: *Fair migration: Setting an ILO agenda*, op. cit., paras 76–78; J. Fudge and F. MacPhail: “The Temporary Foreign Worker Program in Canada: Low-Skilled Workers as an Extreme Form of Flexible Labor”, in *Comparative Labor Law and Policy Journal*, Vol. 31, 2009, pp. 101–139; P. Wickramasekara: *Circular Migration: A Triple Win*

65. In order to harness the benefits and reduce the costs, good governance of labour migration is critical. As ILO constituents agreed at the last general discussion on labour migration at the International Labour Conference in 2004, this governance needs to be rights-based, addressing the decent work deficits and costs that are mainly experienced by less-skilled workers. But it also needs to address labour market needs for migrant workers. The right policy mix lies in ensuring that labour market institutions and active labour market policies devote sufficient attention to migrant workers and labour migration, and in institutionalizing the role for social dialogue in designing and implementing policies relating to labour migration, increasing coordination between immigration/interior and labour ministries to ensure that migrant workers are not penalized when they assert their labour rights, and developing more relevant and inclusive international cooperation on migration. Deepening the ILO's coordination and collaboration with other UN agencies and stakeholders, including in the Global Migration Group and the Global Forum on Migration and Development, may be important to ensuring broader understanding and engagement of ILO standards, tools and guidance at the global and field levels.

or a Dead End, Global Union Research Network Discussion Paper No. 15, ILO Bureau for Workers' Activities (ACTRAV), Geneva, 2011, p. 90.

Chapter 3

Bilateral agreements on labour migration

66. Bilateral labour migration agreements have seen a revival since the 1990s.¹ They have evolved in essentially two distinct stages. The “first generation” made its mark in Europe in the late 1940s and focused mainly on labour recruitment for reconstruction of post-war European economies, and includes attention to refugees and forcibly displaced persons affected by the war. However, the oil crisis and recession in Europe in the 1970s put a stop to labour migration flows, including those taking place under bilateral agreements. The post-1990 period has seen a resurgence of a “second generation” bilateral labour migration agreements across the world, including in new countries of origin and destination, with a peak observed between 2005 and 2009. The subsequent global economic crisis has resulted in a decline in the conclusion of new bilateral agreements since 2010.² Interest is especially evident in certain migration corridors (such as Asia and Africa to the Arab States, and within Asia), in response to the continuing economic growth and demand for migrant workers in the destination countries concerned, which reflects a desire to facilitate new labour migration flows and also to regulate existing flows. As a result, demand for ILO technical assistance in this area has also grown. Given these developments, the conclusions of the 2013 Tripartite Technical Meeting on Labour Migration recommended the creation of an ILO online repository on bilateral labour migration agreements and related good practices.³ The Office mapped a large number of them in preparation for a 2015 study, which forms the basis of this chapter.⁴

67. While bilateral agreements can play an important role in ensuring that the labour rights of migrant workers are protected, in practice they exhibit a number of shortcomings regarding their design, content, monitoring, implementation and impact. This chapter examines recent trends and the major challenges relating to both their content and implementation. It discusses the underlying obstacles, points to some promising experiences, including from ILO development cooperation work, and draws conclusions on ways to enhance the effectiveness of these policy instruments.

¹ OECD: *Migration for employment: bilateral agreements at a crossroads*, Paris, 2004; ILO: *Labour migration*, Governing Body, 316th Session, November 2012, GB.316/POL/1, para. 6.

² ILO–KNOMAD: *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, Research Brief, 2015, pp. 1–2.

³ ILO: *Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013: Conclusions*, para. 9(ii) and (iii).

⁴ P. Wickramasekara: *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, Geneva, July 2015.

3.1. Typology of and trends in bilateral labour migration agreements

68. In this chapter, “bilateral labour migration agreement” is used generically to apply to bilateral agreements which create legally binding rights and obligations governed by international law and are usually more specific and action-oriented, non-binding memoranda of understanding (MoUs) which set out a broad framework of cooperation to address common concerns, as well as to other arrangements, including between specific government ministries or agencies in destination and origin countries.⁵ Broader framework agreements or cooperation agreements that include labour migration along with other migration topics such as irregular migration, readmission, and migration and development are also included in this typology. About 70–80 per cent of bilateral labour migration agreements in Africa, Europe and the Americas are legally binding agreements, while almost 70 per cent of those in Asia are MoUs (table 3.1).

Table 3.1. Bilateral labour migration agreement types by region (percentage)

| Type | Asia* | Africa | Europe and Americas | Total |
|-----------------------------|------------|------------|---------------------|------------|
| Memorandum of understanding | 69.2 | 3.1 | 3.7 | 31.8 |
| Memorandum of agreement | 1.5 | 0.0 | 3.7 | 2.0 |
| Bilateral agreement | 15.4 | 71.9 | 79.6 | 50.3 |
| Inter-agency understanding | 9.2 | 0.0 | 0.0 | 4.0 |
| Framework agreement | 0.0 | 21.9 | 1.9 | 5.3 |
| Protocol | 4.6 | 3.1 | 11.1 | 6.6 |
| Total | 100 | 100 | 100 | 100 |

Note: Based on 144 mapped and seven unmapped agreements in Europe and the Americas. * Includes GCC countries.

Source: P. Wickramasekara: *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, Geneva, July 2015, p. 21.

69. The preference for MoUs in Asia can be explained by a number of factors in destination countries in the GCC, East Asia and South-East Asia, including the fact that they are easier to negotiate and implement than more complex legally binding agreements and that they can be adapted more easily to changing economic and labour market conditions.⁶

3.2. Bilateral labour migration agreements in an international context

70. In its 2016 General Survey, the CEACR highlighted that bilateral agreements can play an important role in ensuring that migrant workers at all skill levels benefit from the protections contained in Conventions Nos 97 and 143.⁷ Convention No. 97 requires Members’ competent authorities, whenever necessary or desirable, to conclude agreements for the purpose of regulating matters of common concern “in cases where the

⁵ See ILO: *Promoting fair migration*, General Survey concerning the migrant workers instruments, Report of the CEACR, ILC, 105th Session, Geneva, 2016, para. 155, footnote 59, referring to an MoU between the Indonesian National Board for the Placement and Protection of Indonesian Overseas Workers and the Japan International Corporation of Welfare Services, and to an MoU between the Spanish and Portuguese labour inspectorates.

⁶ Wickramasekara, op cit., p. 21.

⁷ ILO: *Promoting fair migration*, op. cit., para. 163.

number of migrants going from the territory of one Member to that of another is sufficiently large".⁸ The accompanying Migration for Employment Recommendation (Revised), 1949 (No. 86), contains a model agreement which applies to both temporary and permanent migration for employment, including the migration of refugees and displaced persons. ILO member States, including those that have not ratified the ILO migrant worker instruments, have widely used the model as a blueprint for concluding their own arrangements.⁹ Using the model agreement as a basis, a range of key elements for comprehensive provisions can be identified (box 3.1).

Box 3.1
Key elements of a bilateral labour migration agreement

Pre-departure and recruitment

- notification of job opportunities and skills needs;
- pre-selection and final selection of candidates;
- recruitment process;
- medical examination;
- entry visas;
- residence and work permits;
- outgoing transportation and conditions of transport;

Employment and residence at destination

- equality of treatment;
- contracts of employment;
- terms of employment, including possibility to change employment;
- working conditions, including occupational safety and health;
- trade union rights;
- social security;*
- taxation, including measures addressing double taxation;*
- supply of food;
- accommodation;
- family reunification;
- education and vocational training;
- skills recognition;
- activities of social and religious associations;
- supervision of living and working conditions, including through labour inspection;
- transfer of remittances;
- access to dispute settlement procedures and courts, and effective remedies;

Return and reintegration

- conditions of return;
- return transportation and conditions of transport;
- reintegration into the labour market;

Cooperation

- identification of the competent government authorities in both countries of origin and destination;
- exchange of information between the competent authorities;
- agreement on applicable law and place of jurisdiction;

⁸ Convention No. 97, Art. 10.

⁹ ILO: *Towards a fair deal for migrant workers in the global economy*, Report VI, ILC, 92nd Session, 2004, Geneva, para. 427.

Implementation, monitoring and follow-up

- establishment of a joint commission/committee to:
 - monitor the implementation of the agreement, including resolution of disputes between the parties,
 - propose amendments, and
 - discuss follow-up.

* In practice, social security and double-taxation issues are often regulated separately, although inclusion of the reference to both in this context highlights their particular importance for migrant workers and members of their families.

Source: Adapted from R. Cholewinski: “Evaluating Bilateral Migration Agreements in the Light of Human and Labour Rights”, in M. Panizzon et al. (eds): *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives*, Palgrave Macmillan, Basingstoke, 2015, pp. 231–252, p. 242.

71. ILO standards also refer to bilateral agreements in the context of the regulation of recruitment. For example, the Private Employment Agencies Convention, 1997 (No. 181), contains a requirement that where recruitment is international, member States should consider concluding bilateral agreements to prevent abuses and fraudulent practices.¹⁰

72. The ILO Fair Migration Agenda observes that the analysis of bilateral agreements should be the basis for increased cooperation among member States to promote fair migration practices, with particular reference to the design of schemes for the temporary movement of workers or for the movement of workers with specific skills.¹¹ The ILO Multilateral Framework on Labour Migration provides guidance on how to use bilateral agreements to cover important areas of labour migration, such as “developing the exchange of labour market information”; “establishing policies and procedures [where appropriate] to facilitate the movement of migrant workers”; and providing “social security coverage and benefits [to migrant workers], as well as portability of social security entitlements”.¹²

3.3. Governance challenges

73. Despite their potential, the effectiveness of bilateral labour migration agreements has been challenged. The different bargaining positions of countries of origin relative to destination countries in negotiating agreements may create pressures on the former to accept lower standards or not to discuss or elaborate certain key issues.¹³ This can be exacerbated by tensions, particularly in origin countries, between their desire, on the one hand, to secure jobs for their nationals abroad and reduce high unemployment and informal employment at home, and their responsibilities, on the other, to protect their nationals working in destination countries. The diversity of bilateral agreements in terms of their legally binding status, scope and content presents a further challenge for their effective implementation, monitoring and follow-up. Moreover, countries of origin and destination often have different motivations and objectives for negotiating them. That is why it is important for the principles governing the cooperation to be clearly outlined in the agreement. This is a good practice of the inter-agency understandings concluded between

¹⁰ [Convention No. 181](#), Art. 8(2). See also [Convention No. 97](#), Annexes I and II, Art. 3(3) (in both).

¹¹ ILO: *Fair migration: Setting an ILO agenda*, Report of the Director-General, Report I(B), ILC, 103rd Session, 2014, Geneva, paras 119–120.

¹² ILO: *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, Geneva, 2006, Guidelines 3.4, 5.3 and 9.9.

¹³ R. Cholewinski: “Evaluating Bilateral Migration Agreements in the Light of Human and Labour Rights”, in M. Panizzon et al. (eds): *The Palgrave Handbook of International Labour Migration: Law and Policy Perspectives*, Palgrave Macmillan, Basingstoke, 2015, p. 237.

New Zealand and the Pacific Forum countries in support of New Zealand's Recognized Seasonal Employer Policy enabling the horticulture and viticulture industry to recruit low-skilled workers from the Pacific Islands. For example, the inter-agency understanding with Kiribati is underpinned by the principles of equity of access and opportunity, transparency of processes and decision-making, accountability, development focus, and mitigation of risk.¹⁴

74. While the first generation of bilateral agreements were concluded during a period where labour migration, including recruitment, was mainly organized by governments,¹⁵ the second generation operate in a context where recruitment of migrant workers in certain major migration corridors is largely undertaken by private enterprises (see Chapter 5). While most bilateral agreements today apply to many forms of labour migration irrespective of how the recruitment takes place, a notable exception concerns those concluded by the Republic of Korea with the countries deploying workers under the Korean Employment Permit System, which only envisage the involvement of the respective countries' public employment services.¹⁶ As discussed in Chapter 5, this practice has contributed to a substantial reduction in recruitment costs for the migrant workers concerned. Therefore, the extent to which bilateral agreements can contribute to addressing abusive and fraudulent recruitment practices should be an important measure of their success.

75. Bilateral labour migration agreements also need to be aligned to coherent national employment policies. Key components of such policies relevant to labour migration include the creation of more employment opportunities, with due consideration to national education, skills and training needs; establishment of better conditions of work in origin countries with a view to reducing the need to migrate for employment;¹⁷ collaboration with anti-discrimination and labour market integration processes and institutions in countries of destination; and transition of migrant workers from the informal to the formal economy.¹⁸ Particular attention also needs to be given to the underlying drivers and processes of migration, including recruitment (as discussed in Chapter 5), skills needs at destination, the treatment and labour market integration of incoming migrants, and the labour market reintegration of returning nationals.¹⁹

76. In addition to these governance challenges, the effectiveness in practice of bilateral agreements depends on how accessible their contents are to migrants, the existence of

¹⁴ See, for example, the inter-agency understanding between the Department of Labour of New Zealand and the Ministry of Labour and Human Resource Department of Kiribati in support of New Zealand's Recognized Seasonal Employer Policy, item 4.1.

¹⁵ Wickramasekara, *op. cit.*, p. 17.

¹⁶ *Memorandum of Understanding between the Department of Labor and Employment, Republic of the Philippines and the Ministry of Labor, Republic of Korea on the Sending and Receiving of Workers under the Employment Permit System of Korea*, 30 May 2009.

¹⁷ ILO Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), Part X (International Migration and Employment), Para. 39.

¹⁸ The ILO Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), includes as one of its guiding principles the need for Members to pay special attention to those persons, including migrants and domestic workers, "who are especially vulnerable to the most serious decent work deficits in the informal economy", Para. 7(i).

¹⁹ ILO Recommendation No. 169, Paras 41–43. In this regard, the Mauritius National Employment Policy being developed in collaboration with the ILO includes a section on labour migration containing strategies on inward and outward labour migration as well as the mobilization of the Mauritian diaspora abroad. Ministry of Labour, Industrial Relations and Employment of the Republic of Mauritius: *National Employment Policy for Mauritius (Fourth Draft)*, Sep. 2014.

adequate monitoring of their implementation, access to enforcement mechanisms, and provision of social dialogue.²⁰ Agreements should also refrain from weakening protection in international standards and national laws, in particular fundamental principles and rights at work.²¹ In this regard, the ILC Committee on the Application of Standards (CAS), in discussing the 2016 General Survey, proposed that the Office “undertak[e] further analysis of the compatibility of ... bilateral arrangements with ... international labour standards”.²² Indeed, the effectiveness of bilateral agreements depends heavily on how well developed national migration governance systems are in both sets of countries and the extent to which national labour laws, based on international labour standards, offer comprehensive protection of workers in all sectors. The section below provides an overview of the findings of a 2015 ILO review of a large number of bilateral agreements across different regions and discusses some of these areas in more detail.

3.4. Good practices and the model agreement in Recommendation No. 86

77. The 2015 ILO study evaluated bilateral labour migration agreements according to: (1) their comprehensiveness and scope, with reference to coverage of the provisions in the model agreement annexed to Recommendation No. 86; and (2) their quality, on the basis of 18 criteria for good practice in labour migration governance and protection of migrant workers drawn from international norms and in consultation with ILO experts.²³

78. The study found that no agreement incorporated all the 27 relevant provisions of the model agreement, with the average containing only 11 provisions. Equal treatment provisions were more prevalent in agreements in Europe and the Americas, whereas provisions on the employment contract were more likely to be found in those in Asia.

79. Concerning the second set of evaluative criteria based on 18 good practices, figure 3.1 provides a summary of the results.

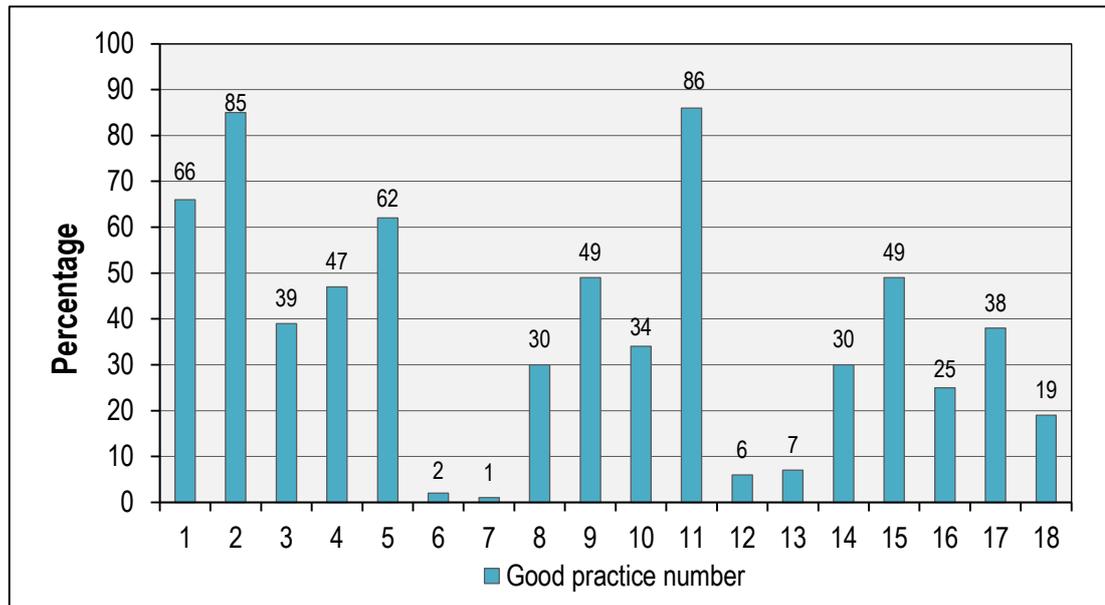
²⁰ ILO: *Promoting fair migration*, op. cit., para. 163.

²¹ *ibid.*, para. 190.

²² Outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning the migrant workers instruments, ILC, *Provisional Record No. 16-1*, 105th Session, 2016, para. 106(12).

²³ Wickramasekara, op. cit.

Figure 3.1. Percentage of bilateral labour migration agreements that incorporate each good practice (n=144)



Good practices in mapped agreements:

- 1 Transparency
- 2 Publicity
- 3 Evidence of normative foundations and respect for migrant rights, based on international instruments
- 4 Specific reference to equal treatment of migrant workers
- 5 Provisions to promote fair recruitment practices
- 6 Addressing gender concerns, and concerns of vulnerable migrant workers
- 7 Social dialogue involving employers and workers, and other stakeholders such as civil society organizations
- 8 Wage protection measures
- 9 Concrete and enforceable provisions relating to employment contracts and workplace protection
- 10 Provision for human resource development and skills improvement through in-service training
- 11 Concrete implementation, monitoring and evaluation procedures
- 12 Prohibition of confiscation of travel and identity documents
- 13 Provision for recognition of skills and qualifications in the destination country
- 14 Provision of social security and health-care benefits for migrant workers on par with local workers
- 15 Defining clear responsibilities between partners
- 16 Incorporation of concrete mechanisms for complaints and dispute resolution procedures, and access to justice
- 17 Provision of free transfer of savings and remittances
- 18 Coverage of the complete migration cycle

Source: Wickramasekara, op. cit., p. 29 (chart 2).

80. Some of the high percentage scores for the listed good practices are deceptive. While 86 per cent of agreements contain concrete implementation and monitoring and evaluation procedures (good practice 11) through the establishment of a joint committee of government officials, only limited information is available on the functioning of such committees, which have been criticized for a lack of transparency, and their achievements. For example, the ILO study refers to the acceptance by Kuwait of a model employment contract as one achievement of the MoU with India. Further, despite the reference to recruitment in 62 per cent of all agreements (good practice 5), there is little evidence of commitments to promote fair recruitment practices, harmonize recruitment regulation among origin and destination countries, or reduce the costs of labour migration.

81. Among other noteworthy findings, almost no information is available on the role of social dialogue in the drafting, negotiation and implementation of bilateral agreements

(good practice 7). The absence of any references to social partners in monitoring and follow-up provisions is particularly difficult to explain, given that labour ministries in both origin and destination countries were involved in the negotiation and signature of many agreements.²⁴ There are some examples, however, from ILO development cooperation activities, where workers' and employers' organizations have taken part in negotiations of agreements and their implementation (see section 3.5 below).

82. Second, only 39 per cent of agreements refer to respect for migrant rights, based on relevant international instruments (good practice 3); however, such references are higher in Africa (50 per cent) than in Asia (38 per cent) and Europe and the Americas (32 per cent).

83. A third significant omission applicable to agreements across all regions relates to the absence of almost any reference to migrant women or other categories of migrant workers, such as low-skilled migrants, who are at particular risk of abuses (good practice 6). The inattention to gender issues and lack of gender-sensitive monitoring mechanisms is a serious concern.²⁵ One important exception relates to those specific agreements governing the migration of domestic workers (such as Jordan and Malaysia with Indonesia, and Saudi Arabia with four Asian countries),²⁶ some of which contain a standard employment contract based on provisions in the Domestic Workers Convention, 2011 (No. 189).²⁷ Inclusion of such model contracts, however, is rare, and where they have been included, their practical effectiveness has been questioned; this requires more in-depth investigation.²⁸

84. A number of gender-specific aspects and measures could be taken into account during negotiation of bilateral labour migration agreements, namely inclusion of gender-specific, non-discrimination and rights-based clauses to promote gender equality, such as explicit prohibition of pregnancy testing; acknowledgment of female-specific vulnerabilities, for example by establishing protection measures concerning violence against women in the migration process; and provision for appropriate health care and social security benefits for women migrant workers.²⁹

85. Fourth, bilateral agreements are generally silent on the prohibition of confiscation and/or retention of travel and identity documents (good practice 12), which is unexpected given that this is a recognized problem in certain destination countries in Asia and the Arab States and is one of the indicators of forced labour.³⁰

86. Fifth, provision for recognition of skills and qualifications (good practice 13) is largely absent. Since the ILO study focused on low-skilled workers, this finding may

²⁴ For example, in destination countries such as those in the GCC, Germany, Italy, Jordan, Republic of Korea and Thailand, and in origin countries such as Cambodia, Lao People's Democratic Republic, Nepal, Indonesia, Philippines and Viet Nam.

²⁵ L.L. Lim: *Gender sensitivity in labour migration-related agreements and MOUs*, Global Action Programme on Migrant Domestic Workers and Their Families, Research Series, ILO, 2016, p. 1; Organization for Security and Co-operation in Europe (OSCE): *Guide on Gender-Sensitive Labour Migration Policies*, Vienna, 2009, pp. 53–54.

²⁶ Wickramasekara, op. cit., p. 26.

²⁷ Lim, op. cit., p. 6 (box 4), with reference to the agreement between the Philippines and Saudi Arabia on migrant domestic workers.

²⁸ Wickramasekara, op. cit., p. 28.

²⁹ OSCE: *Guide on Gender-Sensitive Labour Migration Policies*, op. cit., p. 55.

³⁰ Wickramasekara, op. cit., p. 30; ILO: *ILO Indicators of Forced Labour*, Geneva, 2012, p. 17, retention of identity documents.

reflect the fact that governments attach less significance to these issues for such workers than for highly skilled workers.³¹

87. Finally, provision for social security, including health-care benefits (good practice 14), was found in only 30 per cent of all the agreements mapped, and mainly in those in Europe and the Americas, and there are shortcomings in terms of ensuring migrant workers' equal access to health care.³² Moreover, the study was limited to identifying whether provisions referring to social security were included; it did not look at their scope (risks covered, type and level of benefits) or their concrete application. As explained in section 3.6 below, migrant workers' access to social security is often regulated in separate bilateral agreements.

3.5. ILO support in the design and implementation of bilateral labour migration agreements

88. The Office is periodically requested by ILO constituents to provide technical assistance and advice during the formulation and negotiation of bilateral labour migration agreements. The effectiveness of such assistance, however, depends on the inclusion of labour representatives of both governments together with social partners (box 3.2).

Box 3.2

Bilateral labour migration agreement between the Republic of Moldova and Israel in the construction sector

In November 2012, the Republic of Moldova, specifically the Migration Policy Department within the Ministry of Labour, Social Protection and Family, signed an agreement with the Government of Israel on the temporary employment of Moldovan workers in Israel. The aim was to provide enhanced opportunities for regular migration and reduce the negative effects of irregular migration by ensuring the labour protection and social protection of workers. The agreement was prepared in consultation with social partners from both countries and encompassed 1,000 jobs in the construction sector. Moldovan workers were selected through the local offices of the National Employment Agency, and priority was given to workers registered under the Unemployment Fund. The final selection was carried out by the Government of Israel, and the first group of workers left for Israel in July 2013. The costs of their medical examination, round-trip travel and documentation were covered by Israel.

Source: ILO–EU-funded project on “Effective Governance of Labour Migration and its Skill Dimensions” (2011–14).

89. In the bilateral labour migration agreements mapped by the ILO study, there was hardly any reference to involvement of workers' and employers' organizations in provisions relating to the implementation and monitoring and evaluation of the agreements. One notable exception, however, is the 2013 agreement between Germany and the Philippines for health workers (box 3.3).³³

³¹ Wickramasekara, op. cit., p. 30.

³² See also UN: *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover*, Human Rights Council, A/HRC/23/41, 15 May 2013, para. 12.

³³ Discussed in connection with “Promoting Decent Work Across Borders: A Project for Migrant Health Professionals and Skilled Workers (2011–2014)”, an EU-funded ILO project.

Box 3.3
Bilateral agreement between
Germany and the Philippines for health workers

Signed in March 2013, an agreement between Germany and the Philippines facilitates the entry of Filipino nurses to the German health-care system through a government-to-government hiring scheme. Its salient features include ethical recruitment of Filipino workers, equality of treatment for foreign health professionals and cooperation on human resource development.

The agreement between Germany and the Philippines was also the first to establish a joint committee responsible for monitoring and evaluating its implementation, which is comprised of the ministries of labour and health, and trade union representatives from both countries.

Source: Adapted from Public Services International, PSI Symposium on the German–Philippines Bilateral Agreement for Health Workers, July 2015, <http://www.world-psi.org/en/psi-symposium-german-philippines-bilateral-agreement-health-workers>.

90. The ILO can also play an important convening role in bringing representatives of governments of origin and destination countries together with social partners to discuss good labour migration practices and experiences, including those relating to bilateral agreements. In December 2014, the ILO and the KNOMAD Thematic Working Group on Low-skilled Labour Migration co-organized a technical workshop in Kathmandu, Nepal, which discussed the preliminary research findings of the 2015 ILO study.³⁴ In May 2016, bilateral governmental cooperation was discussed at an interregional knowledge-sharing forum on good practices and lessons learned in promoting international cooperation and partnerships to realize a fair migration agenda for migrant domestic workers in Africa, the Arab States and Asia, held in Antananarivo, Madagascar. In addition to highlighting developments in the conclusion of new or impending labour migration agreements, especially between African and GCC countries, the workshop discussions noted that such agreements often fail to address specific protection issues experienced by migrant domestic workers, including gender discrimination. The discussions also referred to other concerns, such as the agreements' lack of transparency and limited participation by social partners and other relevant stakeholders, including migrant domestic workers themselves. Effective implementation of bilateral labour migration agreements is hampered by the absence of political will, lack of capacity and resources in both origin and destination countries, and the exclusion of migrant domestic workers from national labour laws.³⁵

3.6. Migrant workers' access to social protection under bilateral agreements

91. As discussed in Chapter 2, migrant workers face obstacles in accessing social protection in the destination country. The inclusion of social security provisions in bilateral labour migration agreements or conclusion of separate bilateral or multilateral social security agreements can therefore help greatly in extending social protection

³⁴ See the ILO–KNOMAD note summarizing the deliberations of the workshop at: http://www.knomad.org/powerpoints/low_skilled_labor_migration/KNOMAD%20TWG3%20BLA%20workshop%20summary.pdf.

³⁵ Report of the Workshop, p. 10. For all the documents relating to this meeting, see: http://www.ilo.ch/global/topics/labour-migration/events-training/WCMS_454724/lang--en/index.htm.

lawfully and effectively to migrant workers and their families. This should also be viewed in the context of a more holistic approach comprising the following actions:³⁶

- ❑ ratification and application of ILO Conventions and Recommendations relevant to migrant workers and their social protection,³⁷ which also support the conclusion of bilateral and multilateral social security agreements,³⁸ and incorporation of important principles, notably equality of treatment, into domestic law and labour migration or social security agreements;
- ❑ adoption of unilateral measures to provide or enhance access to social protection for migrants. For instance, destination countries can unilaterally recognize equality of treatment between nationals and non-nationals, including for specific groups such as domestic workers and the self-employed, as well as the principle of payment of benefits abroad. Countries of origin can also unilaterally decide to extend social protection to their nationals working abroad through voluntary insurance (such as in Ecuador) or through welfare funds (such as in the Philippines and Sri Lanka);
- ❑ establishment of national social protection floors, in line with the Social Protection Floors Recommendation, 2012 (No. 202), to unilaterally ensure access to essential health care and to basic income security for all, including migrants and their families;
- ❑ implementation of practical initiatives to facilitate effective access to social security, for instance through translation of texts, awareness-raising campaigns, and ensuring access to complaint mechanisms.

92. Given the exclusion of specific groups of workers from social protection at the national level and the absence of social security provisions in bilateral labour migration agreements or their limited application where they do exist, serious consideration should be given to the conclusion of comprehensive bilateral and multilateral social security agreements to provide for the coordination of social security, with the involvement of social partners in their elaboration and governance. A bilateral social security agreement is comprehensive in ensuring the social security rights of migrant workers and members of their families if it pursues five objectives: (i) equality of treatment; (ii) payment of benefits abroad (“portability” or “exportability” of benefits); (iii) determination of the applicable legislation; (iv) maintenance of rights in course of acquisition (“totalizing”); and (v) administrative assistance.³⁹ However, the conclusion and successful implementation of social security agreements depend on, among other issues, the administrative and management capacities of the social security institutions involved,⁴⁰

³⁶ G. Binette et al.: *Migrant access to social protection under selected bilateral labour arrangements*, ILO, forthcoming, 2017, p. 10.

³⁷ See, among others, the Social Security (Minimum Standards) Convention, 1952 (No. 102); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Employment Injury Benefits Convention, 1964 (No. 121); Invalidity, Old-Age and Survivors’ Benefits Convention, 1967 (No. 128); Medical Care and Sickness Benefits Convention, 1969 (No. 130); Maintenance of Social Security Rights Convention, 1982 (No. 157); Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); Maternity Protection Convention, 2000 (No. 183); Maintenance of Social Security Rights Recommendation, 1983 (No. 167); and the Social Protection Floors Recommendation, 2012 (No. 202). The migrant workers and domestic workers instruments also contain social security provisions.

³⁸ Recommendation No. 167 contains a model social security agreement in its Annex.

³⁹ K. Hirose et al.: *Social Security for Migrant Workers: A rights-based approach*, ILO, Budapest, 2011, pp. 25–37.

⁴⁰ International Social Security Association (ISSA): *Handbook on the extension of social security coverage to migrant workers*, Geneva, 2014, p. 8. A key challenge identified in the efficient implementation of social security agreements is when there are significantly more immigrants than emigrants, which can have financial or administrative implications for one of the social security institutions. Other barriers include different definitions of

which is probably also why conclusion of bilateral social security agreements varies greatly across regions.⁴¹

93. Social security for migrant workers is increasingly being coordinated by way of multilateral agreements at the regional level, which is viewed as a good practice because it ensures common standards and rules for the coordination of the social security systems of all the countries party to the agreement and equality of treatment for migrant workers. Regional agreements can also provide for a higher level of protection than a network of bilateral labour migration agreements covering the same countries and regions, where the rights and obligations depend on the terms of the individual bilateral labour migration agreement.⁴² Examples of different types of regional social security agreements are provided in Chapter 4.

94. The advent of regional social security agreements, however, does not preclude the continued need for bilateral social security agreements, which can better target a specific underserved migrant worker population and also be negotiated and concluded more quickly than multilateral agreements.⁴³ In some cases, the conclusion of a bilateral social security agreement represents a preliminary step laying the ground for future multilateral agreements, while at the same time providing for an immediate response to migrant workers' social protection needs.

3.7. Bilateral agreements between trade unions

95. Recent years have seen increasing bilateral cooperation on the protection of migrant workers between trade unions in countries of origin and destination, based on a model trade union agreement on migrant workers' rights (box 3.4), which is viewed as a good practice.⁴⁴

Box 3.4

Model trade union agreement on migrant workers' rights

The model trade union agreement of the ILO Bureau for Workers' Activities (ACTRAV) and the International Trade Union Confederation (ITUC) reaffirms that freedom of association is a central and non-negotiable principle and that the participation of migrant workers in trade unions contributes to their integration in countries of destination. Signatories commit to promoting the ratification of and respect for ILO Conventions concerning migrant workers. The agreement emphasizes that the situation of migrant workers should be addressed through the principles of international trade union solidarity, social justice, equality of treatment, equal opportunity and gender equality.

The model agreement also commits signatories to:

- raise the specific concerns of migrant workers in their national tripartite labour committees and encourage affiliated unions to integrate them in collective bargaining with employers; and ensure that labour legislation and collective agreements fully

disability benefits (such as for medical conditions, partial disability), access to relevant information between different agencies in home and other countries, and differences in benefit structure and levels, *ibid.*, pp. 40–41.

⁴¹ R. Sabates-Wheeler: *Social security for migrants: Trends, best practice and ways forward*, Working Paper No. 12, ISSA, Geneva, 2009, p. 10, referring to the conclusion of 1,628 bilateral social security agreements by EU countries in contrast to 181 by East Asian and Pacific countries, and only three by South Asian countries.

⁴² K. Hirose et al., *op. cit.*, p. 38.

⁴³ *ibid.*, p. 39.

⁴⁴ See *ILO Multilateral Framework on Labour Migration*, *op. cit.*, Guideline 2.6.

protect all migrant workers, including those involved in temporary labour migration programmes;

- develop initiatives aimed at securing the involvement of trade unions in the development of bilateral labour migration agreements between the governments of origin and destination countries, and the establishment of national tripartite consultation mechanisms and bilateral cooperation forums to discuss and formulate rights-based migration policies, taking into account labour market needs, and the possible expansion and facilitation of regular labour migration channels as a means of eliminating the exploitation and abusive conditions of workers in irregular situations;
- promote cooperation between governments of origin and destination countries with a view to enhancing migration governance relating to: the establishment of legal avenues for labour migration; strengthening labour inspection; legal cooperation in cases of trafficking and abuse; maintenance of social security entitlements; strict supervision and control of activities by private employment agencies, in conformity with Convention No. 181, and subcontractors; and elimination of abuses of sponsorship schemes.

Source: Adapted from ILO: *Good practices database – Labour migration policies and programmes*.

96. There are increasing examples of agreements between trade unions in origin and destination countries on migrant worker protection that draw on this model.⁴⁵ In August 2015, a unique interregional MoU was signed by the Arab Trade Union Confederation, the ASEAN Trade Union Council and the South Asian Regional Trade Union Council to promote rights-based cooperation on migration in organizing and supporting migrant workers. The MoU identified a number of immediate actions, including: protection of migrant workers by offering direct services, either through unions or migrant resource centres; raising issues such as gender concerns, confiscation of passports and regularization of the status of migrant workers; and facilitating bilateral labour migration agreements between origin and destination countries.⁴⁶

97. While bilateral cooperation between trade unions in countries of origin and destination is a good practice, it cannot replace the obligation of governments of both sets of countries to safeguard the rights of migrant workers in accordance with national laws and international labour standards.⁴⁷

3.8. Conclusion

98. The Office has now collected and mapped a large number of bilateral agreements on labour migration. An ILO knowledge-sharing platform in Asia and the Pacific, AP Migration, has made such agreements in that region publicly available.⁴⁸ This serves as a starting point for developing deeper knowledge of the actual implementation of labour migration agreements.

99. Constituents have indicated that further work in this area would be warranted. This would require further guidance, particularly given the changing nature of labour migration and its governance since the adoption of the model agreement annexed to Recommendation No. 86.

⁴⁵ ILO: *Labour migration and development: ILO moving forward*, Background paper for discussion at the ILO Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013, p. 20 (table 4.1); *ILO programme implementation 2014–15*, Report of the Director-General, ILC, 105th Session, 2016, Geneva, para. 197.

⁴⁶ T. Connell: “Unions in Asia, Gulf Sign Migrant Worker Agreement”, Solidarity Center, 8 Aug. 2015.

⁴⁷ Cholewinski, op. cit., p. 245.

⁴⁸ See: <http://apmigration.ilo.org>.

100. While the CAS recalled that the CEACR had noted that the objective of the ILO's migration instruments was as relevant now as it was when the instruments had been adopted, it indicated that it was aware that details of certain provisions might be considered to have "lost their relevance, not being fully responsive to, or necessary, in the current migration context". The CAS therefore considered that within the general discussion on labour migration at the 106th Session of the Conference, the tripartite constituents may wish to clarify the possible need for a review or consolidation of Conventions Nos 97 and 143, as well as the need to complement the existing international labour standards.⁴⁹

101. The model agreement annexed to Recommendation No. 86 accompanying Convention No. 97 is an example of where a more updated and responsive approach may be needed to serve as guidance and take account of the changing landscape of labour migration, including the larger significance of the private sector's role in recruiting migrant workers (see Chapter 5). There are further challenges in ensuring effective implementation, transparency and monitoring across migration corridors. Other important concerns are raised about changing patterns in the mobility of women migrant workers, the role of social dialogue in bilateral labour migration agreements, and how best to include social security provisions in the absence of dedicated social security agreements. The role of bilateral labour migration agreements in enhancing human resource development generally and skills development for migrant workers in particular is an additional question that would benefit from further guidance.⁵⁰

⁴⁹ ILO, Outcome of the discussion, *op. cit.*, para. 15.

⁵⁰ See also the recommendations in Wickramasekara, *op. cit.*, p. 48.

Chapter 4

Regional labour migration and mobility

102. This chapter examines developments in the governance of labour migration and mobility at the intraregional level, as well as through interregional cooperation. Because most labour migration and mobility is taking place at the intraregional level,¹ regional governance is critical to enhancing sustainable development outcomes in regional and subregional contexts, particularly where there is political consensus to move towards greater economic integration.

103. Among regional actors in the global South, the experience of the EU, and specifically its implementation of the right of establishment, has been particularly influential in promoting the idea of “free movement” as a major driver of economic growth and of reduction in wage disparities at the regional level. However, there is still limited knowledge of the actual impact of labour migration on developing countries individually,² let alone at the regional level.

104. There are great disparities between and within regions on governance, with different options ranging from ad hoc visa reciprocity merely facilitating short-term mobility through to advanced free movement protocols allowing residence, establishment and labour market integration. Coordinated labour migration and mobility remain major challenges to many regions, because of political resistance to the reciprocal opening of labour markets, particularly in countries with high unemployment; the weakness of regional organizations; or major capacity gaps more specifically at the national level.

105. This chapter reviews the main stumbling blocks that continue to impede strengthened labour migration and mobility governance at the regional and subregional levels in Africa, the Arab States, Asia and the Pacific, and Latin America and the Caribbean.³ The chapter focuses on five particularly critical and challenging areas and how they are being addressed by regional economic communities, including through ILO interventions.⁴

106. The chapter also looks at two additional dynamics that have a bearing on and reflect different approaches to regional labour migration and mobility: first, the interaction

¹ ILO: *ILO global estimates on migrant workers: Results and methodology*, Geneva, 2015.

² See Chapter 2, box 2.1. While this report focuses on migrant workers, consideration should also be given to the development and expansion of labour mobility pathways for refugees and other forcibly displaced persons, including at the regional level. See ILO: *Guiding principles on the access of refugees and other forcibly displaced persons to the labour market*, in *Third Supplementary Report: Outcome of the tripartite technical meeting on the access of refugees and other forcibly displaced persons to the labour market (Geneva, 5–7 July 2016)*, GB.328/INS/17/3(Rev.), Part F.

³ Given that the EU is widely recognized as the most developed regional labour mobility system, the chapter does not cover the EU per se, but references are made to EU developments and practices where appropriate.

⁴ Selection of issues based on a review of existing regional economic community agreements, protocols and plans of action on labour migration.

between regional economic communities and regional consultative processes on migration;⁵ and second, regional trade arrangements containing labour mobility components.

4.1. Labour migration governance and regional integration: Trends and challenges

4.1.1. Historical trends and strategic importance of international labour standards for regional integration

107. Developed economies remain the main destinations for migrants around the world. However, while the share of migrants living in developed economies has continued to rise, the growth rate has slowed down relative to previous decades (and in 2014 was constant relative to 2010), probably as a consequence of the recent economic crisis.⁶

108. There is a major historical difference between labour migration towards regions of destination in the reconstruction period after the Second World War and labour mobility within regional blocs (in particular the EU integration process), and South–South labour migration over the past two decades. While the former two occurred simultaneously with the consolidation of labour laws and social protection systems, current labour migration towards emerging economies is taking place in the context of often much weaker systems.⁷

109. This growing level of contemporary mobility towards countries with weaker governance systems has at least two critical implications. The first is an even more pressing need for the dissemination and mainstreaming of international labour standards and sustainable technical assistance in order to ensure good governance and the implementation of the Sustainable Development Goals. While South–South labour migration has the potential to yield positive benefits for migrant workers and their families, the social and economic costs will remain high, and development benefits low, without much stronger labour laws and social protection systems, as well as functional labour market intermediation mechanisms.

110. The second implication is that the regional economic communities and regional consultative processes play a more significant strategic role in providing their member States with political guidance and technical frameworks to promote the adoption and implementation of harmonized policies that are compliant with international labour standards. They can foster trust, unity and solidarity among origin countries rather than allow unbridled competition.

4.1.2. Commonalities in labour migration governance

111. An overview of the past 20 years reveals some common attributes that emanate from the consolidation of regional economic communities and that lay the foundation for strengthening regional dialogue and cooperation:

⁵ Regional consultative processes are intergovernmental consultative processes, supported in many instances by the IOM.

⁶ ILO: *World of Work Report 2014: Developing with jobs*, Geneva, p. 183.

⁷ B. Deacon et al.: “Globalisation and the emerging regional governance of labour rights”, in *International Journal of Manpower*, Vol. 32, No. 3, 2011, pp. 334–365.

- ❑ a degree of labour market openness to non-national labour and skills, including through skills recognition frameworks;
- ❑ a perception that well-governed labour migration works to the benefit of both origin and destination economies, thus enhancing regional development;
- ❑ a need for labour migration to occur within strengthened national labour and social protection systems, which should be increasingly harmonized;
- ❑ a requirement for sustained dialogue on labour migration, at least at the intergovernmental level;
- ❑ strengthening of public employment services and their capacities to cooperate with other providers, including private employment agencies;
- ❑ a need for effective protection mechanisms for migrant workers.

112. A number of these factors, such as skills recognition and social protection, present significant challenges for negotiated agreements, given the differences in national systems. In addition, almost all regional economic communities in developing countries face the following challenges, and address them in very different ways, as discussed in section 4.2:

- ❑ implementing regional agreements on labour migration effectively and in a timely manner;
- ❑ collecting harmonized data on labour migration;
- ❑ fostering more efficient coordinating and monitoring and evaluation structures at both the national and regional levels;
- ❑ countering limited political will to improve labour migration governance at the national level;
- ❑ regulating the conduct of a growing number of private labour recruiters hampering the development of fairer recruitment practices;
- ❑ resisting increasingly negative public opinion against extending access to labour market and social protection systems to non-nationals (as was the case for instance in the Southern African Development Community (SADC) on xenophobic violence, or more recently during the campaign for the United Kingdom to leave the EU).

113. These challenges present an opportunity for the ILO to strengthen its technical capacity building on international labour standards and other approaches.

4.1.3. General trends in labour migration and mobility governance in regional economic communities

114. While a detailed account of recent developments on migration issues in regional economic communities is beyond the scope of this report, some general trends can be identified here. Regional economic communities and regional cooperation bodies across the world have adopted a variety of labour migration governance models. By and large, they range from free movement, implying the gradual lifting of all barriers to movement, residence and establishment (the EU model, the Economic Community of West African States (ECOWAS) or the Southern Common Market (MERCOSUR)); facilitation of movement for specific categories of workers (ASEAN, Caribbean Community (CARICOM), SADC); mere visa reciprocity agreements or regular exchange of information (Arab Maghreb Union (AMU)); or protection of the subregion's workers in destination countries outside the region (South Asian Association for Regional Cooperation (SAARC)) (see table 4.1).

115. Each regional economic community has its own trajectory, governance system, pace and objectives, which are usually determined by the history of each region or subregion. In most instances, regional economic communities were established long after historical labour migration flows shaped specific political economies. Even though labour migration is often a secondary issue for them (such as the Community of Sahelo-Saharan States (CEN-SAD), AMU and SAARC), regional economic communities make attempts to address the unintended consequences of already existing labour migration flows.

116. Another characteristic of labour migration and mobility governance at regional economic community level is the extreme diversity in the size and hierarchy of those communities. While Latin America and the Caribbean and Asia and the Pacific have a limited number of subregional economic communities, the Arab States have a single regional integration entity, the GCC. Africa has one regional organization (the African Union (AU)) and a total of eight subregional organizations embedded in it, with overlaps in membership between them, but without any devolution of supranational power, whether at the AU or regional level.

117. Lastly, and perhaps most importantly, there are differences in the funding models and resources of regional economic communities. While those in Africa, from the AU to the subregional organizations, are largely dependent on donor funding (which represented 67 per cent of the AU budget, for instance, in 2015), other regional economic communities have become or have always been entirely self-sustained (ASEAN, EU, GCC, MERCOSUR, SAARC). This indicates that the dependency on external funding to support labour migration plans seems to hamper effective coordination and implementation at the secretariat level within regional communities, whereas member States in regions with budgetary surpluses are more likely to have line ministries, in particular ministries of labour and home affairs, with the capacity to roll out and implement regional plans effectively.

Table 4.1. Advancement of intraregional migration and mobility regimes pursued by regional economic communities (as of October 2016)

| Type of intraregional migration and mobility regime pursued | Enforced and functional | Ongoing development | Principles adopted |
|---|-------------------------|---------------------|--------------------------------------|
| Free movement based on gradual lifting of all barriers to movement, residence and establishment | EU, MERCOSUR | ECOWAS, EAC | AU, COMESA, CAN, ECCAS, IGAD, UNASUR |
| Facilitation of movement for specific categories of workers | | ASEAN, GCC | SADC, CARICOM |
| Visa reciprocity for short-term mobility and exchange of information | | APEC | CEN-SAD, AMU |
| Protection of workers from the regional economic community in employment outside that community | | | SAARC |

Note:
APEC – Asia-Pacific Economic Cooperation
CAN – Andean Community
EAC – East African Community
ECCAS – Economic Community of Central African States
IGAD – Intergovernmental Authority on Development
UNASUR – Union of South American Nations

4.2. Challenges in and responses to the regional governance of labour migration and mobility

118. While continuing to face numerous challenges linked to political and societal tensions and, at times, limited financial and human capacity hampering their own development, regional economic communities have invariably become prominent actors in labour migration governance. The relationship between the national and the regional level is of critical importance in building intervention strategies: at times, the regional process will be a lever through which national processes may be accelerated and harmonized, as for instance in the case of regional qualifications frameworks that may assist countries without national frameworks (such as the SADC regional qualifications framework); in other instances, a cluster of successfully robust systems at the national level will give momentum to a much broader subregional group in creating “coalitions of the willing” (as, for instance, the cases of Argentina, Brazil, Chile and Uruguay, within MERCOSUR, on social security extension).

4.2.1. Improving data collection for policy-making at the regional and national levels

119. In order for labour migration and mobility within the regional economic communities to be successful, it is critical to have harmonized data. The regional economic community is a particularly pertinent and reasonable scale for harmonization, as member States will often share similarities in statistical collection methods and an interest in specific indicators. However, reluctance to share border control data, and disparities in resources, frequency of surveys and statistical coordination mechanisms remain major obstacles to better integration. Some regional economic communities, however, have made substantive progress in coordination.

120. One of the most advanced examples in this area is the International Labour Migration Statistics Database in ASEAN, one of the highlights of the ILO Tripartite Action for the Protection of the Rights of Migrant Workers in the ASEAN Region project (ASEAN TRIANGLE). The database is the first of its kind in the region, and has been replicated in the Arab States.⁸ It gathers together official government data from a range of statistical sources on the stocks and flows of migrant workers within the region as well as on nationals of the various countries who are living or working abroad. The database fills an important knowledge gap, creating a powerful research tool through which policymakers and others can profile and monitor the international migrant labour force within the region.⁹

121. Another example is the SADC member States’ harmonization of labour migration modules across labour force surveys and the training of all 15 member States’ national statistics officers in standard reporting, within the framework of the SADC Labour Migration Action Plan 2013–15, which will be continued in the 2016–19 Action Plan.¹⁰

122. ILO assistance to regional economic communities could be strengthened with more systematic availability of statistics and resources in ILOSTAT and NORMLEX grouped under regional economic communities. In addition, awareness raising of constituents and

⁸ Migration and Government Network (MAGNET), currently hosted by ILOSTAT.

⁹ The ASEAN International Labour Migration Statistics database and accompanying materials, such as a guide and analytical report, can be accessed from the Asia Pacific Migration Network at: <http://apmigration.ilo.org/asean-labour-migration-statistics>.

¹⁰ ILO: *Report on SADC Capacity-Building Workshop on Work Statistics (19th ICLS Resolution) and Labour Migration Statistics*, 15–19 December 2014, Johannesburg.

secretariat staff at the regional economic community level could be conducted more systematically to ensure familiarization with ILO instruments in addition to national labour administrations.

123. Both quantitative and qualitative data is important for policy-making. In this respect, ECOWAS has opted for a series of targeted studies and guides on issues such as implementation of existing protocols, labour market information systems, social security coordination, effective protection of migrant workers and harmonization of policies in order to enhance its regional integration processes. The ILO has supported this effort through its participation in the joint Free Movement of Persons and Migration in West Africa programme (2013–18), funded by the European Commission.

4.2.2. Protection of migrant workers' rights, including fundamental principles and rights at work

124. Protection of migrant workers' rights is an area where implementation remains too limited. However, some developments are encouraging. The Declaration on the Protection and Promotion of the Rights of Migrant Workers, signed by ASEAN leaders in 2007, prescribes, inter alia, decent living and working conditions and employment protection for migrant workers in the ASEAN region. ASEAN has committed to negotiating an instrument to implement this Declaration by April 2017. The ILO has supported ASEAN's efforts in this area. Building on its regional work, the ILO's ASEAN TRIANGLE project (2012–16) focused on supporting ASEAN in reducing the exploitation of migrant workers in the region through increased regular and safe migration and improved labour protection. It aimed to make regional approaches more effective and enhance the capacity of institutions in the Association. Two other projects, ASEAN TRIANGLE Phase II (2017–20) and TRIANGLE II (2016–26), have complementary aims and are linked through a combined regional theory of change.¹¹

125. Protection issues are sometimes very specific to certain occupations and categories of workers, which is where a corridor approach within regional economic communities may be useful. The ILO Global Action Programme on Migrant Domestic Workers (2013–16) took an original approach by combining protection criteria with a migration corridor approach. The programme culminated in the organization of a tripartite interregional knowledge-sharing forum on good practices and lessons learned in promoting international cooperation and partnerships to realize a fair migration agenda for migrant domestic workers in Africa, the Arab States and Asia, held in Madagascar in May 2016 (see Chapter 3).¹²

126. GCC countries are also grappling with a labour migration and mobility model which, although fairly liberal in terms of bringing workers in, has been criticized for not addressing unacceptable conditions of work faced by many migrants. There have been some changes, however. In 2014, the Third Ministerial Consultation of the Abu Dhabi Dialogue among Asian countries of origin and Arab destination countries adopted the Kuwait Declaration, which references the ILO Fair Migration Agenda and the importance of fair recruitment. The Fourth Senior Officials' Meeting of the Abu Dhabi Dialogue in

¹¹ ASEAN TRIANGLE Phase II will run from 2017–20, funded by Canada. The TRIANGLE II project will run from 2016–26, funded by Australia: http://www.ilo.org/asia/whatwedo/projects/WCMS_428584/lang--en/index.htm. For several concrete examples of results for protection, see the Greater Mekong Subregion TRIANGLE project (2010–15) at: http://www.ilo.org/asia/whatwedo/projects/WCMS_304802/lang--en/index.htm.

¹² Outputs of the global action programme are available at: http://www.ilo.org/global/topics/labour-migration/events-training/WCMS_454724/lang--en/index.htm.

May 2016 recommended that the upcoming Fourth Ministerial Consultation take up bilateral and multilateral cooperation on skills development, certification and recognition and the leveraging of occupational skills recognition in the development of model admission and mobility policies. Furthermore, the ILO project Regional Fair Migration in the Middle East (FAIRWAY) (2016–18) focuses on the plight of the most vulnerable workers, namely those in domestic and construction work. The project aims to promote policy change informed by evidence-based research, support improved implementation of laws and policies, and address discriminatory attitudes towards migrant workers.

127. ILO constituents have also developed tools for the protection of migrant workers. These include the use of the ACTRAV–ITUC model bilateral trade union agreement¹³ and a manual for trade unionists on the protection of migrant workers¹⁴ in the development of the 2015–19 Plan of action on the protection of migrant workers by the Commission of Indian Ocean Trade Unions, a subregional platform of trade unions. Another example is the development of a manual for trade unions within the ASEAN TRIANGLE project.¹⁵

4.2.3. Matching of migrant workers' skills and qualifications to available jobs across borders

128. Recognition of skills and qualifications and matching them with appropriate occupations is key to the effective mobility of migrant workers within a region, and has gained prominence on the agenda of many regional economic communities. There are still large obstacles owing to different education systems and traditions at the national level, and at the same time there is also an overemphasis on formal academic skills to the detriment of migrant workers with vocational and artisan experience. Harmonization of skills recognition processes at the subregional or regional level remains a challenge.

129. As low- to medium-skilled workers are often neglected in formal qualifications framework models, there is a need for regionally recognized “translation tools” that allow skills to be evaluated easily regardless of the qualifications migrant workers hold. This is the principle behind the Regional Model Competency Standards for Asia and the Pacific, which do not define qualification levels but rather cluster competencies in logical groupings that can be translated into each country’s classification system as required. The latest such guide, for domestic work,¹⁶ will potentially help more than 20 million domestic workers in Asia and the Pacific.

130. In January 2015, the common market of the GCC was further integrated to allow full equality between GCC citizens in respect of employment, social insurance and retirement coverage. Interoperability of professional qualifications is also under way. However, non-GCC citizens are not (yet) part of these efforts. A joint IOM–ILO project on enhanced recognition of skills and reduced vulnerability of Sri Lankan construction workers in selected GCC countries was designed to target the skills enhancement of this diaspora of migrant workers across the region. The project is presently being implemented in the United Arab Emirates.

¹³ See Chapter 3, box 3.4.

¹⁴ ILO: *In search of Decent Work – Migrant workers’ rights: A manual for trade unionists*, ILO-ACTRAV, Geneva, 2008.

¹⁵ ILO: *Good practices on the role of trade unions in protecting and promoting migrant workers’ rights in Asia, RO–Asia and the Pacific*, Bangkok, 2014.

¹⁶ ILO: *Domestic Work*, Regional Model Competency Standards Series, Geneva, 2015.

4.2.4. Enhanced social protection, including through the coordination of social security rights and benefits

131. While migrant workers contribute to the social security system of either their home or destination country, they often enjoy few or no benefits because of a lack of social security coordination in the absence of bilateral or multilateral agreements, which may prevent them from receiving benefits under the systems of any of the countries in which they have worked.

132. The regional scale is a particularly appropriate level at which to improve coordination, generate common standards and regulations, promote solidarity and protect migrant workers. One important advantage of multilateral agreements over bilateral agreements (discussed in Chapter 3) is that the same provisions apply to all migrant workers, irrespective of their country of origin, within the area covered by the agreement.

133. Progress in the adoption of multilateral frameworks at the regional and interregional levels has been recorded across all regions, and most have received ILO support (box 4.1). However, harmonious implementation remains a major challenge, and further support to strengthen capacity is needed.

Box 4.1
Examples of regional social security agreements which have received ILO support and technical expertise

- ❑ EU regulations on the coordination of social security systems (EU Member States, Iceland, Liechtenstein, Norway and Switzerland)
- ❑ ASEAN Declaration on Strengthening Social Protection
- ❑ Multilateral Ibero-American Social Security Agreement (to which 12 Latin American countries, Portugal and Spain are signatories)
- ❑ CAN proposal for an Andean migratory status
- ❑ CARICOM Agreement on Social Security (13 countries of the Caribbean region)
- ❑ CIPRES (Inter-African Conference on Social Welfare) Multilateral Agreement on Social Security (15 French-speaking countries in Western and Central Africa and the Indian Ocean)
- ❑ ECOWAS General Convention on Social Security (enables retired migrants and migrant workers who had worked in one of the ECOWAS member States to exercise their right to social security in their country of origin)
- ❑ MERCOSUR Multilateral Social Security Agreement

4.2.5 The role of social dialogue in regional labour mobility

134. The history of the relationship between labour migration and social dialogue varies greatly from country to country. Challenges to social dialogue on labour migration issues include the absence of any tripartite tradition among ministries of the interior and of foreign affairs, which are still responsible for migration governance in many countries, and obstacles to freedom of association and the right to organize and bargain collectively for both national and migrant workers. By and large, labour migration governance has been characterized by a deficit of social dialogue.¹⁷

¹⁷ ILO: *International cooperation and social dialogue for well-governed national and international labour migration and regional mobility*, background paper for the ILO Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013 (unpublished).

135. The current consolidation of labour migration regimes within regional economic communities should be seen as an opportunity to instil the principles of tripartite social dialogue in labour migration governance processes, which needs to be supported by capacity building of relevant institutions and social partners.

136. While challenges to better social dialogue on labour migration issues remain, there have been numerous substantive breakthroughs in many regional economic communities (table 4.2).

Table 4.2. Social dialogue in regional economic communities

| Regional economic community | Adopted measures |
|-----------------------------|--|
| ASEAN | The ASEAN Forum on Migrant Labour is a good example of robust and functional tripartite social dialogue on labour migration issues. Its establishment was supported by the ILO ASEAN TRIANGLE I project, which had adopted a tripartite approach from inception, supporting several ASEAN tripartite technical meetings. These efforts will be sustained within ILO ASEAN TRIANGLE II. |
| CAN and MERCOSUR | Both the CAN and MERCOSUR have internal tripartite structures which regularly table labour migration issues or which are entirely dedicated to labour migration governance, such as the CAN's Andean Instrument for Labour Migration or MERCOSUR's Technical Subgroup No. 10. |
| CARICOM | In CARICOM, employers' and workers' councils have signed an MoU in order to facilitate the conducting of business and the circulation of workers through harmonized legislation. |
| ECOWAS | In December 2010, ECOWAS member States adopted the Draft Supplementary Act Establishing the ECOWAS Social Dialogue Forum, which formalized this ILO-supported body. |
| SADC | The SADC Employment and Labour Sector functions in a tripartite manner: the SADC Labour Migration Action Plan (2016–19) and the 2014 Labour Migration Policy Framework are the result of "tripartite plus" discussions and negotiations supported by the ILO. |

4.2.6. ILO adaptation to challenges of regional integration

137. The ILO approach to development assistance in the field of labour migration is shaped by its standards, reference frameworks and priorities. These have been mostly designed for interventions at the national level. The ILO has therefore had to adapt them to accommodate the growing development cooperation needs of regional economic communities.

International labour standards

138. International labour standards have remained an essential tool for the harmonization and convergence of legislation and guiding frameworks at the national and regional levels. While this has not necessarily translated into higher ratification rates of ILO Conventions Nos 97 and 143, the references to them and to related Conventions and Recommendations (such as Conventions Nos 181 and 189 and Recommendations Nos 86 and 151) as model law, providing a benchmark for national laws and supporting jurisprudence and litigation, have continuously informed labour migration agendas across regional economic communities. For example, the 2014 SADC Labour Migration Policy Framework, the 2012 ECOWAS General Convention on Social Security, the 2007 ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, and the CAN Instrument for Safety and Health at Work all draw directly on ILO Conventions and Recommendations related to migration.

139. The continued relevance of international labour standards can also be seen in recent ratifications of new instruments such as the Domestic Workers Convention, 2011 (No. 189), in Latin America, Africa and Asia; in the inclusion of ratification processes for Conventions Nos 97 and 143 on the agenda of several regional economic communities, particularly in Africa (such as the AU Joint Labour Migration Programme); and in the reference to ILO standards such as Recommendation No. 86 and the annexed model bilateral labour agreement (see Chapter 4) as benchmarking tools in regional guidelines.¹⁸ Furthermore, there have been numerous discussions and trainings coordinated by the ILO and other organizations, using ILO tools and standards as educational material.¹⁹

Development cooperation and regional strategies on labour migration

140. In addition to development cooperation projects (box 4.2), the ILO has developed regional labour migration strategies, which draw on policy priorities identified by constituents in ILO regional meetings. For example, the 16th Asia and the Pacific Regional Meeting, held in Bali in December 2016, identified enhancing labour migration policies based on relevant international labour standards as a priority for national policy and action.²⁰ These strategies are rolled out through ILO regional offices and Decent Work Teams with the technical backstopping of the Labour Migration Branch. The rapid emergence of multiple regional partners, regional economic communities and regional social partners has increased the number of requests for intervention and broadened their scope. The ILO field structure has been optimized in order to maximize existing resources and allow assistance at both national and regional or subregional level.

Box 4.2

Examples of development cooperation projects to strengthen linkages between regional economic communities and member States

Development cooperation projects supported by the ILO have focused on several key dimensions of labour migration governance, at regional economic community and national level, reinforcing either the cohesion of a regional economic community framework or the capacity of a community's member States to comply with existing frameworks. They have been an important focus of ILO technical assistance work in collaboration with other international organizations. The following are some of the most recent examples:

- ❑ the Joint Labour Migration Programme, coordinated by the AU Commission, with support from the ILO, the IOM and the UN Economic Commission for Africa (resource mobilization stage);
- ❑ support to the Free Movement of Persons and Migration in West Africa programme, funded by the European Commission and coordinated by ECOWAS, with support from the IOM, the International Centre for Migration Policy Development and the ILO (2013–18);

¹⁸ IOM: *Regional Guidelines for the Development of Bilateral Labour Agreements in the Southern African Development Community*, Geneva, 2016.

¹⁹ Some recent examples are: ILO-ACTRAV: *Trade Union Manual on Export Processing Zones*, Geneva, 2014; ILO: *Achieving decent work for domestic workers: An organizer's manual to promote ILO Convention No. 189 and build domestic workers' power*, Geneva, 2012.

²⁰ ILO: *Bali Declaration*, adopted at the 16th Asia and the Pacific Regional Meeting in Bali, Indonesia, on 9 December 2016, para. 8. See also the *Addis Ababa Declaration of the 13th ILO African Regional Meeting in 2015*, which identified as a continent-wide policy priority, “enhancing labour migration governance at national, subregional, regional and international levels, and developing policies that take into account labour market needs”, based on international labour standards and in accordance with the ILO Multilateral Framework on Labour Migration, AFRM.13/D.8, para. 13(l).

- ❑ support to the ASEAN Forum on Migrant Labour, involving the ILO, the IOM and UN-Women;
- ❑ development and implementation of the SAARC plan of action on labour migration, supported by the ILO and the IOM.

141. In order to guide ILO interventions and internal organization, internal regional diagnostic exercises are conducted at regular intervals. A diagnosis and strategy for labour migration activities in the Africa region were commissioned in 2012.²¹ ILO regional offices in Asia and the Pacific and Latin America and the Caribbean have produced situational reports and strategic plans for the 2016–17 biennium,²² while ILO human resources allocated to the technical backstopping of labour migration have been increased from one regional specialist in 2012 to five in 2016 (in Latin America, Asia and the Arab States).

142. The ILO has also recently extended the principle of its Decent Work Programmes, initially conducted only at the national level, to subregions. These plans set out mutually agreed upon priorities over cycles of four to five years. While there have been only three subregional Decent Work Programmes to date, two of them, in the EAC (2010–15) and the SADC (2013–19), feature strong labour migration components among their priorities.

4.3. Regional economic communities, regional consultative processes on migration and trade arrangements containing labour mobility components

143. Besides the increasingly formalized labour migration regimes found among regional economic communities, at least two processes should also be taken into consideration in the shaping of current labour migration governance at the regional level. The first is the role of intergovernmental regional consultative processes, which have contributed to regional dialogues on labour migration issues for decades. The second is the emergence of a parallel regime of labour protection in international trade agreements and the consequences for the treatment of migrant workers that can already be observed.

4.3.1. Regional consultative processes on migration: Lessons for technical assistance

144. Regional consultative processes, defined as “restricted information-sharing and discussion forums for states with an interest in promoting cooperation in the field of migration”,²³ have received continuous attention since their inception in the mid-1980s and early 1990s.

²¹ A. Segatti and Z. Jinnah: *Diagnostic Exercise for an ILO Strategy on Labour Migration in Africa*, African Centre for Migration & Society, Johannesburg, 2014.

²² ILO: *La migración laboral en América Latina y el Caribe. Diagnóstico, estrategia y líneas de trabajo de la OIT en la región* [Labour migration in Latin America and the Caribbean: Diagnosis, strategy and lines of work of the ILO], RO–Latin America and the Caribbean, Lima, 2016; ILO: *Labour Migration in Asia and the Pacific: Office Strategy Paper for 2016–17*, Bangkok, RO–Asia and the Pacific, 2016 (unpublished).

²³ C. Harns: *Regional Inter-State Consultation Mechanisms on Migration: Approaches, Recent Activities and Implications for Global Governance of Migration*, IOM Migration Research Series, No. 45, IOM, Geneva, 2013, p. 19.

145. Regional consultative processes neither replace nor duplicate existing regional integration organizations; they play a different role from existing formal organizations.²⁴ There is more of a consensus-building role between very distinct organizational cultures (often between security and labour ministries).²⁵

146. Regional consultative processes within or close to regional economic communities or similar bodies²⁶ have a high potential to spawn formal regional agreements on migration (as recent developments in ECOWAS in relation to the Migration Dialogue for West Africa and in the SADC in relation to the Migration Dialogue for Southern Africa seem to confirm). In a similar vein, the potential to move from de facto to de jure coherence in migration governance is stronger in regional economic communities centred on trade and the common use of regional human resources (such as ASEAN and its Forum on Migrant Labour).²⁷

147. Given their commonality of purpose, political cooperation, familiarity of state services with their regional counterparts, and a range of “soft” coordination skills, regional consultative processes could serve as useful platforms for informing regional labour migration governance frameworks. As the IOM serves as a secretariat and convenes global regional consultative process meetings,²⁸ the ILO could seek to strengthen its cooperation with these processes to ensure ILO approaches and standards can be more readily considered, and to help constituents better engage.

148. The regional consultative processes to date have not been especially conducive to tripartite social dialogue. They are mostly dominated by issues concerning the developmental potential of migration flows, which has proved by and large instrumental.²⁹ Yet, in other instances, such as the Intergovernmental Consultations on Migration, Asylum and Refugees and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, the migration control and security paradigms predominate. The principles attached to the ILO’s tripartite social dialogue approach, which presumes not only inclusivity but also equality of voice between the tripartite partners, differ from the principle of broad inclusiveness found among regional consultative processes. This sometimes results in differences in representation between tripartite structures (under the leadership of ministries of labour, for instance) and regional consultative processes in which social partners are not represented (such as in the Intergovernmental Consultations and the Abu Dhabi Dialogue) or are not given the same prominence as government entities. The ILO could therefore play a part in helping to facilitate social dialogue in these processes, especially when labour issues are discussed.

²⁴ According to two studies in 2010 and 2013, commissioned by the IOM. See *ibid.* and R. Hansen: *An Assessment of Principal Regional Consultative Processes on Migration*, IOM Migration Research Series, No. 38, IOM, Geneva, 2010.

²⁵ F. Channac: “The evolution of international decision-making processes concerning migrations: A comparison between formal and informal multilateral fora”, in G. Zincone (ed.): *Immigration Politics: Between Centre and Periphery; National States and the EU*, ECPR Press, Colchester, United Kingdom, 2002.

²⁶ It is important to distinguish stand-alone regional consultative processes, whose development and functioning has been distinct from that of regional integration organizations, from pillar regional consultative processes, which are recognized as one of the pillars of regional integration organizations (the Common Market for Eastern and Southern Africa (COMESA) and the Intergovernmental Authority on Development (IGAD) being cases in point), or existing formal inter-State processes. Harns, *op. cit.*, pp. 19, 28–32.

²⁷ *ibid.*, pp. 87–88.

²⁸ For more on the IOM’s role, see: <http://www.iom.int/global-rcp-meetings>.

²⁹ Harns, *op. cit.*, p. 87.

4.3.2. Trade agreements and labour mobility

149. There has been a general increase in labour provisions in regional and bilateral trade agreements, as observed in a recent ILO report.³⁰ In spite of a growing body of research, available studies³¹ have not focused directly on the impact of these agreements on migrant workers' conditions of work. One exception is a recent report by the UN Special Rapporteur on the human rights of migrants.³²

150. That report cautions that trade agreements have the potential to exacerbate the vulnerabilities of low-wage migrants and directly and systematically violate their human rights. While most governments have concluded agreements over the past two decades that incorporate human rights provisions, this has resulted in “increased fragmentation in the interpretation of international human rights standards, as well as a prejudicial application of labour mobility arrangements and immigration laws, effectively infringing upon the human rights of migrant workers and their families”.

151. The Special Rapporteur proposes the drafting and adoption of a global mobility framework in multilateral and bilateral trade agreements that would strengthen protections for migrants. Such a framework could build upon the protections specified in the 2006 ILO Multilateral Framework on Labour Migration and the model agreement in ILO Recommendation No. 86 (see Chapter 3).³³ The Special Rapporteur argues that only through taking “active measures to merge human rights and trade considerations ... [will it be possible to] mitigate the inherent power imbalances in the global economy and the asymmetrical emphasis on economic efficiency and short-term gains to the detriment of migrant labour”.³⁴ It is possible this issue would be taken up by discussions around new governance mechanisms in the new Global Migration Compact. The ILO may wish to consider how best to engage in such discussions.

4.4. Conclusion

152. Integration of labour markets has undeniably progressed globally, resulting in facilitated labour migration and mobility at the regional level, with multiple approaches now pursuing different objectives across regions.

153. One key lesson for intervention is that national projects are central to supporting efforts at the regional economic community level and, conversely, that frameworks adopted at regional economic community level are very unlikely to be rolled out

³⁰ ILO: *Assessment of labour provisions in trade and investment arrangements*, Geneva, 2016, p. 11.

³¹ S. Lavenex and F. Jurje, in “The Migration-Trade Nexus: Migration Provisions in Trade Agreements”, in L.S. Talani and S. McMahon (eds), *Handbook of the International Political Economy of Migration*, Elgar, World Trade Institute, 2016, compare initial intentions under the 1995 World Trade Organization Global Agreement on Trade in Services to current provisions from a theoretical perspective; the ILO *Decent work in global supply chains* report, paras 125–126, touches only in passing on labour provisions in bilateral and regional trade agreements; the ILO *Assessment of labour provisions in trade and investment arrangements* report, op. cit., documents the impact of labour provisions on trade rather than on workers' conditions of employment; and the ILO-ACT/EMP *Research note: Labour and social policy components in current trade agreements in Asia and the Pacific*, Mar. 2015, focuses on the impact of free trade agreements on the adoption of unsustainable national labour laws.

³² UN: *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*, Human Rights Council, 32nd session, A/HRC/32/40, 4 May 2016.

³³ *ibid.*, para. 70.

³⁴ *ibid.*, para. 91.

effectively without efficient national public administrations and social partners with the ability to take ownership, coordinate and report back to the regional level.

154. Moreover, while frameworks for facilitated migration and mobility are in place almost everywhere, they are at very different stages of implementation. It will therefore be critical to monitor their implementation to see whether these instruments afford the appropriate solutions and, if not, to support constituents in their efforts to strengthen key aspects such as social dialogue in regional economic community processes.

155. ILO development cooperation and expertise in international labour standards are sought in many of these processes, with varying degrees of success. However, major challenges remain in a number of key areas, including with regard to:

- ❑ effective lifting of barriers to migration and mobility across national legislative frameworks;
- ❑ coordination of public administrations; and
- ❑ adoption of mutual skills recognition frameworks.

156. ILO constituents and the Office should also work more concertedly on building the capacities of regional economic communities and social partners.

157. Regional consultative processes have proved useful by and large in transforming the approach of governments and civil society stakeholders to migration and development issues, especially where they rely on small clusters of stable and able participating States asserting leadership within a region. However, regional consultative processes have struggled with tripartite representation.

158. The more systematic inclusion of labour provisions in international trade agreements is a growing trend. However, available research on migrant workers as a distinct category of workers in such arrangements is still scarce. More targeted research is therefore necessary to better understand the kind of protection mechanisms that could be put in place under these arrangements.

Chapter 5

Fair recruitment

159. Ensuring fair recruitment of all workers has been the subject of ILO standards and work for decades. More recently, ILO constituents have called for a strengthening of ILO commitments and action in this area. This led to the launch in 2014 of the multi-stakeholder Fair Recruitment Initiative, which is an integral part of the ILO Fair Migration Agenda, and the approval by the Governing Body at its 328th Session (November 2016) of the ILO general principles and operational guidelines for fair recruitment.¹ Fair recruitment is also an important element of the commitment by the international community to reduce labour migration costs, as reflected in the 2030 Agenda.

160. This chapter is framed by the ILO normative and policy framework relating to the recruitment of workers, especially migrant workers, and the ILO principles and guidelines for fair recruitment, which bring together the applicable standards in one guiding resource and set out the responsibilities of all relevant actors in the recruitment of national or migrant workers. The chapter also provides an overview of some of the emerging policies and practices to address abusive and fraudulent recruitment, with a focus on protection of low-skilled migrant workers and with reference to the ILO principles and guidelines and the Fair Recruitment Initiative.

5.1. Why fair recruitment is important

161. International recruitment covers a wide range of actions: direct hiring by employers or their representatives; operations conducted by public and private labour recruiters; hiring of prospective migrants in one country on behalf of an employer in another country or where a recruiter in one country undertakes to provide employment for migrants in another country; and various operations accompanying the recruitment procedure, such as selection, introduction and placement of migrant workers, and their return to the country of origin after completion of an employment contract.²

162. According to the CEACR, “regulation of recruitment is an important component of fair and effective labour migration governance, benefiting from a multi-stakeholder approach rooted in social dialogue”.³ Instituting fair recruitment processes can also contribute to: improved protection for migrant workers, including against forced labour

¹ ILO: *Fourth Supplementary Report: Outcome of the Meeting of Experts on Fair Recruitment (Geneva, 5–7 September 2016)*, “Appendix: General principles and operational guidelines for fair recruitment”, GB.328/INS/17/4, pp. 3–13. Also available at: http://www.ilo.org/global/topics/labour-migration/projects/WCMS_536263/lang--en/index.htm. Subsequent references in this chapter to guidelines and principles are to this document.

² ILO: *Promoting fair migration*, General Survey concerning the migrant workers instruments, Report of the CEACR, ILC, 105th Session, 2016, Geneva, para. 197.

³ *ibid.*, para. 194. See also the outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning the migrant workers instruments, ILC, *Provisional Record No. 16-1*, 105th Session, 2016, para. 106(3).

and trafficking in persons, and a reduction in inequalities and discriminatory practices based on multiple grounds; more efficient functioning of labour markets; better jobs and skills matching; healthier competition among businesses; and enhanced sustainable development outcomes for migrant workers and their families, as well as for countries of origin and destination.

163. The migrant recruitment landscape today is increasingly complex, and involves a wide range of actors, both regulated and unregulated. In a number of instances, recruitment of migrant workers is undertaken by public employment services, and regulations may require that these are the only entities permitted to operate.⁴ With increasing frequency, however, migrant recruitment is carried out by private employment agencies. The influence of these agencies has been growing, with the result that they have become a globalized feature of labour markets today.⁵ In 2013, there were almost 260,000 private employment agencies worldwide, 56 per cent of which were located in the Asia and Pacific region,⁶ although not all of these agencies were involved in cross-border activities. When appropriately regulated, often through licensing and/or certification, private employment agencies can operate on a level playing field, reducing commercial uncertainty and increasing business efficiency and productivity,⁷ and play an important role in improving the functioning of the labour market: “By sourcing candidates and job vacancies, matching supply and demand of labour and designing workforce solutions, they act as a stepping stone to employment, increase labour market participation and diversity, turn available work into job opportunities and further the inclusiveness within the workplace”.⁸

164. At the same time, abusive practices also characterize a segment of this industry, which includes informal intermediaries, unauthorized subagents, and others operating in the informal economy and outside of the legal and regulatory framework. Low-skilled workers are particularly vulnerable to abusive and fraudulent recruitment practices, especially during periods of high unemployment, when competition for jobs is intense,⁹ and when there are gaps in legal protection and enforcement.¹⁰ This segment of the recruitment industry, working in tandem with certain employers, generates large profits through underpayment of wages and collection of recruitment fees,¹¹ which are often charged to low-skilled, low-wage workers, as employers are more willing to pay for the recruitment of the highly skilled. Other reported abuses include deposits and illegal wage deductions; violence, including sexual violence; deception about the nature and conditions of work abroad; retention of passports and other identity documents, which may impact

⁴ As discussed in Chapter 3 and in section 5.4.4 below, in some countries, public employment services continue to play a key role in placing workers into jobs across borders in connection with temporary worker programmes facilitated by bilateral labour migration agreements.

⁵ ILO: *Fair migration: Setting an ILO Agenda*, Report of the Director-General, Report I(B), ILC, 103rd Session, 2014, para. 85.

⁶ International Confederation of Private Employment Services: *Economic Report: 2015 Edition*, p. 14. The Confederation changed name in September 2016 to become the World Employment Confederation.

⁷ ILO: *Report for Discussion at the Tripartite Meeting of Experts on Fair Recruitment: Principles and Operational Guidelines*, 5–7 September 2016, MEFR/2016, para. 11.

⁸ World Employment Confederation: *Code of Conduct*, 2015, p. 1.

⁹ As is the case for example in the availability of a large pool of low-skilled labour in South Asia for jobs in the Middle East.

¹⁰ ILO: *Report for Discussion at the Tripartite Meeting of Experts on Fair Recruitment*, op. cit., para. 1.

¹¹ ILO: *The cost of coercion*, Global Report under the follow-up to the Declaration on Fundamental Principles and Rights at Work, ILC, 98th Session, 2009, Geneva, paras 12 and 150, estimating that the “opportunity cost” of coercion to the workers affected by abusive recruitment practices, in terms of lost earnings, was US\$21 billion, comprising US\$19.6 billion in underpayment of wages and US\$1.4 billion in recruitment fees.

on access to health-care services;¹² debt bondage linked to repayment of recruitment fees; and threats if workers wish to leave their employer. Compulsory pregnancy and HIV/AIDS tests are also used routinely by some private recruiters, which amount to discrimination in violation of recognized international standards.¹³

5.2. Reducing the recruitment costs of labour migration

165. Recruitment costs are a significant subset of labour migration costs (see figure 2.1 above). They cover a range of monetary costs, such as fees paid to the labour recruiter or agent, the price of internal and international transportation, payments for a medical test and for insurance, and fees for the issuance of passports and visas (table 5.1).¹⁴

Table 5.1. Average recruitment costs paid by migrant workers in selected labour migration corridors (mean in US\$), 2015

| | Vietnamese to Malaysia | Ethiopians to Saudi Arabia | Filipinos to Qatar | Indians to Qatar | Nepalese to Qatar | Pakistanis to Saudi Arabia and United Arab Emirates |
|------------------------------|------------------------|----------------------------|--------------------|------------------|-------------------|---|
| Agent | 1 248 | 553 | 492 | 551 | 874 | 271 |
| Inland transportation | 69 | 128 | 106 | 70 | 108 | 61 |
| International transportation | 88 | 281 | (a) | 296 | 402 | 249 |
| Medical test | 28 | 37 | 67 | 52 | 34 | 45 |
| Passport | 18 | 19 | 29 | 46 | 75 | 46 |
| Clearance (d) | 2.5 | 1 | 5 | – | – | 1 |
| Briefing (d) | – | – | 4 | 24 | 9 | 7 |
| Skills test (e) | – | – | – | 11 | – | – |
| Insurance | 13 | – | 40 | 7 | 37 | 11 |
| Visa (b) | 307 | – | – | – | 319 | 2 823 |
| Other (c) | 30 | 604 | – | – | – | 31 |
| Total | 1 803.5 | 1 623 | 743 | 1 057 | 1 858 | 3 489 |

(a) International travel mostly paid for by employers.

(b) Reflects price of visas sold, and not the official fee.

(c) Other costs include fees paid to human smugglers and bribes.

(d) No costs mentioned by workers, possibly because these have been included in a lump sum paid to recruitment agents.

(e) For the low-skilled migrants sampled in these surveys, skills tests were not always required.

Source: ILO-KNOMAD Surveys, 2015, cited in Background paper prepared by the ILO at the Global Forum on Migration and Development, Roundtable 1.1, Reducing migration costs.

¹² UN: *Report of the Special Rapporteur on the human rights of migrants, Mr François Crépeau*, General Assembly, 70th Session, A/70/310, 11 Aug. 2015, paras 19 and 24: The failure of employers to issue identity cards may also compromise migrant workers' access to health-care services.

¹³ ILO: *In search of Decent Work – Migrant workers' rights: A manual for trade unionists*, ILO-ACTRAV, Geneva, 2008, p. 45.

¹⁴ One particular malpractice is “visa trading”, which occurs in many Gulf countries, whereby visas are issued en bloc to companies or labour suppliers and then sold to labour recruiters, who pass the costs on to workers when recruiting in the country of origin. Given that such visas may result in the workers having no specified job at destination, they may also incur further costs to regularize their stay and employment. R. Jureidini: *Ways forward in recruitment of low-skilled migrant workers in the Asia-Arab States corridor*, ILO White Paper, RO–Arab States, Beirut, 2016, p. 30.

166. Data from the preliminary ILO–KNOMAD sample survey on migration costs shows that in the South Asia–GCC labour migration corridor, recruitment costs can amount to nine months or more of average monthly earnings. However, migrant workers going to Spain incurred recruitment costs of less than one month’s average monthly earnings. This disparity demonstrates that the migration corridor is one of the most important determinants of recruitment costs incurred by workers. The results can be partly explained by structural factors such as the types of labour migration regimes in place, the degree of harmonization of national regulations and enforcement mechanisms among origin and destination countries, and the kind of labour recruiters involved. Another related finding is that the costs can vary significantly within the same migration corridor, depending on the workers’ country of origin.

167. Moreover, the level of recruitment costs is unrelated to the quality of jobs or level of wages at destination. For example, workers migrating to the Republic of Korea and Spain, where salaries are considerably higher, generally pay lower recruitment costs in terms of average monthly earnings than those in other migration corridors. The research also reveals that workers with more education, ties to social networks or previous experience working abroad and also women workers pay less than first-time men migrants without links to migration networks, and that irregular migrants incur higher costs than regular migrants.¹⁵ As observed in Chapter 2, however, the lower recruitment costs incurred by women domestic workers are offset by higher costs in terms of longer working hours and poorer conditions. Migration costs relating to working conditions and wages are twice as high for domestic workers as the recruitment and travel costs incurred.¹⁶

168. As noted in the Introduction, the international commitment to reduce labour migration costs, including recruitment costs, is now part of the 2030 Agenda for Sustainable Development, particularly targets 10.7 (safe and orderly migration) and 10.c (remittances). With a view to measuring the former target, the ILO and the World Bank are the custodian agencies for developing a methodology for indicator 10.7.1 on the cost of migrant worker recruitment.¹⁷

5.3. ILO normative and policy framework

169. The regulation of recruitment has a lengthy history in ILO standard setting. Many of the earlier ILO provisions on recruitment were incorporated into Annexes I and II of Convention No. 97 and Recommendation No. 86, the main purpose of which is to protect migrant workers, facilitate the control and regulation of recruitment, and prevent unauthorized employment.¹⁸

170. Specific international labour standards apply to the recruitment of workers, both within countries and across borders, by public employment services and private employment agencies. The Employment Service Convention, 1948 (No. 88), requires ratifying member States to maintain a free public employment service that should cooperate with other relevant public and private bodies to ensure the best possible

¹⁵ M. Abella et al.: “Why are Migration Costs High for Low-Skilled Workers? Evidence from Migrant Surveys”, KNOMAD Working Paper, 2016 (unpublished), pp. 3, 10–17.

¹⁶ M. Aleksynska et al.: *Deficiencies in conditions of work as a cost to labour migration: Concepts, extent and implications*, ILO, forthcoming, 2017.

¹⁷ Indicator 10.7.1: “Recruitment cost born by employee as a proportion of yearly income earned in country of destination”. UN Economic and Social Council, Statistical Commission: *Report of the Inter-agency and Expert Group on Sustainable Development Indicators*, 47th session, E/CN.3/2016/2/Rev. 1, 19 Feb. 2016, p. 9.

¹⁸ ILO: *Promoting fair migration*, op. cit., para. 195.

organization of the employment market.¹⁹ The Private Employment Agencies Convention, 1997 (No. 181), and accompanying Recommendation (No. 188) are the current international standards applicable to private employment agencies. Convention No. 181 establishes the principle that workers shall not be charged “directly or indirectly, in whole or in part, any fees or costs”.²⁰ It also requires Members to provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in its territory by private employment agencies, including through conclusion of bilateral agreements.²¹ Other sector-specific instruments contain provisions on recruitment across borders, such as the Maritime Labour Convention, 2006 (MLC, 2006), concerning seafarers, the Work in Fishing Convention, 2007 (No. 188), and the Domestic Workers Convention, 2011 (No. 189).²²

171. With a view to the prevention of forced or compulsory labour, the Protocol of 2014 to the Forced Labour Convention, 1930, requires, inter alia, measures “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process” and “supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour”.²³ Further preventive measures, such as targeted awareness campaigns aimed at workers most at risk of forced labour, promotion of coordinated efforts by relevant government agencies with those of other States to facilitate safe and regular migration, and provision of guidance and support to business and employers to take effective measures to address the risks of forced labour in their operations, are advanced in the accompanying Recommendation No. 203.²⁴

172. Recruitment has also been the subject of specific non-binding initiatives of the ILO. Some months before the ILC adopted Convention No. 181, the ILO Governing Body convened a Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, which produced guidelines on special protective measures for migrant workers recruited by private agents.²⁵ Furthermore, Principle 13 of the 2006 ILO Multilateral Framework on Labour Migration calls upon governments in both origin and destination countries to give “due consideration to licensing and supervising recruitment and placement services for migrant workers” in accordance with Convention No. 181 and Recommendation No. 188,²⁶ and is accompanied by a series of guidelines on protection of migrant workers in the recruitment process and regulatory measures.

173. The 2014 ILO Fair Migration Agenda identified “instituting fair recruitment processes” as one of its key components, acknowledging the need for “renewed efforts and cooperation with governments to ensure the adequate regulation of [private] agencies,

¹⁹ Convention No. 88, Art. 1.

²⁰ Art. 7(1). However, Art. 7(2) provides for an exception: “In the interest of the workers concerned, and after consulting the most representative organizations of employers and workers, the competent authority may authorize exceptions [to Art. 7(1)] in respect of certain categories of workers, as well as specified types of services provided by private employment agencies.”

²¹ Art. 8.

²² MLC, 2006, Art. V(5) and Regulation 1.4; Convention No. 188, Art. 22; and Convention No. 189, Arts 8 and 15.

²³ Art. 2(d) and (e).

²⁴ Recommendation No. 203, Para. 4(b), (i) and (j).

²⁵ ILO: *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration*, Geneva, 21–25 April 1997, Annex II.

²⁶ ILO: *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*, Geneva, 2006, p. 24.

and to offer workers who are victims of malpractice access to remedies”.²⁷ Moreover, the conclusions of the 2016 ILC general discussion on decent work in global supply chains called on business enterprises, in line with the UN Guiding Principles on Business and Human Rights, to “carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts”.²⁸

174. The most recent development is the endorsement by the ILO Governing Body in November 2016 of general principles and operational guidelines for fair recruitment (box 5.1), which respond to the recommendation of constituents at the Tripartite Technical Meeting on Labour Migration.²⁹

Box 5.1
ILO general principles and operational
guidelines for fair recruitment

The objective of the non-binding general principles and operational guidelines is to “inform the current and future work of the ILO and of other organizations, national legislatures, and the social partners on promoting and ensuring fair recruitment”. There are 13 general principles to orient implementation at all levels and 31 operational guidelines identifying the responsibilities of key actors in the recruitment process and containing possible interventions and policy tools.

Key features of the principles and guidelines:

- ❑ They are based on existing standards, including human rights instruments, international labour standards and related ILO instruments, and good practices that have been brought together for the first time in one guiding resource.
- ❑ They include definitions of core terms.
- ❑ They are comprehensive in scope, applying to the recruitment of all workers within and across national borders, and cover all sectors of the economy.
- ❑ The general principles underscore that recruitment should take place in a way that respects and fulfils human rights and international labour standards, and in particular fundamental principles and rights at work.
- ❑ The principles also call for measures against abusive and fraudulent recruitment practices, including those that could result in forced labour and trafficking. The principle that no fees or related costs should be paid by jobseekers and workers is underscored. Particular attention is given to the role of transparent employment contracts and labour inspection, and use of standardized registration, licensing and certification systems.
- ❑ The operational guidelines identify the specific responsibilities of governments, public employment services and enterprises, which encompass labour recruiters and employers.

Examples of the application of some of these guidelines in practice are provided in section 5.4 below. The ILO aims to implement these guidelines, in collaboration with other agencies of the Global Migration Group, such as the IOM, which has indicated that they will serve as a basis for its International Recruitment Integrity System initiative,¹ as well as the UN Office on Drugs and Crime (UNODC), the Office of the UN High Commissioner for Human Rights (OHCHR) and other partners participating in the ILO Fair Recruitment Initiative.

¹ See: <https://iris.iom.int/>.

Source: ILO principles and guidelines for fair recruitment, op. cit.

²⁷ ILO: *Fair migration: Setting an ILO agenda*, op. cit., para. 122.

²⁸ ILO: *Conclusions concerning decent work in global supply chains*, ILC, 105th Session, 2016, para. 18.

²⁹ ILO: *Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013, Conclusions*, para. 5(iii).

5.4. Emerging fair recruitment policies and practices

175. This section discusses a range of emerging policies and practices relating to fair recruitment that could be ripe for replication in different settings.³⁰ In doing so, it draws on the ILO general principles and operational guidelines for fair recruitment and the work under the Fair Recruitment Initiative (box 5.2).

Box 5.2 The ILO Fair Recruitment Initiative

The ILO Fair Recruitment Initiative, launched in 2014, is an example of the ILO working cohesively to respond to a growing global concern. The initiative has three objectives: to help prevent human trafficking and forced labour; to protect the rights of workers, including migrant workers, from abusive and fraudulent practices during the recruitment process; and to reduce the costs of labour migration and enhance development outcomes. It is a multi-stakeholder initiative, implemented in close collaboration with governments, the ITUC and the IOE and their affiliates, agencies of the Global Migration Group, in particular the IOM (which co-chairs with the ILO the Group's Task Force on Migration and Decent Work), UNODC, OHCHR and World Bank, and non-governmental organizations. It serves ILO constituents and other stakeholders in identifying innovative practices in conformity with relevant international labour standards.

The initiative is based on a four-pronged approach, which puts social dialogue at the centre:

1. enhancing global knowledge on international and national recruitment practices;¹
2. improving laws, policies and enforcement mechanisms to promote fair recruitment practices;
3. promoting fair business practices;
4. empowering and protecting workers.

¹ This aspect of the initiative has resulted in the publication of the following studies, among others: Andrees et al., op. cit.; J. Gordon: *Global Labour Recruitment in a Supply Chain Context*, ILO, Geneva, 2015; K. Jones: *For a fee. The business of recruiting Bangladeshi women for domestic work in Jordan and Lebanon*, ILO, Geneva, 2015.

Source: <http://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm>.

5.4.1. Eliminating recruitment fees and related costs

176. As discussed above, abusive and fraudulent recruitment is often tied to labour recruiters charging workers unauthorized fees and related costs. In stating that “no recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers”,³¹ the ILO principles and guidelines reiterate the principle of Convention No. 181.

177. However, in negotiating the guidelines, the experts recognized that a gap remains in that there is no global consensus on the scope and definition of recruitment fees and costs. Governments regulate recruitment and recruitment costs in a myriad of ways. It was agreed that the definition of fees and related costs “is a subject that future work by the ILO might

³⁰ The term “emerging practice” rather than “good practice” is used because “it is not yet possible to establish good practices regarding models of regulation and enforcement that aim to limit abusive and fraudulent recruitment practices, either because the practice is too recent and/or its impact has not yet been tested through rigorous research”. B. Andrees et al.: *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities*, ILO, Geneva, 2015, p. 13.

³¹ Principle 7 and Guidelines 6 and 17.

make more precise”.³² Guidance on this issue would remove ambiguity and help stakeholders better operationalize the guidelines on fair recruitment.

178. In labour migration corridors with high numbers of low-skilled workers, regulations often differ. For example, some destination countries provide that recruitment fees and costs are to be paid by the employer, whereas origin country regulations may permit labour recruiters to charge workers but cap the fee at a certain amount. In the context of this regulatory disparity, other factors contribute to high recruitment costs, such as the almost unlimited supply of low-skilled workers willing to work abroad, ineffective enforcement of existing rules, allegations of corrupt practices and collusion between labour recruiters and government officials, and the small number of employment agencies operating in these corridors that comply with national laws prohibiting the charging of fees or related costs to low-skilled workers.³³

179. Improved cooperation, therefore, between destination and origin countries across migration corridors to reduce recruitment costs, and labour migration costs more generally, and harmonize regulatory frameworks would be an important step forward. As observed in the ILO principles and guidelines and in Chapter 3 above, bilateral labour migration agreements can play an important role in facilitating such cooperation, with the inclusion of oversight mechanisms and meaningful participation of social partners.³⁴ Laws and regulations prohibiting the charging of fees and related costs to workers also need to be supplemented by efforts to change the culture of “payment expectations”, prevalent for example in the Asia–GCC migration corridor.³⁵

180. Debt resulting from recruitment fees may also affect the capacity of migrant workers, particularly women, to leave abusive situations, which may increase their vulnerability to violence or abuse.³⁶ In addition to applying adequate enforcement measures, one practical response is to ensure that labour recruiters participate in awareness-raising and training programmes on the rights of women migrant workers, gender-based discrimination, the exploitation women could experience and the responsibilities of recruiters towards women.³⁷

5.4.2. Innovative regulatory frameworks

181. International labour standards set conditions governing the operation of private employment agencies in both origin and destination countries, which is to be determined by a standardized registration, licensing or certification regime, except where they are otherwise regulated or determined by appropriate national law and practice. This is supported by the ILO principles and guidelines.³⁸ Emerging good practices include the establishment of regulatory frameworks in a number of Canadian provinces requiring both the licensing of agencies recruiting foreign workers and employer registration, as well as

³² ILO: *Final report: Meeting of Experts on Fair Recruitment (Geneva, 5–7 September 2016)*, March 2017, para. 44.

³³ For example, see Jureidini, *op. cit.*, p. 21, who observes that there are only a few agencies that do not pass on their costs to low-skilled workers in the Asia–Arab States corridor.

³⁴ Guideline 13.

³⁵ Jureidini, *op. cit.*, pp. 8, 15 and 35.

³⁶ UN Committee on the Elimination of Discrimination against Women: General recommendation No. 26 on women migrant workers, CEDAW/C/2009/WP.1/R, 5 Dec. 2008, para. 15.

³⁷ *ibid.*, para. 24(b)(iv).

³⁸ Convention No. 181, Art. 3(2); Principle 5 and Guideline 4.2.

proactive enforcement mechanisms.³⁹ Another example is the licensing system applied by the UK Gangmasters Licensing Authority, which enshrines eight key standards into a licensing code of practice that have to be satisfied by private employment agencies, including those based in origin countries who supply workers for employers in the United Kingdom, before being granted a license or wishing to retain their license.⁴⁰

5.4.3. Effective grievance mechanisms

182. The ILO principles and guidelines underline that all workers, irrespective of their presence or legal status in the country, should have access to free or affordable grievance procedures and other dispute resolution mechanisms to address alleged abusive treatment in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.⁴¹ The Office has assessed complaints mechanisms in a number of Asian countries and suggested improvements, which has resulted in an increase in complaints (box 5.3).

Box 5.3
Recruitment violations and complaints mechanisms in Asia: ILO assistance

To address recruitment violations, countries of origin need to establish a complaints mechanism. The ILO has assessed complaints mechanisms in Bangladesh, Cambodia, Sri Lanka and Thailand and concluded that, for the mechanism to be effective, some of the key factors include: availability of gender-responsive support services to help workers use the mechanism (these can be provided by trade unions, civil society organizations or the government); well-trained conciliation officers; and a unified approach to avoid duplication. With ILO development assistance, Cambodia introduced legislation and set up a complaints mechanism in 2013. Migrant worker resource centres were opened at the same time. This was followed by a high uptake of the complaints mechanism by migrant workers.

Source: N. Baruah: "Labor Migration Infrastructure and Services in Countries of Origin in Asia", in Asian Development Bank Institute, OECD and ILO: *Labour Migration in Asia: Building Effective Institutions*, Tokyo, Paris, Bangkok, p. 27.

183. The Office is also developing, in collaboration with the ITUC, a web tool to enable workers to access essential information on their rights during the recruitment process and assess labour recruiters. In addition, it is working on a system for reporting violations, in partnership with the Migrant Forum in Asia non-governmental organization, to strengthen access to remedies.

184. The role of workers' organizations in promoting fair recruitment is key. Indeed, it would have been valuable to address the responsibilities of workers' organizations within the fair recruitment guidelines, but there was insufficient time for the experts to develop and agree upon them. It was agreed, however, that this may be a pertinent subject for future ILO work.⁴²

³⁹ For example, the Manitoba Worker Recruitment and Protection Act, 2008, cited in Andrees et al., op. cit., pp. 47–48 (box 3.2).

⁴⁰ *ibid.*, pp. 79–80 (box 3.9).

⁴¹ Principle 13 and Guidelines 2.1, 8, 15.5 and 27.

⁴² ILO: *Final report: Meeting of Experts on Fair Recruitment (Geneva 5–7 September 2016)*, op. cit., para. 137.

5.4.4. Government-to-government recruitment

185. The ILO principles and guidelines also apply to public employment services (box 5.1). Government-to-government arrangements that authorize migrant worker recruitment only through public employment services in both destination and origin countries can contribute to fairer recruitment. One notable example is the MoUs concluded by the Republic of Korea with 15 countries of origin regulating the admission of workers into selected sectors (agriculture, construction, manufacturing, fisheries and services) under the Employment Permit System, subject inter alia to applicants passing a Korean language proficiency test.⁴³ This government-to-government set-up has also significantly reduced the costs of labour migration to the Republic of Korea,⁴⁴ mostly for Korean language tests and transportation.⁴⁵

5.4.5. Bypassing labour intermediaries

186. Excluding labour intermediaries through direct employer recruitment is another practice that could be promoted, provided adequate regulations and conditions are in place. The possibility of direct recruitment by government and enterprises is also recognized in the ILO principles and guidelines.⁴⁶ In the United States, the Fair Food Code of Conduct, which came about through sustained action on the part of the Coalition of Immokalee Workers, a membership-based human rights organization of farmworkers, and supported by a number of large companies, prohibits labour intermediaries and commits tomato growers to hire field workers directly. If a violation is not remedied within four weeks, participating buyers are required to stop purchasing from the grower in question.⁴⁷ Direct recruitment can also be facilitated through information technology, for example by holding online employer–worker interviews,⁴⁸ using social media applications such as LinkedIn, or setting up job databanks that aim to match job vacancies with available workers, such as the European Job Mobility Portal operating within the EU.⁴⁹

5.4.6. Standard employment contracts and electronic payment of wages

187. Providing workers with clear, transparent and written contracts is an important feature of the ILO principles and guidelines. In the case of migrant workers, such contracts should be: in a language the worker can understand, provided sufficiently in advance of departure from the origin country, subject to measures preventing contract substitution, and enforceable.⁵⁰ The development, widespread use and appropriate enforcement of standard employment contracts containing terms consistent with international labour

⁴³ See: <https://www.eps.go.kr/ph/index.html>; M.J. Kim: *The Republic of Korea's Employment Permit System (EPS): Background and Rapid Assessment*, International Migration Papers No. 119, ILO, Geneva, 2015; and ILO: *Pioneering a system of migration management in Asia: The Republic of Korea's Employment Permit System approach to decent work*, RO–Asia and the Pacific, Bangkok, Sep. 2010.

⁴⁴ ILO: *Pioneering a system of migration management in Asia*, op. cit., p. 9, which observes that the average recruitment cost decreased from US\$3,509 during the 1990s Industrial Training System to US\$1,097 under the Employment Permit System.

⁴⁵ Abella et al., op. cit., pp. 13–14 (figure 1c.) and 19. However, passing a Korean language test means only that the successful applicant is available for selection and provides no guarantee for securing employment in the country.

⁴⁶ Guidelines 14.1 and 15.3.

⁴⁷ Gordon, op. cit., pp. 39–40.

⁴⁸ Jureidini, op. cit., pp. 32 and 36.

⁴⁹ See: <https://ec.europa.eu/eures/public/homepage>.

⁵⁰ Principle 8 and Guidelines 7 and 26.

standards militates against the practice of illegal contract substitution,⁵¹ particularly in sectors such as domestic work that are frequently excluded fully or partially from the scope of labour laws.⁵² The ability of migrant domestic workers and other categories of “at risk” workers to benefit fully from the protection of the existing labour law frameworks is inextricably linked to fair recruitment processes.⁵³ As observed in Chapter 3, attaching standard employment contracts to bilateral labour migration agreements is viewed as a promising practice, although evidence of the actual use and practical effectiveness of such contracts remains limited.⁵⁴ Registration of employment contracts with a central government authority at destination may help prevent contract substitution; moreover, requiring employers to deposit workers’ wages directly into their bank account, as practised in some Gulf countries, can help to ensure timely payment of the wages promised to workers in their contract, provided that such a system is supported by regular monitoring and enforcement mechanisms⁵⁵ in accordance with the Protection of Wages Convention, 1949 (No. 95).

5.4.7. Joint liability

188. A number of countries have enacted joint liability arrangements⁵⁶ with the aim of ensuring that both recruiters and employers can be held liable for violations of workers’ rights in the recruitment process. Promotion of government schemes to this effect is supported by the ILO principles and guidelines.⁵⁷ The complexity of supply chains arguably requires that a degree of legal responsibility for the treatment of workers should be attributed to the firm at the top of the chain, given that it has decided to structure its enterprise through subcontracting arrangements, often with a view to lowering its costs and risks, while retaining functional control over key aspects of the work contracted out.⁵⁸

189. To date, however, ILO research has concluded that “challenges still exist with joint liability schemes, particularly in the cross-border context where implementation requires the collaboration of both countries of origin and destination”.⁵⁹ For example, with regard to liability for payment of fees or related recruitment costs, there are practical difficulties in establishing the burden of proof of payment, since receipts are rarely provided, or if provided only indicate the maximum payment permissible by law.⁶⁰ Enabling migrant workers at both destination and origin to access effective remedies in the event of violations under such arrangements through easy-to-use complaints mechanisms is an important complementary measure.

⁵¹ Cf. Jureidini, *op. cit.*, p. 24.

⁵² See ILO: *Domestic workers across the world: Global and regional statistics and the extent of legal protection*, Geneva, 2013.

⁵³ Regarding migrant domestic workers, see Convention No. 189, Art. 15.

⁵⁴ Wickramasekara: *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, *op. cit.*, p. 28.

⁵⁵ Jureidini, *op. cit.*, p. 11.

⁵⁶ For example, Bangladesh, Ethiopia, Philippines, Slovakia. See Andrees et al., *op. cit.*, pp. 30, 70 and 78.

⁵⁷ Guideline 5.2, which adds that such schemes “could include shared responsibility initiatives, and other initiatives to promote fair recruitment practices”.

⁵⁸ Gordon, *op. cit.* p. 19.

⁵⁹ Andrees et al., *op. cit.*, p. 82.

⁶⁰ Jureidini, *op. cit.*, p. 16.

5.4.8. Due diligence in supply chains

190. The exercise of due diligence in supply chains to ensure that employers, contractors and subcontractors do not use the services of recruiters who engage in abusive practices is an emerging practice undertaken by a number of multinational companies and those recruiters who are committed to fair and ethical recruitment.⁶¹ The ILO principles and guidelines contain a definition of due diligence and strongly support this practice, which is applicable to all relevant actors in the recruitment process.⁶² Due diligence requirements can also be an integral part of effective regulation and enforcement.⁶³ This is illustrated by Canadian provincial legislation, which contains measures requiring employers to scrutinize recruiters and their labour supply chains, including through enhanced reporting obligations. Another example is a recent United States regulation requiring all contractors and subcontractors tendering for federal contracts to examine their labour supply chains to ensure compliance with anti-trafficking laws and to prevent misleading or fraudulent recruitment practices, including the charging of recruitment fees to workers.⁶⁴ Furthermore, project tenders should also contain a separate, transparent labour recruitment cost analysis within bidding proposals that details variable and fixed costs of recruitment, including the costs of subcontractors, and the lowest bids should be carefully scrutinized to ascertain whether cost reductions are at the expense of migrant workers being recruited.⁶⁵

191. Under the Integrated Programme on Fair Recruitment,⁶⁶ the Office is testing models that support the exercise of due diligence in selected countries and sectors (box 5.4).

⁶¹ For example, in May 2016, the Coca-Cola Company, HP Inc., Hewlett Packard Enterprise, IKEA and Unilever launched the Leadership Group for Responsible Recruitment, focused on promoting ethical recruitment and combating the exploitation of migrant workers in global supply chains across industries. See: <http://www.ihrb.org/pdf/reports/IHRB-Statement-of-Intent-Employer-Pays-Principle-Leadership-Group-for-Responsible-Recruitment.pdf>.

⁶² Guidelines 2.1, 11.1, 15 and 21.1.

⁶³ Guideline 14.

⁶⁴ See Andrees et al., *op. cit.*, p. 48 (box. 3.2) on the Manitoba approach, and pp. 50–51 (box 3.3) with reference to Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts.

⁶⁵ Jureidini, *op. cit.*, pp. 19–20.

⁶⁶ See: http://www.ilo.org/global/topics/labour-migration/projects/WCMS_405819/lang--en/index.htm.

Box 5.4
Establishing a fair migration corridor between Nepal and Jordan

Under the Integrated Programme on Fair Recruitment, and in collaboration with Better Work Jordan, the Office is implementing a pilot recruitment model in the apparel sector, with a view to establishing a fair recruitment migration corridor between Nepal and Jordan. The model is based on a number of intervention tracks, including:

- ❑ collaboration with private employment agencies which have a proven model of fair recruitment;
- ❑ development of learning sessions with factory owners and human resource managers to raise awareness of the benefits of fair recruitment;
- ❑ strategic engagement with international buyers to develop and share innovative ways to reduce fraudulent and abusive recruitment practices in global supply chains;
- ❑ enhancement of the capacity of trade unions in both countries to improve organization and representation of migrant workers, and monitoring of recruitment-related abuses; and
- ❑ consultation with the governments of both countries to discuss improvement of current regulations and their enforcement, and to facilitate the conclusion of a bilateral labour migration agreement in line with international standards.

Source: http://www.ilo.org/global/topics/labour-migration/events-training/WCMS_464656/lang-en/index.htm.

5.5. Conclusion

192. The launch of the ILO Fair Recruitment Initiative has helped to join together the different strands of the Office's work in this area both at headquarters and in the field, in close collaboration with tripartite constituents and other partners. Nevertheless, there is room for improvement in the knowledge base at the national, bilateral, regional and global levels of how recruitment of migrant workers is conducted, especially in the context of increasingly complex labour supply chains, and on how best to promote and implement fair recruitment business models in migration corridors.

193. This discussion has demonstrated that ILO standards relating to recruitment are dispersed over a wide range of binding and non-binding instruments, which led to the development of the ILO general principles and operational guidelines for fair recruitment.

194. The principles and guidelines are still at an early stage of implementation and more dissemination and monitoring of their impact will be needed. There were, however, a number of outstanding issues that remain as gaps in the guidelines, for example the scope and definition of recruitment fees and costs, and the role and responsibility of workers' organizations in the area of recruitment. These were noted as areas for future ILO work.

Chapter 6

Conclusions and the way forward

195. The changing patterns of migration and the increasing level of human mobility occurring today have moved this issue to the top of constituents' policy agendas. This is evidenced not least by UN member States' adoption of the New York Declaration in 2016 and their commitment to adopting for the first time a Global Compact for Safe, Orderly and Regular Migration in 2018. As indicated, decent work and labour migration and its governance will be a crucial element of the Compact. The general discussion therefore provides a timely and valuable opportunity for ILO constituents to contribute to the Global Compact. It is also an opportunity for the ILO to assert its competitive advantage, reflected in its historical legacy, experience and standards framework.

6.1. Key conclusions

196. This report has drawn attention to a number of areas that are important to ensuring fair and effective labour migration governance, in particular pertaining to bilateral and regional arrangements and to the recruitment of migrant workers. It has highlighted relevant ILO standards, detailed the Organization's work in these areas, provided examples of good practices and discussed the most significant gaps which require additional guidance. These elements will be important for constituents to consider in charting a coherent way forward.

197. The conclusions that have emerged can be summarized in three key areas for further consideration.

1. Protecting migrant workers and reducing the costs of labour migration

198. Labour migration can have significant positive economic and development benefits if well governed and aligned with international labour standards. Governments have the primary responsibility to ensure the protection of migrant workers – especially low-skilled migrant workers in sectors such as agriculture, construction and domestic work, migrant women and young persons – from abuse and discrimination and to reduce decent work deficits. Paying specific attention to the protection of these migrant workers is also the best way of protecting national workers, thereby preventing “social dumping”. Much attention is also needed on fostering labour mobility that can ensure proper jobs and skills matching to better meet labour market needs and enhance economic productivity.

199. Poor governance of labour migration between countries in migration corridors and within regions has tended to increase the social and economic costs for workers and business. Such governance, however, can be more effective only when strong labour market institutions exist in countries of destination and social partners are more robustly engaged in migration dialogue. Improving cooperation between countries at the bilateral

and regional levels, in collaboration with social partners, would help to build migration regimes that reduce these costs. The most critical areas for this cooperation concern the protection of workers' rights; fair recruitment processes; improved matching of workers with available jobs, including by establishing skills standards and skills recognition systems; and enhancing coordination of social security.

200. *Strengthening labour market institutions*: Labour market institutions are key tools to develop sustainable migration regimes across the globe. Guaranteeing equality of treatment for men and women migrant workers with nationals, eliminating dual labour markets for migrants and non-migrants, and ensuring that migrants can fulfil their human development potential at destination and origin requires robust and well-functioning labour market institutions which devote specific attention to the needs and interests of migrant workers. It is also important to align active labour market and employment policies, and other policies, with migration policies to ensure that labour migration, whether incoming or outgoing, responds better to a country's skills needs.

201. *Strengthening guidance on bilateral agreements*: Bilateral agreements can be useful tools to support fair and effective labour migration governance if they incorporate provisions aligned with international labour standards. However, as the discussion has shown, there are significant concerns about the compatibility of bilateral labour migration agreements with these standards. Constituents have indicated that further work in this area would be warranted, and that, in particular, further and more updated guidance would be required, as proposed by the CAS in its review of the 2016 General Survey.¹

202. While many elements essential to meeting ILO standards and good practice are included in the model agreement annexed to Recommendation No. 86, guidance is needed to take account of the changing landscape of labour migration and governance, including the larger significance of the private sector in recruiting migrant workers. The institutional aspects of bilateral labour migration agreements pose further challenges to ensuring effective implementation, transparency and monitoring across migration corridors, and the role of social dialogue. Other important concerns are raised regarding changing patterns in the mobility of women migrant workers, and how best to include social security provisions in the absence of dedicated social security agreements. The role of bilateral labour migration agreements in enhancing human resource development generally and skills development for migrant workers in particular is an additional question that would benefit from further guidance.²

203. The Office could engage more in development of the capacities of public employment services to provide integrated and quality services to all jobseekers, with particular attention to inclusion of both migrants and refugees in the labour market. Moreover, it could assess the role and activities of labour inspection services in enforcing labour legislation in respect of all migrant workers, and particularly those in irregular situations, and their access to justice, including effective and easy-to-use complaints and dispute settlement mechanisms. The Office could also examine the extent of migrant worker organizing and involvement in collective bargaining processes, in view of the implementation of target 8.8 of the 2030 Agenda calling for the protection of the labour rights of all workers, including migrant workers.

¹ Outcome of the discussion by the CAS of the General Survey concerning the migrant workers instruments, ILC, *Provisional Record No. 16-1*, 105th Session, 2016, para. 106(12).

² See also the recommendations in Wickramasekara: *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, Geneva, July 2015, p. 48.

204. *Strengthening participation of the social partners:* Enhancing participation of the social partners in regional economic communities and regional consultative processes and in consultations between regions holds promise for improving labour migration governance. This can build on the social partners' engagement at the national level. As discussed in Chapter 4, their participation is weak in many regions and in interregional corridors, in part due to a lack of capacity of employers' and workers' organizations. Strengthened participation, however, is emerging in some regions which provide good practice models. Constituents may wish to consider how to improve the participation of the social partners in regional migration processes, and the role of the Office in this regard, including in building constituents' capacity for more effective engagement.

205. Finally, the ILO could support more concerted and targeted public awareness-raising and educational programmes on non-discrimination and the contribution of migrant workers to development, underscored in the 2016 New York Declaration for Refugees and Migrants and the 2030 Agenda, and engage more closely in the Secretary-General's global campaign to counter xenophobia, endorsed by the New York Declaration.³

2. Promoting fair recruitment migration corridors

206. As the discussion has indicated, given that recruitment is the first step in establishing an employment relationship, instituting fair recruitment processes within migration corridors is essential for the protection of men and women migrant workers. It is also important to the interests of businesses seeking a level playing field and improved productivity from workers, and in terms of enhanced development outcomes for migrant workers and their families, as well as for origin and destination countries.

207. The principles and guidelines for fair recruitment adopted by the ILO are a good step forward in bringing together the many different areas of ILO standards and good practices that are emerging in the field. The guidelines are at an early stage of implementation, but it is clear that more dissemination and monitoring of their impact will be needed. The discussion demonstrates, however, that a number of outstanding issues remain. These gaps include the scope and definition of recruitment fees and costs, and the role and responsibility of workers' organizations in the area of recruitment. These were noted as areas for future ILO work during the tripartite meeting of experts. Constituents may therefore wish to examine these gaps and to determine what actions at this stage would be needed to address them.

208. In addition, as noted in this report, protecting migrants requires the fulfilment of commitments under Sustainable Development Goal targets 8.8 on decent work and 10.7 on orderly, safe, regular and responsible migration and mobility of people. A critical indicator identified by the UN (10.7.1) calls for the measurement of recruitment costs. Yet, the dearth of data on recruitment suggests that tackling this issue requires more robust commitment to and investment in data collection and monitoring: one reason why the ILO and the World Bank are now devising an appropriate methodology. This will be an important consideration for the Global Migration Compact, and an area which the constituents may wish to examine.

209. Moreover, the Fair Recruitment Initiative could be deepened and strengthened through the involvement of a wider range of partners and interventions, such as through closer cooperation with the IOM and the World Bank, that pilot the design and implementation of fair recruitment migration corridors based on a no-fees/costs approach.

³ UN: *New York Declaration for Refugees and Migrants*, General Assembly, 71st session, A/RES/71/1, 3 Oct. 2016, para. 14. See also the "Together" campaign at: <http://refugeesmigrants.un.org/together>.

The keen interest of development partners in this area could be harnessed to contribute to this objective.

3. Improving statistics and data for evidence-based policy-making

210. This report has highlighted that harmonized data is critical to realizing successful labour migration and mobility and that this is particularly relevant for improving regional governance. The regional economic community level is a very pertinent and reasonable scale for harmonization of data and statistics, as their member States will often share similarities in statistical collection methods and an interest in specific indicators. There are several new databases being developed at this level with ILO assistance. However, reluctance to share border control data and disparities in resources, frequency of surveys and statistical coordination mechanisms remain major obstacles to better harmonization of data and to regional integration.

211. The ILO could make a significant contribution to data deficits by instituting a more consistent and regular updating of the 2015 global and regional estimates on migrant workers, and deepening the information collected, particularly in respect of sectors where both highly skilled and low-skilled migrants are employed. Special attention could be given to collection of data relating to working conditions and wages, as well as social protection coverage, in sectors (such as agriculture, construction, manufacturing and mining) in which migrant workers face specific challenges. The ILO's work on developing an international standard on labour migration statistics that would enable the systematic collection of data and ensure data comparability within and across regions is particularly important. The surveys on measuring labour migration costs, including the costs at destination in respect of the remuneration, conditions of work and access to social protection of migrant workers, should also be continued, with the involvement of workers' and employers' organizations, and in partnership with the World Bank and other member agencies of the Global Migration Group.

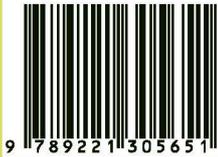
6.2. Suggested points for discussion

212. The purpose of this general discussion is for the ILO's constituents and the Office to examine trends in labour migration and related governance challenges and discuss their implications for the ILO's future work on labour migration, with reference to the specific themes of this report and the emerging global debate on migration governance. The results of the discussion should lead the Organization to confirm or adjust its priorities accordingly. On the understanding that there is broad diversity among migrant workers, and that women and youth represent a large proportion of them, constituents may wish to bear this in mind when discussing the following questions:

1. What are the principal opportunities and challenges presented by labour migration governance at the global, regional, bilateral, national and local levels in the realization of social justice for a fair globalization?
2. How can coordination and cooperation between ministries of labour and other relevant government entities dealing with migration (for example, ministries of the interior, foreign affairs and development planning) be enhanced nationally, across migration corridors and regions, and at the global level? How can cooperation with other international agencies, including with the Global Migration Group, be deepened and made more effective?

3. How can social dialogue on labour migration be strengthened at the local, national, bilateral, regional, interregional and global levels?
4. Are the ILO's existing normative and policy frameworks concerning bilateral agreements and fair recruitment sufficient to address current and future challenges related to the governance of labour migration and mobility, also in light of ongoing global discussions? What further action would be needed to overcome these challenges and to complement these frameworks?
5. What actions should the ILO's constituents and the Office take to reflect ILO concerns and responses, as identified in this discussion, including those concerning labour migration data, in ongoing global migration debates, particularly those on the Global Compact for Safe, Orderly and Regular Migration and the related Sustainable Development Goals?

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