▶ Trade Unions Manual to Promote Migrant Workers' Rights and Foster Fair Labour Migration Governance in Africa
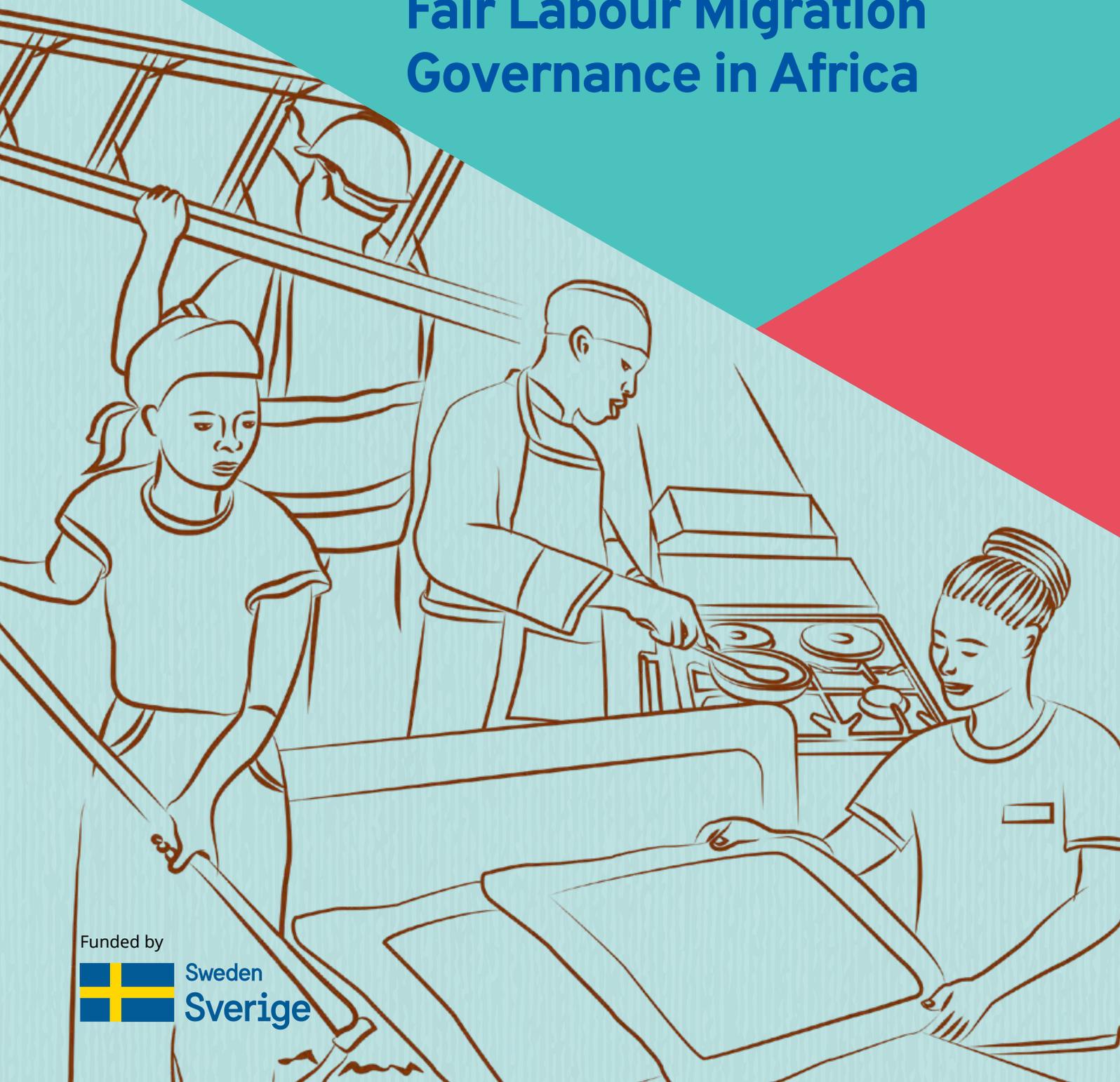
▶ Trade Unions Manual to Promote Migrant Workers' Rights and Foster Fair Labour Migration Governance in Africa

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► Preface

International migration, a highly dynamic phenomenon in general, has been on the rise within Africa. In 2019, there were 26.3 million international migrants in Africa, an increase from 17.2 million in 2010. Movement across national borders to search for work is one of the key drivers of international migration. Indeed, migration for employment is an important issue in Africa, affecting all countries in the region. Two major labour market forces are in operation today that result in increased migration for work – many people of working age either cannot find employment or cannot find employment adequate to support themselves and their families in their own countries, while some other countries have a shortage of workers to fill positions in various sectors of their economies.

Migrant workers face undue hardships and abuse in the form of low wages, poor working and living conditions, limited access to social protection, denial of freedom of association and workers' rights, discrimination as well as social exclusion. Migrant workers' contributions to the economies of their host and origin countries many times remains unaccounted for – yet migrant workers generate tremendous benefits to both.

There is a need therefore for a comprehensive and balanced approach to labour migration governance taking into account migration realities and trends as well as linkages between migration and other key economic, social, political and humanitarian issues. Maximizing the benefits of labour migration for migrant workers and their families as well as minimizing its risks and social costs requires fair and effective labour migration governance. Well-governed labour migration can contribute to sustainable development for countries of origin, transit and destination, and can provide benefits and opportunities for migrant workers and their families.

For the ILO, labour migration governance is more effective when constructed and supported through tripartite consensus and social dialogue. The ILO supports Member States to strengthened labour migration governance through tripartism and social dialogue in the formulation and implementation of evidence-based and gender-sensitive labour migration policies, legislation, and practices.

The participation of ILO's tripartite constituents (Ministries of Labour, workers and employers' organizations) at the local, national, bilateral, regional, interregional, and global levels is central to achieving fair labour migration governance and can strengthen the effectiveness and sustainability of labour migration policies, legislation and practices. A key objective of the ILO is to continue supporting and enhancing ILO's tripartite constituents' capacity in this area.

The development of the Trade Union Manual to promote migrant workers' rights and foster fair labour migration governance in Africa will contribute to achieve this objective and will serve as a training tool in ILO's and partners training programmes for Trade Unions to strengthen their role in promoting and influencing rights-based approach to labour migration. The Manual is composed of 14 practical modules and each module has good practices and the role workers' organizations play in each thematic area. As such, it provides examples on the role of TUs in Africa and abroad (mainly in main receiving countries of African migrant workers) in protecting migrant workers and the services they can provide to migrant workers, etc.

Trade Union are advocates of human rights for all. The central notion of human rights is the implicit assertion that certain principles are true and valid for all peoples, in all societies, under all conditions of economic, political and ethnic or cultural rights. It is important also to note that protecting the rights of migrant workers is the best way to protect the rights of national workers and avoid attempts to place migrant and national workers in competition with each other, as this would only serve the interests of unscrupulous key actors looking for cheap labour. It is also important to note that migrant workers are workers and are potential members of workers' organizations. Reaching out and organizing migrant workers will only be possible if unions are seen as actively promoting the rights of migrant workers.

We believe the effective utilization of this manual will contribute to strengthening the trade union movement's capacity to participate in the shaping of migration policies, promote sound labour migration practices, reach out to migrant workers; making sure that the benefits of migration, are maximized for all: for the countries of origin of migrant workers, for the countries of destination, and for both migrant and national workers.

Our special thanks go to Nyasha Muchichwa (Consultant), who drafted the manual and adapted it, integrating the comments and suggestions at the different stages of development of the manual and to Silvia Cormaci, Mariette Sabatier and Bethelhem Tesfaye Kassa (ILO/JLMP - Priority) who patiently helped with keeping the document in shape as the adaptations were integrated. Without the contribution and encouragement of the team in the ILO's International Migration Branch (MIGRANT) and in the ILO's Bureau for Workers' Activities (ACTRAV) at headquarters in Geneva, in Turin and in the field, this manual would not have seen the light of day. It clearly has been the work of a team. And we thank all those who made it happen. For trade unions that will need to contact ILO-ACTRAV on the use of this manual, they can contact Victor Hugo Ricco (ricco@ilo.org).

Ms. Cynthia Samuel-Olonjuwon
ILO Assistant Director-General and Regional
Director for Africa
ILO/ Regional Office for Africa (ROAF)

Ms. Maria Helena Andre
Director
ILO Bureau for Workers' Activities
(ACTRAV)

▶ Acronyms

ACTEMP	Bureau for Employers' Activities
ACTRAV	Bureau for Workers' Activities
AMU	Arab Maghreb Union
ATUMNET	African Trade Union Migration Network
AU	African Union
AUC	African Union Commission
BLMA	Bilateral Labour Migration Agreements
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CEN-SAD	Community of Sahel-Saharan States
EAC	East African Community
EATUC	East African Trade Union Confederation
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
GCM	Global Compact for Safe, Orderly and Regular Migration
IGAD	Intergovernmental Authority on Development
ILC	International Labour Conference
ILO	International Labour Organization
ILS	International Labour Standards
IOM	International Organization for Migration
ITUC-Africa	African Regional Organisation of the International Trade Union Confederation
JLMP	Joint Programme on Labour Migration Governance for Development and Integration in Africa
LMAC	Labour Migration Advisory Council
MOU	Memorandum of Understanding
OTUWA	Organisation of Trade Unions of West Africa
OATUU	Organisation of African Trade Union Unity
REC	Regional Economic Community
RSMMS	Trade Union Network on Mediterranean Sub-Saharan Migration
SADC	Southern African Development Community
SATUCC	Southern Africa Coordination Council
SDG	Sustainable Development Goal
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs

Module 1.

ILO's Mandate, AU on Labour Migration, Tripartism and Social Dialogue, Data and Trade Union Networks in Africa on Labour Migration

▶ Module 1. ILO's Mandate, AU on Labour Migration, Tripartism and Social Dialogue, Data and Trade Union Networks in Africa on Labour Migration

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Overview

This Module:

▶ Details ILO's mandate with regard to labour migration governance.

▶ Explains the role of tripartism and social dialogue in labour migration governance, detailing the role of the social partners (with special emphasis on workers' organizations) in the establishment of labour migration networks.

▶ Details on the work on the AU on labour migration.

▶ Provides data on inter and intra African labour migration.

Learning Outcomes

By the end of this module, you will be able to:

▶ Understand the ILO mandate on labour migration governance;

▶ Explain the importance of social dialogue in labour migration governance and identify good practices; and,

▶ Describe the role of trade unions and trade union networks in the labour migration governance arena.

Content

The module addresses the following themes:

1.1 ILO mandate on labour migration: The section details reasons why labour migration is an issue of the ILO and what key governance documents and instruments of the ILO say about labour migration. It also lays-out the early work of the ILO in addressing labour migration.

1.2 African Union on labour migration: The section highlights the work on the African Union on labour migration, with a special focus on the JLMP.

1.3 Tripartism and Social Dialogue on labour migration governance: The role of social dialogue in the design, formulation and implementation of labour migration governance. It also gives examples of the good practices at the RECs level and national level.

1.4 Data on inter- and intra- labour migration in Africa: This section looks at the demographic changes in labour migration. Taking note of the changes in the number of women migrant workers, the growth and expansion, across the different RECs in Africa.

1.5 Why labour migration is a trade union issue: Why should labour migration be a trade union issue and the role of trade unions in countries of origin, destination and collaboratively in both countries.

1.6 Trade union networks on labour migration governance in Africa: Roles of trade union networks at the continental and REC levels in labour migration governance.

Principal questions which this module addresses

▶ What is the work undertaken by the AU on labour migration?

▶ What is the ILO mandate on labour migration and why is it an issue of concern to the ILO?

▶ What is the role of social dialogue in labour migration governance and what have been the good practices?

▶ Is labour migration a trade union issue and why? What is the role of trade unions and trade union networks in labour migration governance?

1.0   Introduction

The International Labour Organization has a longstanding and extensive experience in labour migration and labour market issues. Most migration today is linked directly or indirectly to the search for a job and opportunities pursuing better life quality including decent work. Even if employment is not the primary driver, it usually features in the migration process at some point, including by entering in the informal economy.

1.1   The ILO Mandate on Labour Migration

As early as 1919, the International Labour Organization (ILO) expressed the need to protect migrant workers by including in the Preamble of its Constitution as one of the objectives of the Organization, "***the protection of the interests of workers when employed in countries other than their own***." From its inception, the ILO encompassed in its work on ILS, including Conventions, Protocols and Recommendations mentioning specific provisions on migrant workers, as well as technical assistance work in areas such as women migrant workers, bilateral labour migration agreements, the recruitment of migrant workers and labour migration statistics. The Declaration of Philadelphia (1944),[1] confirmed the continuing concern of the institution on the protection of migrant workers. It noted that,

> The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve: (c) the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement.

The mandate and vision of the ILO is to promote decent work for all workers. The ILO's mandate, articulated in the Strategic Objectives which are as well the 4 pillars of Decent Work Agenda, includes respect of international labour standards and in particular the fundamental principles and rights at work, employment promotion, social protection and social dialogue. The ILO approach to international labour migration combines interests in ensuring global economic growth and employment, including through the international mobility of labour, the recognition of labour market needs and the protection of migrant workers. Unless specified otherwise, all migrant workers are protected by fundamental human rights instruments, international labour standards, and other economic and social policies. Thus, working on labour migration issues fits squarely within ILO's mandate for social justice.

The ILO promotes the rights of migrant workers and the fair governance of labour migration through its body of international labour standards, including the ILO fundamental Conventions, the Forced Labour Protocol and their respective accompanying Recommendations. In principle, International Labour Standards cover all workers irrespective of nationality and migration status unless otherwise stated. The 'Resolution and Conclusions concerning a fair deal for migrant workers in a global economy', adopted by consensus at the 92nd Session of the International Labour Conference in 2004 defined the broad agenda for ILO's work on labour migration. It highlighted the unique obligations of the organization in this respect:

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1 http://www.ilo.ch/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO#declaration

▨▨ The ILO's mandate in the world of work as well as its competencies and unique tripartite structure entrust it with special responsibilities regarding migrant workers. Decent work is at the heart of this. The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration." The Resolution added: "Promotion of policies that maximize the contribution of migration to development is another essential component of a comprehensive policy to address the global context of migration.

The 2017 International Labour Conference's Resolution and Conclusions concerning Fair and Effective Labour Migration Governance mentioned:

▨▨ There is solid evidence that participation of the ILO's tripartite constituents in national and regional processes can strengthen the effectiveness and sustainability of labour migration policies, including those on fair recruitment, protection of migrant workers, skills development and recognition of qualifications, and improve public perception."

In 2019, the International Labour Conference adopted the ILO Centenary Declaration for the Future of Work, linked to the human centered approach. The ILO Centenary Declaration, noted that, *[Part II (A(xvi))]*

▨▨ In discharging its constitutional mandate, taking into account the profound transformations in the world of work, and further developing its human-centered approach to the future of work, the ILO must direct its efforts to: deepening and scaling up its work on international labour migration in response to constituents' needs and taking a leadership role in decent work in labour migration."

1.2   Tripartism and social dialogue on labour migration governance

Social dialogue in the formulation and implementation of international and national labour migration policies and action plans is thus essential. Through social dialogue, the participation of the ILO's tripartite constituents (Governments and Workers' organizations and Employers' organizations) at the local, national, bilateral, regional, interregional and global levels is central to achieving fair labour migration governance and can strengthen the effectiveness and sustainability of labour migration policies, legislation and practices. Social dialogue involving the three parties most affected by migration – the governments, employers and workers – is a major pillar of the ILO approach.

Social dialogue is essential to the development of sound labour migration policy and therefore, to the formulation and implementation of migration-development policies. When relevant and according to national practice, i could also be important to involve concerned civil society organizations in broad-based consultative processes. This approach ensures that labour migration and development policies will be based on national consensus to the extent possible. Structures and regular mechanisms for social dialogue on migration policy are necessary for meaningful involvement of representative employers' and workers' organizations.

The ILO is promoting tripartism and social dialogue on labour migration governance in Africa in close cooperation with the African Union. The 2015 Addis Ababa Declaration "Transforming Africa through Decent Work for Sustainable Development" identified as a continent-wide policy priority: "to enhance

labour migration governance at national, subregional, regional and international levels, and developing policies that take into account labour market needs, based on relevant ILO standards and in accordance with the ILO Multilateral Framework on Labour Migration."[2]

1.2.1   Social dialogue within the regional economic communities (RECs)[3]

While challenges to improve social dialogue on labour migration issues remain, there have been numerous substantive breakthroughs in many regional economic communities. The following are some of the good practices on the use of social dialogue in labour migration governance at a regional level.

The Southern African Development Community (SADC)

The SADC Employment and Labour Sector (ELS) includes social partner representation, functions in a tripartite manner and has taken a number of steps to regulate migration and protect migrant workers' rights. In 2013, a first SADC Labour Migration Action Plan was approved by ministers responsible for employment and labour and the social partners and in 2014, they adopted the SADC Labour Migration Policy Framework, identified and included labour migration indicators in national labour force surveys and developed a Labour Migration Module Template for use by Member States. A new SADC's 2020–25 Labour Migration Action Plan saw light a few years later as well as the SADC Cross Border Portability of Accrued Social Security Benefits Framework of 2016 and the 2019 Guidelines on the Portability of Social Security Benefits in SADC, and a Common Migration Module for Labour Force Statistics Surveys and common reporting template were agreed. These instruments encourage SADC Member States to put in place national labour migration policies.

The Economic Community of West African States (ECOWAS)

Through its Social Dialogue Forum and its working group on labour migration established in 2017, the ECOWAS counts with Tripartite Dialogue on labour migration and recently adopted an ECOWAS Regional Migration Policy (2019) and an ECOWAS Mixed Migration Framework (2019). At the same time, it has established an ECOWAS General Convention on Social Security to guarantee the portability of social security rights for migrant workers, with an administrative arrangement to facilitate its implementation, and has developed Guidelines and a Monitoring Mechanism for the evaluation by ECOWAS member states of the implementation of the ECOWAS Protocol on the free movement of persons including workers. Lately, it has produced a Guide for Policymakers for strengthening the Protection of migrant workers' rights in the region.

The East African Community (EAC)

The East African Community is developing an East African Labour Migration Policy Framework with EAC Partner States and sub-regional representative organizations of the social partners. The draft labour migration policy is intended to guide national endeavours on labour migration governance on a common basis and approach.

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2 Adopted by ILO's 13th African Regional Meeting that took place in Addis Ababa on 30th November to 3rd December 2015.

3 The Regional Economic Communities (RECs) are regional groupings of African states. Generally, the purpose of the RECs is to facilitate regional economic integration between members of the individual regions and through the wider African Economic Community (AEC), which was established under the Abuja Treaty (1991), Currently, there are eight RECs recognized by the African Union, each established under a separate regional treaty. These are: (i) Arab Maghreb Union (AMU); (ii) Common Market for Eastern and Southern Africa (COMESA); (iii) Community of Sahel-Saharan States (CEN-SAD); (iv) East African Community (EAC); (v) Economic Community of Central African States (ECCAS); (vi) Economic Community of West African States (ECOWAS); (vii) Intergovernmental Authority on Development (IGAD); and (viii) Southern African Development Community (SADC).

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1.2.2   Social dialogue at national level

The implementation of social dialogue and effective involvement of the social partners, has led to the design, review and adoption of labour migration policies/strategies, in the following countries: **Egypt, Ghana, Nigeria, Lesotho, Seychelles, Sierra Leone, South Africa, Togo, and Zimbabwe.** Various other African countries, such as **Algeria, Burkina Faso, Kenya, Morocco, Nigeria, Senegal, South Africa** and **Tunisia**, have organized national social partner consultations and platforms on migration with government involvement. Box 1.1 shows some of the good practices on labour migration through social dialogue at the national level.

▶   **Box 1.1 Good Practices of social dialogue on labour migration at the national level**

In **Ethiopia,** through social dialogue on labour migration a Social Partners Forum for the support and protection of Ethiopian women migrant domestic workers to the GCC States, Lebanon and Sudan has been established. The Government of Ethiopia adopted the revised Overseas Employment Proclamation 923/2016 which addresses a range of issues including the role of public employment services; education, training and medical examination; costs and fees; bilateral labour agreements; working conditions; and private employment agencies in the protection of migrant workers.

The national migration policy for **Ghana**, adopted in April 2016 followed a comprehensive consultation process led by an inter-ministerial steering committee on migration (including a Labour Department representative), and makes specific mention of the role of employers' and workers' organizations. It states that they "will ensure fair recruitment, treatment and observance of the rights of workers, nationals and foreigners alike" and will partner with the Ministry of Foreign Affairs and Regional Integration (MFARI) "to ensure host nation and Ghanaian emigrant worker compliance with appropriate ILO and UN conventions."

In **South Africa,** the Cabinet approved a white paper on international migration in March 2017 as the culmination of a long process of consultation and social dialogue engagement between government, workers, employers and civil society, including the consortium of refugees and migrants in South Africa. It seeks to promote the regularization of semi-skilled and unskilled economic migrants, including migrant domestic workers. It also provides a framework for the integration of international migrants in South African communities and to foster their social acceptance.

In **Tunisia, Morocco** and **Egypt** the ILO has promoted inter-ministerial collaboration on labour migration and consultation with the social partners and civil society organizations (CSOs). National road maps/action plans have been drafted on the strengthening of institutions and social partners in the area of labour migration, and on improving the governance of labour migration by strengthening social dialogue.

1.3   The Africa Union (AU)

The AU believes that if well-managed in a coherent manner, nations and regions can reap the benefits of the linkages between *migration* and development as the continent strives towards the ideals of Agenda 2063, through economic integration. This has seen the AU developing, the AU's Migration Policy Framework for Africa MPFA,[4] which is one of the continental frameworks that has been developed to enable Africa to better manage and benefit from planned migration by providing strategic guidelines to Member States

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4 More details on the Framework are provided in Module 4.

and RECs in the management of migration through the formulation and implementation of their own national and regional migration policies in accordance with their priorities and resources.

AU/ILO/IOM/UNECA Joint Programme on Labour Migration Governance (JLMP) for Development and Integration in Africa

The African Union Commission (AUC)-International Labour Organization (ILO)-International Organization for Migration (IOM)-Economic Commission for Africa (ECA) Joint Programme on Labour Migration Governance for Development and Integration (better known as the Joint Labour Migration Programme or JLMP) in Africa is a long-term joint undertaking between the four organizations, and the United Nations Development Programme (UNDP) to implement the 5th Key Priority Area of the Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development adopted by the Assembly of Heads of States and Governments (AU/Assembly/AU/20(XXIV)/Annex 3, January 2015) in Addis Ababa, Ethiopia in January 2015.

The JLMP addresses the needs and concerns of migrant workers, their families and their organizations. Actions focus on knowledge sharing combined with advisory services, training, advocacy, and technical assistance to RECs and mobilization of government, employers and trade union representatives, civil society, and public opinion to promote progress on Africa's intra-regional labour migration and mobility. The JLMP focuses on intra-Africa labour migration and supports the achievement of the First Ten Year Plan and the Flagship Project of the African Union (AU) Agenda 2063 (2013–2023), as well as targets laid out in the Sustainable Development Goals. The JLMP is also responsible for the implementing components of the MPFA and Plan of Action 20182030 adopted by the AU Executive Council.

JLMP's objective is to contribute to improved labour migration governance to achieve safe, orderly and regular migration in Africa. This is as committed in relevant frameworks of the African Union (AU) and Regional Economic Communities (RECs), as well as relevant international human rights and labour standards, and other cooperation processes. The goals and objectives of the JLMP derive from the long-term aspiration of achieving an effective regime of labour mobility for integration and development in Africa, with the necessary governance to sustain it. It also aligns with the strategic themes of the AU Migration Policy Framework and carries forward the priority actions of the AU Youth and Women Employment Pact, and the AU Employment Creation, Poverty Eradication and Inclusive Development Plan of Action. The JLMP's priority thus strategically responds to the Africa-EU Partnership on Mobility, Migration and Employment and addresses the needs and concerns of migrant workers, their families and their organizations.

In order to have a significant and realistic take-off of the Programme, a Three-Year Project (JLMP Priority) was developed and launched in 2018 with the overall objective of improving the governance of labour migration to achieve safer, orderly and regular migration in Africa as committed in relevant frameworks of the African Union (AU) and Regional Economic Commissions (RECs), as well as international labour conventions and other cooperation processes. The JLMP Priority prioritizes four specific objectives closely drawn from the JLMP:

▶ **Outcome 1:** Enhanced effectiveness and transparency of operations of labour migration stakeholders, such as labour market actors and institutions, migration authorities, in consultation and cooperation with workers and employers' organizations, the private sector, recruitment industry and relevant civil society organizations, in delivering improved labour migration governance services.

▶ **Outcome 2:** Improved policy and regulatory systems on labour migration at Member State (MS) and Regional Economic Communities (REC) levels, and considering the gender dimension and relevant international human rights and labour standards.

▶ **Outcome 3:** Multi-stakeholder policy consultation and practical coordination on labour migration and mobility to provide advisory support to MS, AU and REC decision makers; and,

▶ **Outcome 4:** Strengthened capacity of the AUC for continental and regional operational leadership in labour migration management including spearheading/steering the implementation of the JLMP at all levels.

It focuses on facilitating intra-continental free movement of workers as a crucial means of advancing regional integration and development in Africa and includes as its main activity areas and action the following outputs:

▶ Strengthen effective governance of labour migration in Africa

  ▶ Increased domestication of key international standards on labour migration;

  ▶ Free-circulation regimes in coherent labour migration policies are elaborated and adopted by the Regional Economic Communities (RECs);

  ▶ Strengthened capacities of labour institutions and social partners in RECs and national governments for labour migration governance, policy and administrative responsibilities; and,

  ▶ Regional mechanisms for tripartite policy consultation and coordination on labour migration issues established, and consultation and technical cooperation with other regions strengthened.

▶ Promote decent work for regional integration and inclusive development

  ▶ Decent work for migrants with effective application of labour standards to migrant workers in recruitment and treatment promoted;

  ▶ Social security extended to migrants through access and portability regimes compatible with international standards and good practice;

  ▶ Harmonized policies to foster mobility of skills and better alignment of skills with labour market needs are adopted and implemented in Africa; and,

  ▶ Enhanced collection of gender and age disaggregated data on migrants' economic activity, employment skills, education, working conditions and social protection situations.

Main activities of the JLMP priority:

▶ Design and implement training and capacity building programmes on labour migration management for labour market institutions in Member States (MSs) and Regional Economic Communities (RECs), including social partners, migration authorities and parliaments, and considering gender responsive components;

▶ Enhance capacity of AUC to coordinate and spearhead the implementation of the JLMP;

▶ Support operationalization of the AU Labour Migration Advisory Committee;

▶ Improve capacity of the RECs and regional labour market institutions to effectively contribute to labour migration governance in the regions;

▶ Provide effective guidance to RECs' Member States (MS) to develop national labour migration policy frameworks; and,

▶ Support AUC in the collection and analysis of labour migration data; and Support RECs and the AUC on increasing recognition of skills and qualifications across Africa.

1.4 Data on inter and intra African labour migration

The Economic Development in Africa Report 2018: *Migration and Structural Transformation* noted that more than half (53%) of Africa's international migrants in 2017 remained on the continent. With the exception of Northern Africa, the share of intra-African migration was much higher, as more than 80% of international migrants from the continent resided in each of the following regions: Eastern, Middle and Western Africa. This is mainly characterized by the migration of low-skilled workers, of great importance in the region is the consolidation of significant South-South migration corridors to neighboring labour markets in the

search for a job and better wages. Figure 1.1 shows the major migration corridors in Africa.

In absolute terms, about 36 million (about 14%) of the 258 million international migrants in 2017 originated from Africa, a seemingly small number compared to the global total. The report however, indicated that, since 2000, the number of international migrants originating from Africa was the highest (plus 68%) in relative terms than any other region. As shown in Table 1.1, indeed Africa emigration over the period has increased substantially in percentage terms, 85% as compared to intra–Africa migration (55%).

▶ **Figure 1.1 Major Migration Corridors in Africa**
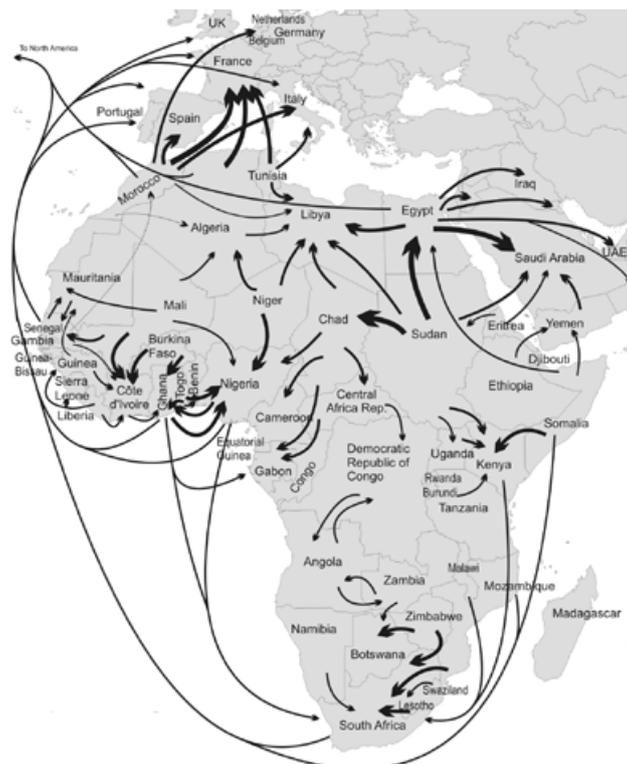
Source: United Nations Economic Commission for Africa (2017)

▶ **Table 1.1 Estimates of Migration Stocks Trends Within, Out of and Into Africa, 1960–2017**

Year	Intra-Africa Migration	African emigration to the rest of the world	From the rest of the world into Africa
1960*	6,176,385	1,830,776	2,811,930
1980*	7,966,359	5,418,096	1,872,502
2000	12,413,437	9,098,838	2,386,869
2005	12,746,503	11,675,679	2,715,803
2010	13,666,144	14,390,051	3,341,105
2015	18,214,050	16,255,185	5,222,038
2017	19,274,433	16,868,723	5,375,790

Source: UN DESA, 2017 Trends in International Migration Stock: 2017 Revision,
*2016 Evaluation of the Migration Policy Framework for Africa

Indeed, today, most African countries are participating in migration flows, whether as countries of origin, transit or destination. The fragmented approach to migration issues and the integration thereof in development is also materialized by the political measures often targeting laws, regulations and the closing of borders rather than actions for pooling the potential resources of migration for development. Migration

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is often looked at with suspicion due to the need to protect the domestic labour market and the economic and social sectors from its complex negative impacts, mainly from a broader border control and security angle. For all these reasons, migration is often linked to widespread controversy and infringements to human rights, especially in the case of migrants in an irregular situation.

The 2017 African Union's Report on Labour Migration Statistics in Africa noted that international migration within Africa has intensified over the past ten years. Thus, the total number of international migrants in the continent increased from 13.3 million in 2008 to 25.4 million in 2017: a tremendous increase of 91.2%. The Report notes that, to a considerable extent, this growth in migration may be attributed to the cooperation agreements between countries within certain economic communities (e.g. ECOWAS, IGAD), which uphold the free movement of people and their freedom of establishment. Other important factors are the continent's population growth, the age structure of the population and individual countries' policies on the movement of people.

The working-age migrant population was 19.7 million in 2017 (women represented 45.7%), of the total international migrant stock in Africa. There were an estimated 14.4 million international migrant workers in 2017, up from 7.5 million in 2008. In 2017, there were 10.7 million male and 9.0 million female migrants aged 15 years and above, compared with 5.6 million male and 4.7 million female migrants in the same age category in 2008.

▶ **Figure1.2 International migrant workers in Africa, by regional economic community and sex, 2017 (millions)**
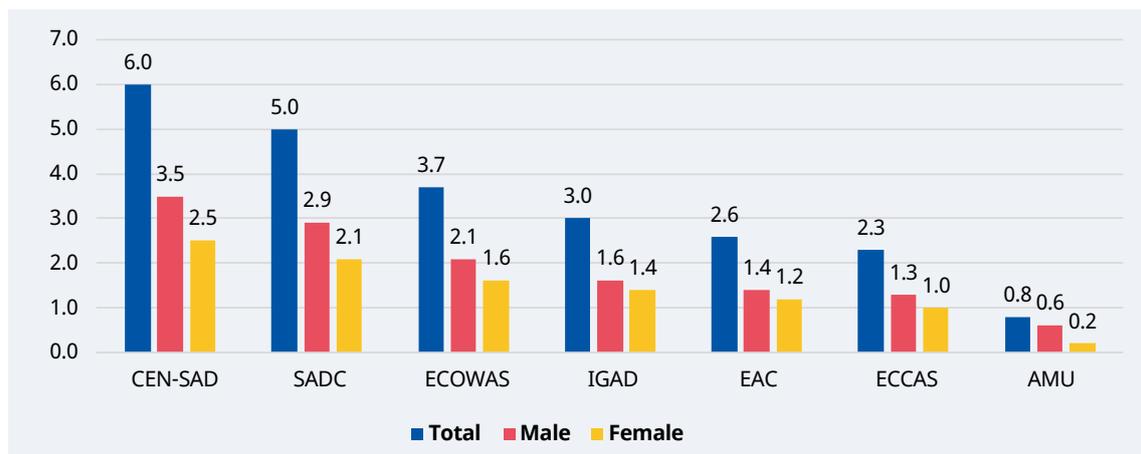
Source: 2017 African Union's Report on Labour Migration Statistics in Africa

The number of migrant workers increased from 7.5 million in 2008 to 14.4 million in 2017. Male migrant workers accounted for an average of 58.1 per cent of the total migrant labour force over that period. The migrant workers are unevenly distributed across the economic communities, with CEN-SAD and SADC recording the highest numbers of migrant workers aged 15 years and above in 2017, at 6.0 million, 5.0 million and 4.8 million, respectively (Figure 1.2). At the lower end of the spectrum, AMU had 800,000 migrant workers.

The majority of migrant workers are employed in low-skilled occupations, such as agricultural, forestry and fishery labourers (20.1 per cent), plant and machine operators (19.7 per cent), clerical support workers (12.4 per cent) and service and sales workers (10.7 per cent). Highly skilled professions, including directors, managers and knowledge workers, accounted for only 20.2 per cent in 2016.

The agricultural sector (fisheries, livestock, forestry and related agricultural activities) was by far the largest provider of employment for migrants in Africa in 2016, accounting for 24.9 per cent of migrant workers. It was followed by the "wholesale and retail trade; motor vehicle and motorcycle repairs; transport and warehousing; accommodation and catering" sector (17.7 per cent), the "public administration, compulsory social security, education, health and social work activities" sector (17.1 per cent), and the construction sector (10.4 per cent). Altogether, these four sectors accounted for 74 per cent of employed migrant workers in 2016.

CEN-SAD and SADC were also the economic communities with the two largest youth migrant worker populations (aged 15–35 years), at 2.5 million, and 2.0 million, respectively. AMU had the least number of youth migrant workers, namely 0.3 million (Figure 1.3). The number of young migrant workers in Africa increased from 2.8 million in 2008, to 3.5 million in 2012 and to a further 5.8 million in 2017 (Figure 1.4). Young men accounted for more than half of the migrant youth labour force population in Africa in any given year.

▶ **Figure 1.3 Young international migrant workers (aged 15–35 years) in Africa, by regional economic community and sex, 2017 (millions)**
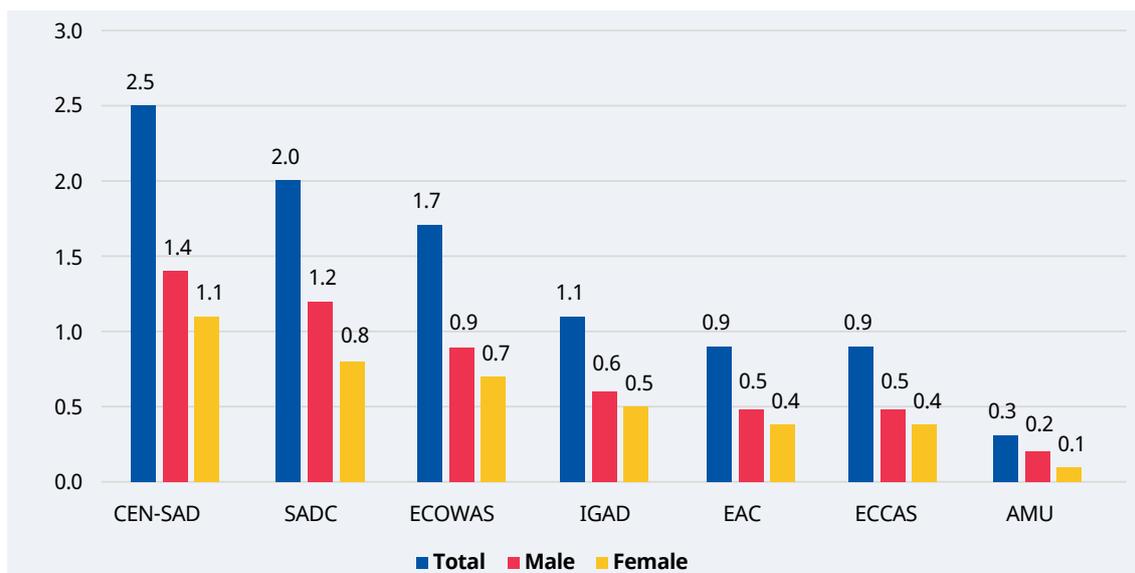
Source: 2017 African Union's Report on Labour Migration Statistics in Africa

▶ **Figure 1.4 Young international migrant workers (aged 15–35 years) in Africa, by sex, 2008–17 (millions)**
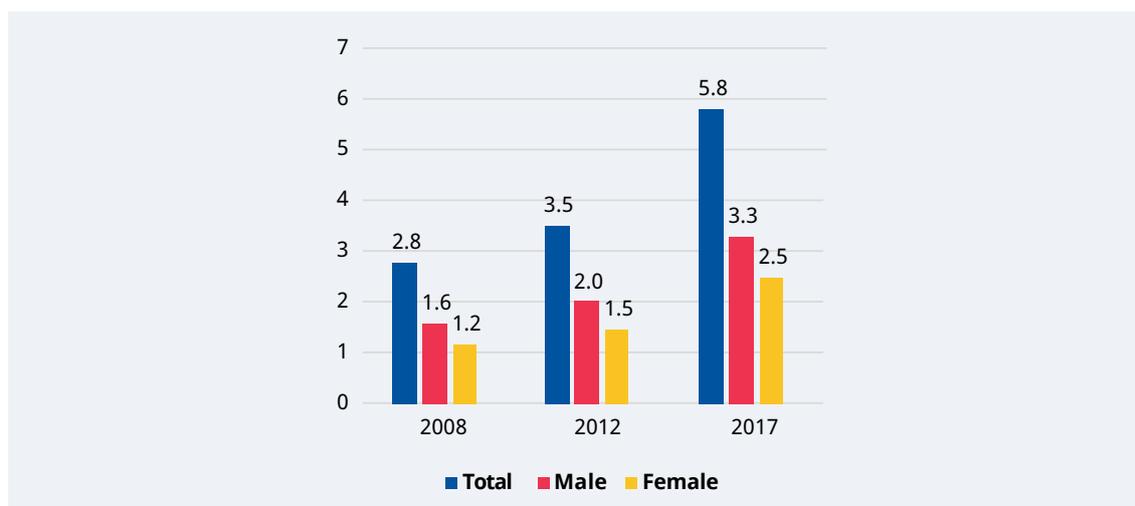
Source: 2017 African Union's Report on Labour Migration Statistics in Africa

Immigration stocks by region show that African migrate more to African countries and within their regions. As of 2017, it was only Northern Africa which had a stock of immigration from within the region as a share of total stock of immigrant below 50% (Table 1.2).

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▶ **Table 1.2 Immigration Stocks by Region of Origin**

Destination	Total Stock of Immigrants	Total Stock of Immigrants from within the Region	Stock on Immigrants from Within the Region as a Share of Total Stock of Immigrants (%)	Total Stock of Immigrants from without the Region	Stock on Immigrants from Without the Region as a Share of Total Stock of Immigrants (%)
Total Africa	24,650,223	19,359,848	78.5	5,290,375	21.6
Eastern Africa	7,591,799	6,731,752	88.7	860,047	11.3
Middle Africa	3,539,697	2,976,597	54.1	563,100	15.9
Northern Africa	2,410,056	1,194,386	49.6	1,215,670	50.4
Southern Africa	4,338,205	2,419,803	55.8	1,918,402	44.2
Western Africa	6,770,466	6,037,310	89.2	733,156	10.8

Source: UNCTAD calculations, based on United Nations Department of Economic and Social Affairs, 2017

Women Migrant Workers

Intra-African women migration is both a long-standing and growing phenomenon on the continent. While migration in Africa was once traditionally a male phenomenon, women are now increasingly present in migratory flows. Africa has experienced a considerable increase in the feminization of migration during the past half century; with women constituting between 45% and 47% of all migrants on the continent between 2000 and 2015. The percentage of female migrants in the different regions ranged between 41% and 50% in 2015. Southern Africa and Northern Africa had the lowest percentage of female migrants at 41% in 2015 and Middle Africa had the highest percentage of female migrants at 50% followed by Eastern Africa at 49% (UNDESA Population Division, 2016).

The 2017 African Union's Report on Labour Migration Statistics in Africa revealed that the number of migrant women increased by 93.4% between 2008 and 2017, from 3.1 million to 6.1 million. While migrant men increased by 90.1%. **Thus migrant women workers were 42.4% of the total number of international migrant workers in Africa in 2017.** The increase in the number of migrant women is correlated to the increase in the female labour market participation rate. Due to the difficulties faced by migrant workers in accessing formal jobs, the majority of the migrant women end up working in informal jobs, as it is very difficult for migrant workers, in general, to overcome decent work deficits when entering the labour market in their countries of destination.

The increasing feminization of migration is a reflection of the changing demands for particular types of skills including the growing demands in the service industries especially for domestic workers, nurses, teachers and other typically female dominated professions. A 2018 Report by UNCTAD on Economic Development in Africa noted that women were in the following sectors:

▶ *Domestic Work:* Paid domestic work, which is an important sector of occupation for African women but migrants as yet still only constitute a small part of it. After Asia and Latin America, the African region is the third largest employer of domestic workers.

▶ *Trading:* Intra-African female migrants are centrally involved in trading, encompassing both cross border trading and street trading. The sector had a long history dating to the 1940s, were Togolese female traders selling African fabrics imported from Ghana in Togo.

▶ *Services:* One aspect of the services sector that is relevant for female migrants is that of hair styling. Hair styling is certainly not new in Africa but more attention should be paid to its potential to provide female migrants with a means to earn a livelihood.

▶ *Sex work:* Although marginalized and invisible in many accounts of intra-African labour migration, sex work is a feature of female migration. It is difficult to obtain detailed information about this hard to research group but it is a sector that requires more attention given that income derived from this activity supports individuals and impoverished households.

The Figure 1.5 shows that, for all the regions in Africa the share of women migrant by 2017 had increased in all the region expect for Middle Africa which had a decrease between the years 2015 and 2017.

▶ **Figure 1.5 Women migrants as share of international migrant stock in Africa**
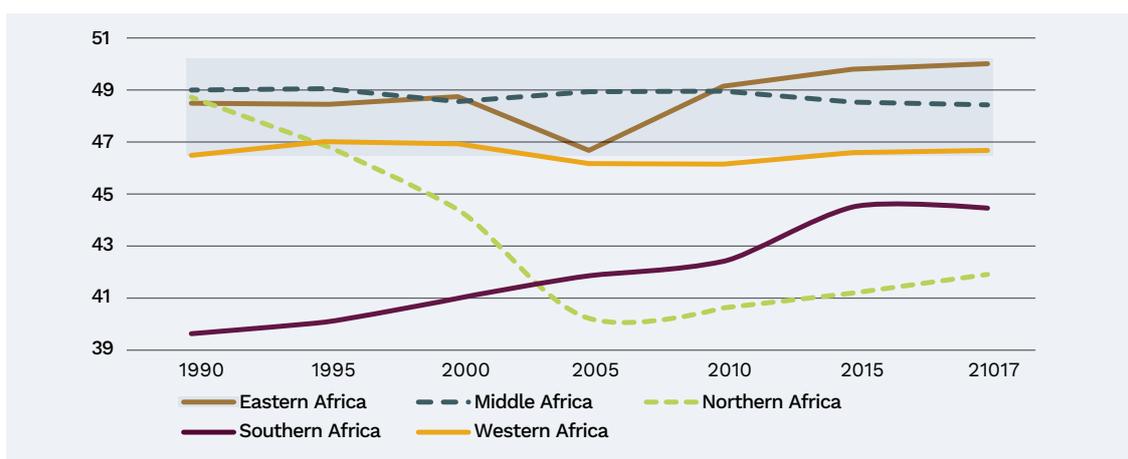
Source: UNCTAD calculations, based on United Nations Department of Economic and Social Affairs, 2017

1.5 Why is labour migration a Trade Union issue?

Evidence shows that migrant workers face some of the most serious decent work deficits and that their exposure to exploitation and abuse very often takes place at the recruitment stage, or is a consequence of how recruitment is organized, regulated and monitored. Migrant workers are largely employed in the informal economy, in particular in hard-to-reach sectors, including in rural areas, on fishing vessels, or in private households. Migrant workers tend to have long and irregular working hours and may not be able to leave the workplace to seek help or join union activities. Frequently they face cultural and communication barriers, including language. Thus the factors that result in high incidence or risk of forced labour and trafficking in certain occupations are the same factors that lead to these sectors often having the lowest trade union density.

The trade union movement emphasizes solidarity with workers' rights in social and economic concerns, and holds freedom of association and the right to collective bargaining as the main avenues for improving working conditions and increasing workers' share of the profits they help to create. Unions are established to give voice to workers, to provide a channel for discussion with employers and government, and to promote the best interests of workers.

> Migrant workers, regardless of their status, are first of all workers. As such, they have rights, including freedom of association – the right to form or join a trade union.

Trade unions have a clear objective of protecting all workers and promoting social justice. This is why trade unions fight for equality, for decent work for all, for social protection and against child labour or forced labour, although not all these workers will be union members. ***An injury to one is an injury to all*** is one of the best-known trade union slogans and is the main reason for considering labour migration as a trade

union issue. As migrant workers are among workers in the most vulnerable situations, they are in need of particular attention in organizing efforts, and at the negotiating table. Beyond the moral obligation of rights and solidarity, one very good reason for recruiting and organizing migrant workers is that organizing migrant workers can revitalize the unions and build membership. Labour market restructuring in the developed economies has meant that trade union membership and density have shrunk in many once highly unionized sectors.

Trade unions have a critical role to play in countries of origin and destination alike by promoting the ratification of relevant Conventions and Protocols and monitoring compliance in law and practice with international labour standards. They play a key role in mobilizing and organizing migrant workers to better articulate and defend their rights and respect for their dignity. Trade unions are particularly well placed to provide migrant workers with legal advice, support and assistance in seeking redress when their rights are violated.

The trade union movement shares with the ILO standpoint of a rights-based approach to labour migration. Thus, it should push for a framework of labour laws and regulations that ensure migrant workers benefit from equal treatment and opportunities in the world of work, in particular with respect to wages, working conditions, and benefits of collective agreements, freedom of association, and social security. The "decent work deficits" associated to many workplaces and industries that take in migrant workers highlights the further need to put human and trade union rights in the centre of the policy debates and initiatives.

The following are areas of work for trade unions, in countries of origin, destination and both (collaborative):

▶ **Trade unions in Countries of origin**

  ▶ Developing union capacity to participate effectively in policy dialogue on labour migration;

  ▶ Offering services for pre-departure training and country-specific information about conditions of employment, social security and relevant international labour standards;

  ▶ Advocating for the use of model employment contracts and recruitment process, based on ILO standards for decent work;

  ▶ Establishing links with diaspora communities abroad and participating in the development of appropriate policies and programmes for the socio-economic reintegration of returnee migrant workers;

  ▶ Establish empowerment programmes, access to skills development, access to decision making; and,

  ▶ Establishing special programmes for women migrant workers, especially protection against gender-related discrimination and forced labour.

▶ **Trade unions in Countries of destination**

  ▶ Establishing a programme for monitoring working conditions of migrant workers and for protecting their rights;

  ▶ Helping organize migrant workers or arrange for their membership in trade unions, and provide the require services and benefits to them;

  ▶ Making representation for the repeal of provisions in working contracts or working permits that discourage migrants from joining trade unions;

  ▶ Discussing the situation of migrant workers with employers' organizations, including migrant workers in collective bargaining agreements and encouraging employers' organizations to provide migrant workers opportunities for skills upgrading; and,

  ▶ Campaigning for non-discriminatory treatment of migrant women and for adequate protection against sexual or other abuses.

▶ **Trade unions in both Countries of Origin and Destination**

    ▶ Collaborating, where appropriate, with workers' organizations in foreign countries or cooperating with other agencies / bodies / associations (private or public) to advance a common interest of upholding and protecting the rights of migrant workers.

    ▶ Advocating for ratification of international labour standards applicable to migrant workers, in general the FPRW's Conventions and Protocol and especially Conventions No. 97, No. 143, No. 181, No. 189 and No. 190;

    ▶ Taking appropriate action to protect the human and labour rights of migrant workers and eliminating all forms of exploitation;

    ▶ Ensuring solidarity between foreign and national workers, particularly in terms of preventing a "raise to the bottom approach" concerning working conditions (e.g. working time, wages, leave entitlements, among others);

    ▶ Promote access to association for women migrant workers, within the trade union as a central topic; and,

    ▶ Assisting migrant workers in obtaining accurate and comprehensive information about employment opportunities and workers' rights.

1.6 Trade Union Networks on Labour Migration in Africa

1.6.1 Continental Level

There are two continental worker organizations in Africa, these are, the African Regional Organisation of the International Trade Union Confederation (ITUC-Africa) and the Organisation of African Trade Union Unity (OATUU). Both have programmes and initiatives that focus on labour migration, these are:

▶ **African Regional Organisation of the International Trade Union Confederation (ITUC-Africa) and the African Trade Unions Migration Network (ATUMNET)[5]**

ITUC-Africa in its work on labour migration, has set-up the African Trade Unions Migration Network (ATUMNET). ATUMNET is a platform for all national trade union organizations in the 52 of the 55 African countries affiliated to the African Regional Organisation of the International Trade Union Confederation (ITUC-Africa) and are engaged on migration issues. The vision of ATUMNET is to effectively contribute to the global governance of migration so that all workers, especially migrants and refugees enjoy their human and workers' rights necessary for the fulfillment of their potentials and wellbeing across gender, nationalities, sending, and transit and host economies. ATUMNET was created to design and deploy African trade union responses to the issues of migration and labour migration, as well as link it to the actualization, enjoyment, defense, protection and promotion of the rights of migrants and refugees as well as contribute to enhancing the development benefits of migration.

The objectives of the platform are to:

    ▶ create a continent-wide platform that will help to bring cohesion, order and efficiency to trade union interventions on migration and labour migration issues;

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5 http://www.ituc-africa.org/Press-statement-of-the-African-Trade-Union-Migration-Network-ATUMNET.html

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▶ deliver development gains for the economies involved in migration at all the various stages and chains (sending, transit and receiving/host economies;

▶ advocate for sound policies and strong institutions at multiple levels that will address the challenges posed by rising international labour mobility in Africa in order to fulfil its true potential for economic and social gain; and,

▶ addressing key knowledge gaps around the extent of irregular migration, migrant workers' participation in the formal and informal economy, and the extent of labour abuses migrants might face through standard labour migration statistics.

Activities of ATUMNET

▶ Assist in building capacity of trade union activists and leaders to engage in migration policy debates, formulation, implementation and monitoring

▶ Support local, national and regional organizations' working towards the empowerment of [African] migrants and refugees for the promotion and realization of their rights.

▶ Meet regularly to dialogue and debate on contemporary migration issues

▶ Support all unions towards organizing of migrants into trade union structures for effective representation, empowerment-participation and integration

▶ Develop partnerships with other organizations to support our advocacy campaigns, education and public policy initiatives in the area of migration

▶ Sensitization of migrants and the public to create more awareness on issues of migration so as to reduce and ultimately eliminate misconceptions, mistrust, ignorance, exploitation and abuses.

▶ Offer a set of policy and advocacy priorities based on the practical realities e.g. ratification of relevant instruments

▶ Conduct research where necessary to offer evidenced based responses to migration discourses, governance and solutions.

The immediate aims are to:

▶ Deepen and increase African trade unions' engagement on migration and labour migration issues with the view to improve the spaces and opportunities for migrants and members of their families to enjoy their human and workers' rights;

▶ Action-driven African trade union platform that initiates hands-on initiatives for the advancement of migration that works for all;

▶ Help to properly organize the voices and actions of African trade unions on migration and labour migration to make them more cohesive, orderly, structured and efficient;

▶ To be an organized platform that would be able to liaise and partner the African Union and other regional and international institutions on migration and development issues as they affect migrants from and in Africa; and,

▶ Form national structures and alliances to push for common platform or landscape of non-state stakeholders for dialogue on migration at national level. In the long run these should develop into an effective structure working at the regional and global levels working to deepen the preservation, protection and promotion of migrants as well as further the contributions to development.

Membership to ATUMNET is open to all affiliates of the ITUC-Africa. In essence, the ITUC-Africa's cherished principles of independence, democracy and freedoms as well as commitment to real workers' struggles are the underpinning values of the network.

ITUC-Africa has also signed a Memorandum of Understanding (MoU) with the ASEAN Trade Union Council (ATUC), South Asian Regional Trade Union Council (SARTUC), International Trade Union Confederation Asia Pacific (ITUC-AP); Arab Trade Union Confederation (Arab TUC) the Trade e Union Confederation of the Americas (TUCA), on labour migration to create better and improved spaces, opportunities and environment for the better defense, protection and promotion of migrants, their families and their rights through:

- ▶ Joint and coordinated efforts to promote and facilitate organizing;
- ▶ Advocacy and campaign engagements;
- ▶ Training and education;
- ▶ Communication, reporting and documentation; and,
- ▶ Support services provision.

▶ The Organisation of African Trade Union Unity (OATUU)

The Organisation of African Trade Union Unity (OATUU) performs its functions of coordinating trade union actions in Africa, defending the moral and material interest of African workers including migrant workers; harmonizing labour legislation and the principles of collective bargaining; working for African unity and economic integration; and working for social and economic justice, among other issues.

The 2019 AU-OATUU Partnership Forum on **On Migration, Mobility and Forced Displacement in Africa,**[6] recommended that OATUU take a central role in the development of labor migration policy and legislation at both the national and regional and continental levels; realizing that migrants are effectively workers who find themselves in a situation of mobility. The meeting further called on trade unions, to advocate more aggressively for the universal ratification and domestication of continental and global conventions that enshrine rights and protection for migrants, refuges and internally displaced persons. In conclusion, the meeting developed outcome documents, in the form of policy recommendations, on three focus areas within the context of migration, mobility and forced displacement. These focus areas are:

- ▶ Leveraging Migration as a Driver of Sustainable Development;
- ▶ Ensuring protection and promotion of migrants and refugees' rights; and,
- ▶ The role of trade unions in the implementation of the theme of the year 2019.

▶ Mediterranean – Sub-Saharan Migration Trade Union Network (Reseau Syndical Migrations Mediterraneennes – Sub-Sahariennes) – RSMMS

The Mediterranean – Sub-Sharan Migration Trade Union Network (Réseau Syndical Migrations Méditerranéennes – Sub-sahariennes) – RSMMS is a network of African (Sub-Saharan and Maghrebian) and European trade unions established in 2014 for the promotion of migrants' rights in the Mediterranean and Sub-Saharan areas (Casablanca Declaration, 2014). It brings together unions that have chosen to raise as a part of their agenda the protection of the fundamental rights of migrants and their families as well as the protection of the rights of those workers who transit or settle in their country. Today, the Network represents 30 Trade Unions in West Africa, North Africa, and Europe, bringing together their experience and know-how and promoting innovative Trade Union practices through solidarity.

The RSMMS network, which aims to help migrants in their journeys and their integrations. The strategic vision of the RSMMS is to promoting trade unions' action for decent work for migrants, its three priority areas of intervention include: (i) support of migrant workers; (ii) social dialogue as a vehicle for rights-

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6 Report of the AU-OATUU Partnership Forum 2019, 24–26 July 2019, Tunis, Tunisia (https://oatuu.org/wp-content/uploads/2019/08/Final-Report-AU-OATUU-Partnership-Forum-2019-conclusions-2.docx).

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based migration policies; and, (iii) trans-regional solidarity and a unified position of different trade union families in favor of equitable global governance.

The RSMMS is part of the international project "Promoting Migration Governance" PROMIG-FES (2017–2020). PROMIG-FES (2017–2020) aims at promoting the role of the social partners, including Trade Unions, in the concerted governance of migration and mobility based on rights and social dialogue. The project's multi-stakeholder approach enhances cooperation and coordination. The multi-dimensional approach includes pilot activities that will serve to consider alternatives to the security approach.

1.6.2   Regional Level Network

The following are the Africa regional level networks on labour migration:

▶ **East Africa Trade Union Confederation (EATUC**) - The EATUC has also being working on labour migration and in 2017, it has obtained membership of the African Union's Economic Social and Cultural Council (ECOSOCC). ECOSOCC was established in 2004 as an advisory organ to the African Union composed of civil society organizations. Through ECOSOCC, civil society organizations can contribute to AU policies. EATUC's membership of ECOSOCC gives further recognition of the vital role that trade unions must play in reaching this and other objectives.

▶ **Organisation of Trade Unions of West Africa (OTUWA)** - Under its strategic plan, OTUWA's work in the area of migration and free movement of people within the sub-region will focus on capacity building for the leadership of affiliate National Centers and to sensitize them on ECOWAS Free Movement Protocols as well as on Labour Migration issues in general.

▶ **Southern Africa Trade Union Coordinating Council (SATUCC)** - Under its strategic plan, SATUCC will focus on the following areas, in terms of labour migration: <u>Strategic Goals</u> -Strengthening policies and campaigns for Regional Integration (e.g. Regional Indicative Strategic Development Plan [RISDP], labour migration, social protection). In 2018, SATUCC contributed to developing a cohesive and transformative Labour Migration Policy Framework for SADC through its participation in its tripartite dialogue process.

Learning exercises for Module 1
Labour migration a trade union issue

▶ **Exercise 1**

Activity: Revisiting trade union policy on labour migration

Aim: To establish an understating of labour migration, as a trade union issue.

Task:

1. Are the rights of migrant workers a discussion topic in the union?

2. Does your trade union have a policy on labour migration?

3. Are migrant workers' members of your trade union?

4. Has your union participated in the development of any policy, programme or activity aimed at migrant workers (at the national level)? In your view was participation of the trade union relevant?

▶ **Exercise 2**

Activity: Trade unions and migrant workers

Aim: To think about trade union policy.

Task:

1. What makes labour migration a trade union issue?

2. Why should trade unions develop internal policies of labour migration?

3. Why should trade unions be concerned about migrant workers?

Module 2.

Global Policy Frameworks guiding labour migration governance in Africa

Overview

This Module:

▶ Describes the global policy frameworks that are guiding labour migration governance in Africa.

▶ Provides an in-depth look at the global frameworks and how a rights-based approach is the focus.

▶ Describes the United Nations and International Labour Organization key frameworks.

▶ Explores the role of workers' organizations/trade unions in the implementation of the global frameworks.

Learning Outcomes

By the end of this module, you will be able to:

▶ Understanding the full labour migration governance cycle;

▶ Understand UN frameworks on labour migration governance;

▶ Understand the ILO frameworks on labour migration governance; and,

▶ Describe the role of trade unions in the labour migration governance global frameworks.

Content

The module addresses the following themes:

2.1 Understanding labour migration governance: Section highlights how migration frameworks are developed at the international level.

2.2 United Nations Frameworks: The section highlights the frameworks developed by the United Nations in regards to labour migration governance. Details are given on the Global Compact on Migration and 2030 Agenda for Sustainable Development.

2.3 ILO Frameworks: The ILO's strategy on labour migration and mobility in the African region is set by the ILS and is complemented by other instruments such as the guidelines/general principles/guiding principles, frameworks and International Labour Conference General Discussion Conclusions, are highlighted in this section.

2.4 Trade Union role in global frameworks: Trade unions have an important role to ensure that migrant workers' rights are respected both in law and in practice and this should be fully recognized at both national and international levels.

Principal questions which this module addresses

▶ Why do we need to have global frameworks on labour migration governance?

▶ How do we make global framework work for migrant workers in our countries?

▶ No question about the role of TUs in global frameworks?

2.0 Introduction

As noted in Module 1, labour migration as a development agenda has made its way steadily towards the top of the regional, and international discourse. This has also seen the development of international instrument and frameworks, at the international, continental and regional levels. In Africa, labour migration governance has been guided by global frameworks illustrated in Figure 2.1.

▶ **Figure 2.1 Global Policy Frameworks guiding labour migration governance in Africa**
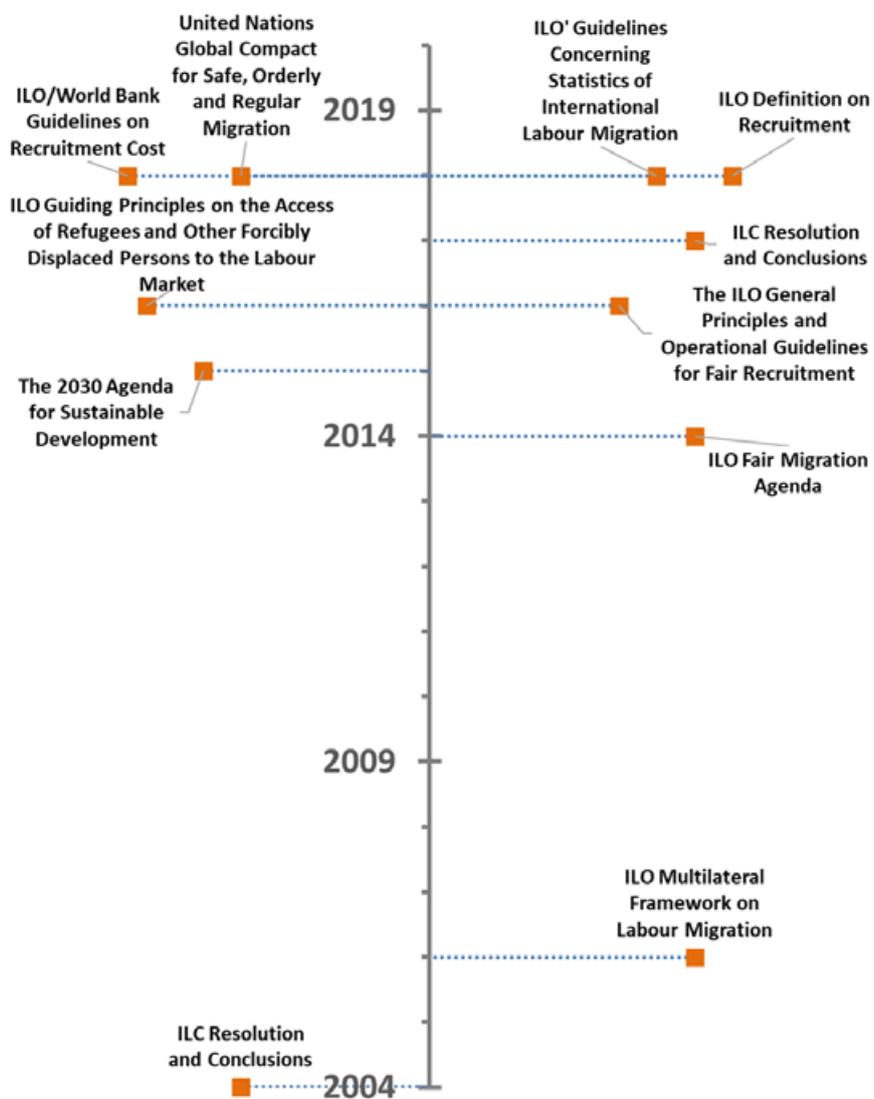
2.1 Understanding labour migration governance

Migration governance is the combined frameworks of legal norms, laws and regulations, policies and traditions as well as organizational structures (subnational, national, regional and international) and the relevant processes that shape and regulate States' approaches with regard to migration in all its forms, addressing rights and responsibilities and promoting international cooperation. Migration governance as defined above considers three aspects: (a) the substantive level, linked to rules, measures and principles as well as migration policies; (b) institutional set-up; and (c) the procedural level, including for example what actor is leading on policymaking. Labour migration governance:

▶ begins with national policy frameworks which establish legal protections for migrant workers, and mechanisms for their implementation;

▶ these are then negotiated into terms and conditions regarding employment contracts through bilateral and intergovernmental agreements; and,

▶ regional and global dialogue processes, and international treaty bodies, further advance consensus on employment standards.

Understanding the full labour migration governance cycle is therefore crucial for promoting decent work for migrant workers including women. Figure 5.1, illustrates how labour migration governance works.

▶ **Figure 2.2 How labour migration governance works**
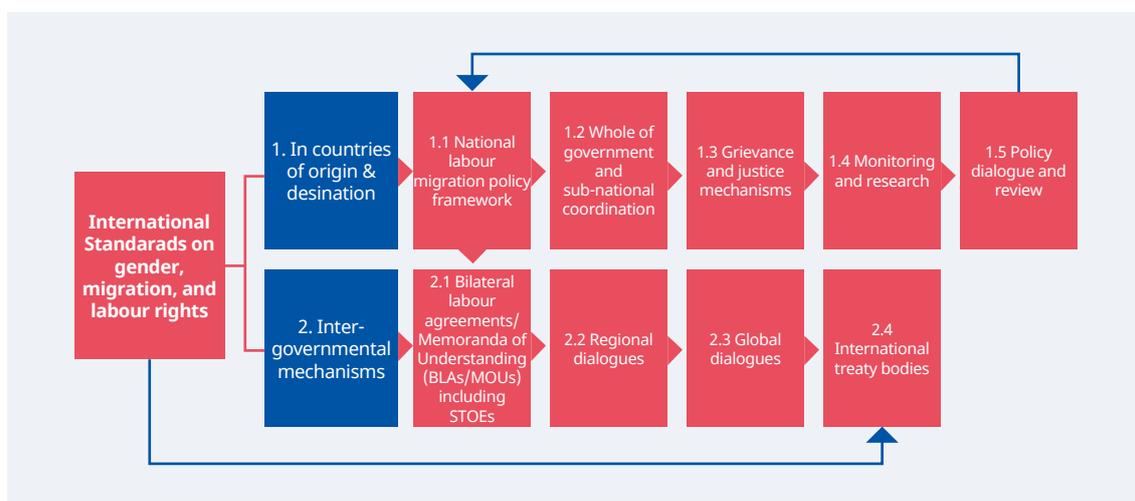
Source: UN Women, 2018

National governments remain the primary actors, in particular with regards to regulating the admission, stay, exit and return of migrants, as well as engaging with other States at bilateral, regional and global levels. At the national level, labour migration governance includes laws and policies that govern and regulate labour migration. These are sometimes standalone labour migration laws and policies but may also be embedded within broader national policies on development, growth, labour market management, immigration, national security and/or foreign affairs. The formulation of such policies may take a whole-of-government approach, including ministries of labour, interior and foreign affairs.

2.2 United Nations Frameworks

2.2.1 The 2030 Agenda for Sustainable Development

On 25 September 2015, the Declaration adopted by the United Nations General Assembly on the 2030 Agenda for Sustainable Development recognized *"the positive contribution of migrants for inclusive growth and sustainable development"* in countries of origin, transit and destination. It also highlighted that "international migration is a multidimensional reality of major relevance for the development of countries of origin, transit and destination, which requires coherent and comprehensive responses." Moreover, Heads of State and Government committed to "cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants regardless of migration status, of refugees and of displaced persons."[7]

The 2030 Agenda for Sustainable Development Declaration views economic growth and decent work as mutually reinforcing, and has resolved to create conditions for sustainable, inclusive and sustained prosperity. This is mainly reiterated in two Sustainable Development Goals (SDGs) of particular significance to the ILO's Decent Work and Fair Migration Agendas:

▶ **SDG 8-Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all**

Target 8.8 is of specific significance to the protection of migrant workers and labour migration governance, as it speaks to: *Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.* The indicators to measure Target 8.8 are:

▶ Indicator 8.8.1 Frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status.

▶ Indicator 8.8.2 Increase in national compliance of labour rights (freedom of association and collective bargaining) based on International Labour Organization (ILO) textual sources and national legislation, by sex and migrant status.

Other targets that speak to labour migration under SDG 8, include:

▶ Target 8.5 By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.

▶ Target 8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

▶ **SDG 10-Reduce inequality within and among countries**

Target 10.7 speaks to the promotion of good and fair governance of migration policies, as it states: *Facilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies.* Two global indicators to measure Target 10.7 are:

▶ Indicator 10.7.1 Recruitment cost borne by employee as a proportion of yearly income earned in country of destination.

▶ Indicator 10.7.2 Number of countries that have implemented well-managed migration policies.

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7 ILO, 2019: Labour Migration and Migrant Workers in the 2030 Agenda for Sustainable Development.

Other targets that speak to labour migration under SDG 10, include:

▶ Target 10.3 Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.

▶ Target 10.4 Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality.

Other SDGs that are also relevant to labour migration governance are:

▶ *Goal 1* - End poverty in all its forms everywhere:

▶ Target 1.3 Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable;

▶ *Goal 5* - Achieve gender equality and empower all women and girls:

▶ Target 5.1 End all forms of discrimination against all women and girls everywhere;

▶ Target 5.4 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate;

▶ *Goal 16* - Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels:

▶ Target 16.B Promote and enforce non-discriminatory laws and policies for sustainable development; and,

▶ *Goal 17* - Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development:

▶ Target 17.4 Assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate, and address the external debt of highly indebted poor countries to reduce debt distress; and,

▶ Target 17.18 By 2020, enhance capacity-building support to developing countries, including for least developed countries and small island developing States, to increase significantly the availability of high-quality, timely and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts.

2.2.2 United Nations Global Compact for Safe, Orderly and Regular Migration

The Global Compact was adopted in 2018 by 164 nations, to enhanced cooperation on international migration in all its dimensions, in a holistic and comprehensive manner. It is rooted in the 2030 Agenda for Sustainable Development and the Addis Ababa Action Agenda, and informed by the Declaration of the High-level Dialogue on International Migration and Development adopted in October 2013. It recognizes that *migration is a source of prosperity, innovation and sustainable development in our globalized world,* and that these positive impacts can be optimized by improving migration governance. The Global Compact sets out common understanding, shared responsibilities and unity of purpose regarding migration, making it work for all.

The Global Compact carries a strong human dimension to it, inherent to the migration experience itself. It promotes the well-being of migrants and the members of communities in countries of origin, transit and destination. As a result, the Global Compact places individuals at its core.

The Global Compact is based on ten cross-cutting and interdependent guiding principles which are: people-centered; international cooperation; national sovereignty; rule of law and due process; sustainable development; human rights; gender-responsive; child-sensitive; whole-of-government approach; and whole-of-society approach. It is noteworthy mentioning that the GCM recognizes key dimensions of ILO's work and role, including:[8]

▶ **Strong recognition for the role of trade unions and employers** in the various objectives and particularly in the implementation of the compact and through a whole-of-society approach;

▶ ILO conventions and **call for ratification and implementation of relevant instruments on labour migration**, labour rights, decent work and forced labour;

▶ Reference to **labour mobility and decent work as important elements in enhancing pathways for regular migration**;

▶ Investing in **skills development and qualifications recognition** with specific reference to Global Skills Partnerships;

▶ The reference and commitment to draw on ILO standards, principles and guidelines for developing **standard terms of employment and in bilateral and regional labour mobility agreements**;

▶ Promoting **fair recruitment practices** as an important component of the protection of the rights of migrant workers and subsequently ensuring decent work;

▶ Ensuring **consular protection** for migrant workers including those exploited in the process of recruitment;

▶ Specific references to the **protection of the rights of domestic workers and workers at all skills levels**;

▶ **Reviewing labour laws and work conditions** to identify and address vulnerabilities of migrant workers at all skills levels; and,

▶ Establishing non-discriminatory **social protection** systems including social protection floors and mechanisms for access and portability of social security benefits.

There are 23 objectives and commitments listed in the global compact and these include collecting and using accurate and anonymized data to develop evidence-based migration policy, ensuring that all migrants have proof of identity, enhancing availability and flexibility for regular migration, encouraging cooperation for tracking missing migrants and saving lives, ensuring migrants can access basic services, and making provisions for both full inclusion of migrants and social cohesion. Decent Work is mentioned explicitly in a number of GCM objectives, including:

▶ **Objective 2:** Minimize the adverse drivers and structural factors that compel people to leave their country of origin;

▶ **Objective 5:** Enhance availability and flexibility of pathways for regular migration;

▶ **Objective 6:** Facilitate fair and ethical recruitment and safeguard conditions that ensure decent work;

▶ **Objective 16:** Empower migrants and societies to realize full inclusion and social cohesion;

▶ **Objective 18:** Invest in skills development and facilitate mutual recognition of skills, qualifications and competences;

▶ **Objective 21:** Cooperate in facilitating safe and dignified return and readmission, as well as sustainable reintegration; and,

▶ **Objective 22:** Establish mechanisms for the portability of social security entitlements and earned benefits.

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8 https://www.ilo.org/africa/areas-of-work/labour-migration/policy-frameworks/WCMS_671734/lang--en/index.htm

2.3 International Labour Organization´s Frameworks

2.3.1 ILO's 2006 Multilateral Framework on Labour Migration[9]

The ILO placed labour migration and the rights of migrant workers at the forefront of its agenda in 2004, when it undertook a General Discussion on Migrant Workers at the 92nd Session of the ILC. One of the outcome of the Discussion was the adoption by consensus of a resolution on a fair deal for migrant workers in the global economy. That, in turn, called for an ILO plan of action on labour migration. The centerpiece of the plan of action was the development of a rights-based Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration.

The Framework is intended to be a guide in the development, strengthening, implementation and evaluation of national, regional and international labour migration policies and practices for improving the governance, promotion and protection of migrant rights and promoting linkages between migration and development. The Framework has drawn in particular upon Conventions Nos. 97 and 143 and their accompanying Recommendations Nos. 86 and 151, as well as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Framework also advocates gender-responsive migration policies that address the special problems faced by women migrant workers.

The Framework addresses nine major areas and is composed of 15 broad principles, with guidelines under each principle for giving practical effect to them. The nine areas are as follows:

▶ **Decent work**, with a principle and guidelines addressing opportunities for decent and productive work for all men and women of working age, including migrant workers;

▶ **Means for international cooperation on labour migration,** with a principle and guidelines on how governments, in consultation with employers' and workers' organizations, can engage in international cooperation to promote managed migration for employment purposes;

▶ **A global knowledge base,** with a principle and guidelines regarding the collection of knowledge and information on labour migration and its application to policy and practice;

▶ **Effective management of labour migration,** with principles and guidelines on the role of international labour standards in government policy, expanding avenues for regular labour migration, social dialogue, and consultation with civil society and migrant associations;

▶ **Protection of migrant workers,** with principles and guidelines on the human and fundamental labour rights of migrant workers, international labour standards, and the protection of the rights of migrant workers by the application and enforcement of national laws and regulations in accordance with the standards;

▶ **Prevention of and protection against abusive migration practices,** with a principle and guidelines on measures to prevent abusive practices, migrant smuggling and trafficking in persons, and to inhibit irregular labour migration;

▶ **The migration process,** with principles and guidelines on promoting an orderly and equitable process of labour migration through all stages of migration, and licensing and supervising recruitment services;

▶ **Social integration and inclusion**, with a principle and guidelines on promoting the social integration and inclusion of migrant workers, preventing discrimination against them, and measures to combat racism and xenophobia; and,

▶ **Migration and development**, with a principle and guidelines on recognizing and maximizing the contribution of labour migration to development and to the alleviation of poverty in both origin and destination countries.

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9 ILO, 2006. ILO's Multilateral Framework on Labour Migration; Non-binding principles and guidelines for a rights-based approach.

2.3.2 ILO's 2014 Fair Migration Agenda

The Fair Migration Agenda,[10] as outlined by ILO Director General Guy Ryder at the International Labour Conference (ILC) in June 2014, calls for "constructing an agenda for fair migration which not only respects the fundamental rights of migrant workers but also offers them real opportunities for decent work." A Fair Migration Agenda is one in which there is a fair sharing of the prosperity that migrants help to create. This can be achieved through building migration regimes that respond equitably to the interests of countries of origin and destination, migrant workers, employers, and nationals.

The ILO's Fair Migration Agenda consists of:

▶ Making migration a choice and not a necessity, by creating decent work opportunities in countries of origin;

▶ Respecting the human rights, including labour rights, of all migrants;

▶ Ensuring fair recruitment and equal treatment of migrant workers to prevent exploitation and level the playing field with nationals;

▶ Formulating fair migration schemes in regional integration processes;

▶ Promoting bilateral agreements for well-regulated and fair migration between member States;

▶ Countering unacceptable situations through the promotion of the universal exercise of fundamental principles and rights at work;

▶ Promoting social dialogue by involving Ministries of Labour, trade unions and employers' organizations in policy making on migration; and,

▶ Contributing to a strengthened multilateral rights-based agenda on migration.

2.3.3 The ILO's 2016 Guiding Principles on the Access of Refugees and other Forcibly Displaced Persons to the Labour Market

A Tripartite Technical Meeting on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market was held in 2016,[11] where the following principles were adopted to guide the work of Member States:

▶ Governance frameworks on access to labour markets. Members should formulate national policies, and national action plans to ensure the protection of refugees and other forcibly displaced persons in the labour market. National policies and action plans should be formulated in conformity with international labour standards, decent work and humanitarian principles, and foster opportunities for formal and decent work that support self-reliance. Members should make easily available information regarding laws and regulations applicable to entrepreneurship.

▶ Economic and employment policies for inclusive labour markets. Members should formulate coherent macroeconomic growth strategies, including active labour market policies that support investment in decent job creation that benefit all workers.

▶ Labour rights and equality of opportunity and treatment. Members should adopt or reinforce national policies to promote equality of opportunity and treatment for all, in particular gender equality, recognizing the specific needs of women, youth and persons with disabilities, with regard to fundamental principles and rights at work, working conditions, access to quality public services, wages and the right to social security benefits for refugees and other forcibly displaced persons, and to educate refugees and other forcibly displaced persons about their labour rights and protections.

10 ILO, 2014. Fair migration: Setting an ILO agenda. International Labour Conference, 103rd Session, 2014.

11 https://www.ilo.org/wcmsp5/groups/public/~ed_protect/~protrav/~migrant/documents/publication/wcms_536440.pdf

▶ Partnership, coordination and coherence. Members should promote national, bilateral, regional and global dialogue on the labour market implications of large influxes of refugees and other forcibly displaced persons, and the importance of access to livelihoods and decent work.

▶ Voluntary repatriation and reintegration of returnees. Countries of origin should reintegrate refugee returnees in their labour market. The ILO and its Members in a position to do so should provide assistance to countries of origin in areas of refugee returnees in creating employment and decent work for all, as well as livelihoods and self-reliance.

▶ Additional pathways for labour mobility. Members should promote labour mobility as one of the pathways for admission and for responsibility-sharing with countries hosting large numbers of refugees and other forcibly displaced persons and include such pathways for admission in their national policies.

2.3.4 The ILO's 2016 General Principles and Operational Guidelines for Fair Recruitment

The objective of the ILO General Principles and Operational Guidelines for Fair Recruitment 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. The General Principles and Operational Guidelines for Fair Recruitment are non-binding, rights based, aspirational, and concrete. They apply to recruitment within or across national borders, as well as to recruitment through temporary work agencies, and cover all sectors of the economy.

In November 2018, the ILO Governing approved the publication and dissemination of a new definition of recruitment fees and related costs, to be read in conjunction with the ILO General Principles and Operational Guidelines on Fair Recruitment that had been adopted by a Tripartite Meeting of Experts. The definitions[12] represent a critical step forward in:

▶ providing clarity on the nature and characteristics of recruitment fees and related costs;

▶ supporting the development, monitoring, implementation and enforcement of laws, policies and measures aimed at the protection of workers' rights;

▶ recognizing the principle that workers must not be required to pay for access to employment.

▶ supporting the development and implementation of effective regulation of recruitment practices, notably of public and private employment agencies; and,

▶ combating non-compliance, provide transparency of recruitment practices and enhance the functioning of labour markets.

Defining Recruitment fees and Related costs

The terms recruitment fees or related costs refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection.

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12 Detailed definitions are provided for in the Module 7: Enhancing fair recruitment practices and regulations.

Responding to the requests from constituents to provide further guidance on what constitutes fair recruitment practices, and the Tripartite Technical Meeting on Labour Migration called on the ILO to develop "guidance to promote recruitment practices that respect the principles enshrined in international labour standards." Thus the Fair Recruitment Initiative, an interdepartmental initiative was established, whose main objectives are to: strengthen global knowledge on national and international recruitment practices; strengthen laws, policies and enforcement mechanisms in line with ILO Convention No. 181 and other standards; promote fair business standards and practices; and, foster social dialogue and partnerships and promote good practices within the industry and beyond.

2.3.5 The 2017 International Labour Conference's Resolution and Conclusions concerning Fair and Effective Labour Migration Governance and its Follow-up Plan of Action

Under the Resolution and Conclusion,[13] the following priorities in relation to international labour migration were identified:

▶ *International labour standards* - Promote the ratification and effective application of the ILO Conventions and recommendations.

▶ *Skills* - Provide support for: (i) the development of skills, (ii) better assessment of skills needs, and (iii) the alignment of training to meet labour market demands.

▶ *Fair recruitment* - Support and promote constituents' efforts to operationalize the ILO's General Principles and Operational Guidelines for Fair Recruitment. Pursue efforts in developing and testing a methodology to measure recruitment costs under target 10.7 of the 2030 Agenda for Sustainable Development and further work on the definition of recruitment fees and related costs.

▶ *Data* - Collect and disseminate comparable data on labour migration, disaggregated by sex and age, among others, and on its effect on labour markets in countries of origin, transit and destination, and on migrant workers.

▶ *Social protection* - Build constituents' capacities to develop and implement bilateral and multilateral social security agreements and extend social protection systems to migrant workers.

▶ *Freedom of association* - Work with the ILO constituents to identify obstacles to freedom of association for migrant workers and assess the most effective measures and strategies to address them.

▶ *Temporary labour migration* - Conduct a comparative analysis of temporary and circular labour migration schemes.

▶ *Irregular labour migration* - Encourage sharing of good practices on reducing irregular labour migration, including on pathways out of irregularity. Promote respect for human rights and fundamental principles and rights at work of migrant workers, irrespective of their migrant status.

The Addis Ababa Action Agenda of the Third International Conference on Financing for Development (and an integral part of the 2030 Agenda), for its part, recognized that stronger governance is needed to optimize and distribute in a fair manner the benefits of migration, and that reducing the costs of migration through lowering recruitment costs, ensuring coordination of social security rights and benefits, skills recognition and lowering remittance costs are key vehicles to achieve this. Similarly, the New York Declaration for Refugees and Migrants acknowledges that labour migration at all skill levels, employment creation and adherence to labour standards are essential in protecting migrant workers, regardless of their status. **(Decent work for migrants and refugees, ILO, 2016).**

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13 https://www.ilo.org/wcmsp5/groups/public/–ed_norm/–relconf/documents/meetingdocument/wcms_558628.pdf

2.3.6 ILO's 2018 Guidelines Concerning Statistics of International Labour Migration

The purpose of the Guidelines Concerning Statistics of International Labour Migration[14] is to help countries to develop their national statistical system by collecting comparable statistics on international labour migration in order to provide an improved information base for the various users, taking into account specific national needs and circumstances. Such a system should be designed to achieve a number of objectives, which include, to: (a) obtain a better understanding of the migration process; (b) to assess the socio-demographic characteristics and conditions of work and the equitable treatment of different groups of international migrant workers; and (c) to study the relative status of the disadvantaged groups of international migrant workers that are of specific policy concern.

To achieve these objectives, the integrated national statistical system should be developed in consultation with the various users of the statistics and, to the extent possible, in harmony with the collection of other economic, demographic and social statistics. Choices regarding the concepts and topics covered and their different frequencies of measurement and/or reporting will depend on their national relevance and the resources available. Each country should establish an appropriate strategy for data collection and statistical reporting that ensures the progress and sustainability of the system.

The scope of the Guidelines are as follows, among others:

▶ To be effective, policies must be based on strong evidence, including the number of international migrant workers involved, their characteristics and their employment patterns;

▶ The term international labour migration is used in the guidelines as a generic term to refer, to concepts related to the process and outcome of international labour migration and, in particular, to the following three concepts: (i) international migrant workers; (ii) for-work international migrants; (iii) return international migrant workers;

▶ These guidelines aim at supporting countries to develop their national statistics on international labour migration and at encouraging them to test the conceptual framework suggested in the guidelines; and

▶ In general, statistics of international labour migration should cover the reference population, comprising all persons who are usual residents of the country, regardless of sex, country of origin or citizenship (nationality). The reference population also includes persons who are not usual residents in the country but who are, nevertheless, in the labour force or potential labour force or any other forms of work in that country, such as frontier workers, seasonal workers, itinerant workers, documented and undocumented migrant workers, project-tied workers, specified-employment workers, seafarers and workers on an offshore installation.

(An extract of the 2018 Guidelines Concerning Statistics of International Labour Migration is provided in Annex 1).

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14 https://www.ilo.org/africa/areas-of-work/labour-migration/policy-frameworks/WCMS_674548/lang--en/index.htm

2.4 Making use of the Global Policy Frameworks guiding labour migration governance - the Role of Trade Unions

Trade unions have an important role to ensure that migrant workers' rights are respected both in law and in practice and this should be fully recognized at both national and international levels. Trade Unions as representative organizations, are mandated to represent their members, protect their rights and interests, and provide services from field of education to social security. The trade union movement should be at the forefront in advocating for and ensuring that a rights-based approach to labour migration is enshrined in all national, regional and global legislation.

Trade unions should raise migrant workers' awareness of their rights, help identify and denounce violations and contribute to ensuring compliance with international labour standards. The organization of migrant workers into trade unions reduces exploitation and strengthens workers' representation and bargaining power, assists with community integration, aids in deepening social cohesion and contributes to building more equitable societies. Awareness-raising campaigns and non-discriminatory training are important, as they ensure that migrant workers gain knowledge of the global frameworks and the provisions that they provide for them (migrant workers). Raise awareness of and advocate for migrant workers' rights, and that protecting their rights is an essential component of the trade union agendas to advance human rights, equality and labour standards for all workers, as well as to fight racism and xenophobia.

Global governance frameworks enable the trade unions to intensify efforts to integrate sustainable development practices within their policies, both by lobbying international institutions and by building alliances/networks amongst trade unions to ensure that the rights of workers are respected and monitored. By building networks, trade unions can ensure that there is protection and promotion of workers' rights across borders and ensure that the race to the bottom is curtailed.

As a global structure, trade unions are a political-social-and economic actor which represents its members in the global, regional and national levels. The changes in the labour markets that facilitate the integration of migrant workers into trade union structures underscore the important role that the trade union movement at various aspects of labour mobility. It is due to this that trade unions should advocate for national, regional and international policy(ies), that promoting and protecting migrant workers' rights.

Trade Unions as a social partner, ought to participate not only in the development of international frameworks of labour migration governance, but in the implementation, monitoring and evaluation of such at global, regional and national levels. It is in these platforms that trade unions should formulate frameworks of labour laws, regulations and governance that ensure migrant workers benefit from equal treatment and opportunities in respect to wages, working conditions, and benefits of collective agreements, membership in trade unions, and social security.

Learning exercises for Module 2
Making global frameworks work for migrant workers

Activity: Making global frameworks work for migrant workers

Aims: To develop an understanding of the role of trade unions in labour migration governance

Task:

1. What is the role of trade unions in the frameworks below:

Global Framework	Role of trade union
United Nations Global Compact for Safe, Orderly and Regular Migration	
ILO/World Bank 2018 Guidelines on Recruitment Costs	
The ILO's 2016 Guiding Principles on the Access of Refugees and Other Forcibly Displaced Persons to the Labour Market	
The ILO's 2016 General Principles and Operational Guidelines for Fair Recruitment	
The 2030 Agenda for Sustainable Development-2015	
ILO's 2006 Multilateral Framework on Labour Migration	

2. What are the key take-away issues for you and your union in the establishment of labour migration frameworks at the global level?

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◢◢ Well-governed labour migration can contribute to sustainable development for countries of origin, transit and destination, and can provide benefits and opportunities for migrant workers and their families by balancing labour supply and demand, helping develop and transfer skills at all levels, contributing to social protection systems, fostering innovation and enriching communities both culturally and socially.

The 2017 International Labour Conference's Conclusions and Resolution Concerning Fair and Effective Labour Migration Governance.

3. Do you agree with the statement above? Give your reasons.

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Annex 1

Extract from the 20th International Conference of Labour Statisticians, held in Geneva, 10th–19th October, 2018[15]

Guidelines adopted concerning statistics of international labour migration

International migrants include all those residents of a given country who have ever changed their country of usual residence. International migrants may be measured as "all persons who are usual residents of that country and who are citizens of another country (foreign population) or whose place of birth is located in another country (foreign-born population)." In particular:

▶ **the foreign-born population of a country** includes all persons who have that country as the country of their usual residence and whose place of birth is located in another country. They correspond to the stock of international migrants who have migrated at least once in their life and currently reside outside their country of birth. People born outside their country of current residence but who are citizens of that country at birth (e.g. born abroad of national parent(s) living abroad) are sometimes excluded from the count of foreign-born population. The recorded country of birth refers to the geographical entity at the time of data collection. Native born persons can be nationals or foreign citizens or both;

▶ **the foreign population of a country** includes all persons who do not have citizenship of the country of their usual residence. It includes resident stateless persons. It excludes international migrants who have acquired citizenship of their country of usual residence. The foreign population can be foreign-born or native-born.

International Migrant Workers meant to measure the current labour attachment of international migrants in a country, irrespective of the initial purpose of migration, and of others who are not usual residents of the country but have current labour attachment in the country of measurement. In this context, the terms "international migrant workers" and "international migrant and non-resident foreign workers" are equivalent. Workers moving abroad under Free Movement Protocols fall under this definition. They are defined, for statistical purposes, as all persons of working age present in the country of measurement who are in one of the following two categories:

▶ **usual residents:** international migrants who, during a specified reference period, were in the labour force of the country of their usual residence, either in employment or in unemployment; and,

▶ **not usual residents, or non-resident foreign workers:** persons who, during a specified reference period, were not usual residents of the country but were present in the country and had a labour attachment to the country, i.e., were either in employment supplying labour to resident producer units of that country or were seeking employment in that country.

Labour Migration - The term international labour migration is used as a generic term to refer, in general, to concepts related to the process and outcome of international labour migration and, in particular, to the following three concepts:

▶ **international migrant workers;**

▶ **for-work international migrants; and,**

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15 https://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_648922.pdf

▶ **return international migrant workers.**

International labour migration may take the form of **international labour mobility**, as temporary or short-term movement of persons across countries for employment-related purposes in the context of the free movements of workers in regional economic communities. The latter are considered migrant workers if they meet the criteria listed above under the definition of international migrant workers: (a) usual residents and (b) not usual residents, or non-resident foreign workers.

Particular categories of international migrant workers include:

▶ **frontier workers,** who are not usual residents of the country of measurement but have been granted permission to be employed on a continuous basis in that country provided they depart at regular and short intervals (daily or weekly) from the country;

▶ **seasonal workers**, who are not usual residents of the country of employment, whose work by its character is dependent on seasonal conditions and is performed during part of the year;

▶ **itinerant workers**, who are not usual residents of the country of measurement but travel to the country for short periods for work-related reasons;

▶ **project-tied workers**, who are admitted to the country of employment for a defined period of employment solely on a specific project being carried out in that country by their employer;

▶ **specified-employment workers,** who have been sent by their employer, such as a multinational enterprise, for a restricted and defined period of time to the country of employment to undertake a specific assignment or duty, or to undertake work that requires professional, commercial, technical or other highly specialized skills or work that is transitory or brief, and who are required to depart from the country of employment either at the expiration of their authorized period of stay or earlier if they no longer undertake that specified assignment or duty or engage in that work;

▶ **self-employed workers**, who are engaged in a remunerated activity otherwise than under a contract of employment and who earn their living through their activity normally working alone or together with members of their family, also including any other migrant worker recognized as self-employed by applicable legislation of the country of employment or bilateral or multilateral agreements;

▶ **seafarers, including fishermen** employed on a vessel which is registered in the country of measurement, of which the workers are not nationals;

▶ **workers employed on an offshore installation** that is under the jurisdiction of the country of measurement, of which the workers are not nationals;

▶ **foreign domestic workers** engaged by resident employers;

▶ **foreign students** who entered the country on the declared purpose of studying but then were working or seeking work or combining work and study;

▶ **international travellers on tourism trips whose main purpose is to be employed** in the country of visit and receive compensation for the labour input provided;

▶ **(working or seeking work refugees and asylum-seekers**, irrespective of authorization to work during processing of refugee status or sanctuary request;

▶ **forcibly displaced persons across borders** due to natural or human-made disasters working or seeking work in the country of displacement; and,

▶ **persons trafficked across international borders** for forced labour or labour exploitation.

Excluded as international migrant workers are the following:

▶ foreign military and diplomatic personnel;

▶ international travellers on tourism trips undertaking work in the country of visit that is incidental to the trip (i.e. not its main purpose);

▶ staff of call centers in non-resident production units and others providing services from a foreign location.

Categories of international migrant workers:

▶ **long-term international migrant workers**, that is, international migrant workers whose duration of stay in the country of labour attachment has been one year or more (12 months or more). Where relevant, long-term international migrant workers may be sub-divided to distinguish between those with duration of stay of less than 5 years, and those with duration of stay of 5 years or more;

▶ **short-term international migrant workers**, that is, international migrant workers whose cumulative duration of stay in the country of labour attachment has been of limited duration, i.e., less than 12 months;

▶ **seasonal international migrant workers**, whose work by its character is dependent on seasonal conditions and is performed during only a part of the year.

▶ Similar considerations for separate identification may also apply to **frontier workers and itinerant workers**.

Classification as permanent and temporary international migrant workers on the basis of nature of intended stay in the country of labour attachment at the time of entry, as follows:

▶ **permanent international migrants**, that is, international migrants with the intention of settling for a lifetime in the country of labour attachment or country of destination. For practical purposes, in the case of employees with labour contracts, permanent international migrants may be defined on the basis of the duration of the labour contract, such as those with labour contracts with a duration of 5 years or more. From the perspective of the country of citizenship, when different from the country of labour attachment or country of destination, permanent international migrants may be regarded as "citizens working abroad with no intention of returning to the country of citizenship." Similarly, from the perspective of the country of birth, when different from the country of labour attachment or country of destination, permanent international migrants may be regarded as "native-born persons working abroad with no intention of returning to the country of birth";

▶ **temporary international migrants**, that is, international migrants entering the country of labour attachment or country of destination with the intention of stay for a limited period of time period, which may be less or more than 12 months. The time restriction may be voluntary on the part of worker or due to the needs of the employing organization. For practical purposes, in the case of employees with labour contracts, temporary international migrants may be defined on basis of the duration of the labour contract. From the perspective of the country of citizenship, when different from the country of labour attachment or country of destination, temporary international migrants may be regarded as "citizens working abroad with the intention of returning to the country of citizenship." Similarly, from the perspective of the country of birth, when different from the country of labour attachment or country of destination, temporary international migrants may be regarded as "native-born persons working abroad with the intention of returning to the country of birth;"

International migrant workers may be classified by country of labour attachment and country of origin. In particular:

▶ **country of labour attachment** is the country in which the international migrant worker was supplying labour to resident producer unit(s) during the specified reference period used for measurement; (b) depending on the definition used for measurement purposes, the **country of origin** of the international migrant worker may refer to the country of birth, the country of citizenship or the country of previous usual residence.

Migrant workers in an irregular situation[16] **-** Migrants are considered to be in an irregular situation or non-documented situation if they are unauthorized «to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreement to which that State is a party.

The **main items of data collection** should include:

▶ **main socio-demographic characteristics:**

  ▶ sex

  ▶ age or date of birth

  ▶ marital status

  ▶ level of education attained

  ▶ type of living quarters (private household, collective or institutional

  ▶ household, other type of living quarters, non-residential accommodation)

  ▶ country of birth and country of birth of parent(s)

  ▶ country of citizenship

  ▶ country of usual residence

  ▶ country of last usual residence (or country of previous labour attachment

  ▶ for return international migrant workers)

  ▶ proficiency (speaking, reading, writing) in a language of the country of

  ▶ labour attachment

▶ **main migration characteristics:**

  ▶ purpose of migration (declared or documented reason for first entry into the country, specifically the country of actual or intended labour attachment); and also, for return international migrant workers, the main reason for last departure from the country of previous labour attachment

  ▶ type of visa, residence permit, work permit

  ▶ permanent, temporary or circular nature of migration

  ▶ duration of stay: date of first entry into the country of labour attachment; and also, for return international migrant workers, date of last departure from the country

  ▶ any restrictions in the rights to residence in the country of actual or intended labour attachment (such as concerning place of residence, duration of stay, mobility)

16 UN: *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. Article 5.*

▶ **main work characteristics:**

- ▶ labour force status (employed, unemployed, outside the labour force)

- ▶ branch of economic activity

- ▶ occupation

- ▶ status in employment

- ▶ working time, including hours usually worked, contractual hours of work

- ▶ duration of employment in months or years

- ▶ employment-related income

- ▶ remittances sent outside the country of labour attachment

- ▶ social security entitlements in the country of labour attachment

- ▶ any restrictions of the right to employment (e.g. concerning undertaking or seeking work, changing employer or work performed)

Depending on policy concerns, additional data items may be collected, such as on past migration and work history; family relationships and characteristics of family members; particular categories of international migrant workers, such as one or more of those listed under paragraph 20 above; or special topics, such as occupational injuries, the informal sector and informal employment, and labour exploitation and forced labour of international migrant workers, in line with the latest ICLS standards on the respective topics, namely, statistics of occupational injuries (resulting from occupational accidents), statistics of employment in the informal sector and informal employment and statistics of forced labour, etc.

The concept of ***return international migrant workers*** is intended to provide a basis for measuring the work experience of persons returning after being international migrant workers abroad. For the country of measurement, return international migrant workers are defined as all current residents of the country who were previously international migrant workers in another country or countries. In particular:

▶ the measurement of return international migrant workers does not depend on the current labour force status of persons in the country of current residence. Return international migrant workers may include persons currently outside the labour force or outside the potential labour force, or persons no longer engaged in any form of work in the country of current residence;

▶ return international migrant workers include those current residents of the country of measurement who were working aboard without being usual residents of the country in which they worked (corresponding to category 14(b) (not usual residents) of international migrant workers as given above);

▶ it is recommended that the chosen minimum duration of labour attachment abroad for a person to be considered as a return international migrant worker be relatively short, such as 6 months, calculated on a cumulative basis for workers with repeated spells of migration; and,

▶ it is recommended that the reference period for the date of return, i.e., the maximum time elapsed since the return of the person to the country of current residence for them to be included in the count (stock) of return international migrant workers in that country, should be relatively long, such as last 12 months or last 5 years, or it may be left open and then classified by date of return.

Module 3.

Global Instruments on the protection of migrant workers (UN and ILO Instruments)

Overview

▶ Describes the international legal instruments guiding international labour migration which are composed of UN and ILO instruments. There are eight UN instruments, four migrant workers' International Labour Standards (ILS), five specific ILS related to migrant workers' social protection, six ILS containing specific provisions on migrant workers, the Fundamental Conventions, Protocols and Recommendations that apply to all migrant workers irrespective of migration status.

▶ Explains the how trade unions can make use of these international instruments.

Learning Outcomes

By the end of this module, you will be able to:

▶ Understand UN instruments on labour migration governance;

▶ Understanding of what ILS are, the reasons for their development, their relevance and how they are used today; and,

▶ Knowledge of the subjects covered by both UN instruments and ILO ILS, and their content.

Content

The module addresses the following themes:

3.1 United Nations Instruments: The section highlights the UN instruments that pertain to international labour migrations.

3.2 ILO International Labour Standards: International labour standards are legal instruments set up by the ILO's constituents (governments, employers and workers) with a view to setting out basic principles and rights at work and to regulate other areas of the world of work. This section highlights the ILS that pertain to labour migration and migrant worker rights.

3.3 Trade Union role in global frameworks: The sections looks at how trade unions can make use of international instruments on labour migration and reporting process of ILS.

Principal questions which this module addresses

▶ What are the international instruments that look at international migration?

▶ Why do we need to have such instruments on labour migration?

▶ Who is covered by such international instruments?

▶ How trade unions can make use of these international instruments and responsibly participate in the ILO ILS System?

3.0 Introduction

The international community has developed several legal instruments covering areas such as human rights, employment and labour, social security, or trafficking and smuggling of persons, within the labour migration arena. This has been largely driven by the understanding that international migration cannot be left to market forces alone, but should be subject to governance and regulation at the international level. There is a wide variety of international instruments providing rights and protection that apply to migrant workers. These apply to migrant workers, first and foremost as humans and members of the human family, and secondly as workers. This is in line with the ILO Centenary Declaration for the Future of Work. The Declaration's "human-centred approach" focuses on increasing investment in: (a) people's capabilities; (b) the institutions of work; and, (c) decent and sustainable work. Promoting decent work for all, good governance of labour migration, migrant workers' rights, development linkages and international cooperation, can serve as a force for growth and development in both origin and destination countries, while protecting the rights of migrant workers.

The need/drive for a rights-based approach to labour migration, recognizes that the key to the effective protection of migrants' rights lies in effective governance and regulation of migration. Human and labour rights of migrant workers are contained in a number of international instruments, developed by both the UN and the ILO. A rights-based approach to labour migration is one that draws on these internationally recognized rights and standards and ensures that they have a tangible impact on the lives of migrant workers. International labour standards provide a framework for cooperation between States at either end of the migration process, and for national legislation, policy and practice. ILS provide principles and guidelines for the governance of migration, the protection of migrant workers and the safeguarding of States' interests.

3.1 United Nation (UN) Instruments

Migrant workers, as persons first - whatever their status, are always entitled to human rights. There are several international instruments which cover them. These are the following:

3.1.1 Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights,[17] adopted by the UN General Assembly in 1948, establishes basic rights for "human beings", rights that are held by all persons, "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2). Rights particularly relevant for migrant workers are the right to be free from slavery or servitude; equality before the law and equal protection of the law; protection against discrimination; effective remedy by national tribunals; freedom from arbitrary arrest, detention or exile; freedom of movement and residence; peaceful assembly and association; and social security.

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17 https://www.un.org/en/udhrbook/pdf/udhr_booklet_en_web.pdf

3.1.2 International Covenant on Economic, Social and Cultural Rights, 1966

The International Covenant on Economic, Social and Cultural Rights[18] was adopted by the UN General Assembly in 1966 and is legally binding on those States that have accepted it by ratification or accession. It speaks of rights for "all members of the human family" and for "everyone."

The rights are to be exercised "without discrimination of any kind as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2.2). Among the economic rights is the right to work, including the rights to receive technical and vocational training; to just and favorable conditions of work; to fair wages and equal remuneration for work of equal value; to safe and healthy working conditions; to equal opportunity for promotion in employment; to rest, leisure and reasonable limitation of working hours and holidays with pay; and to form and join trade unions and to take strike action (Articles 6–8). Article 22, establishes the right to freedom of association.

3.1.3 International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights[19] was also adopted by the UN General Assembly in 1996 and is legally binding on those States that have accepted it by ratification or accession. It is also inclusive of all human beings, speaking of "all members of the human family" and "all individuals."

It applies to all individuals within the territory "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2.1). All are equal before the law; discrimination is prohibited, and equal and effective protection against discrimination is guaranteed for everyone. Articles 7–10: recognizes the right of everyone to the enjoyment of equal and satisfactory working conditions, the right to form trade unions and join them, and the right to enjoy social security, including social insurance and maternity leave. The Covenant states that no one shall be held in slavery or servitude or required to perform forced or compulsory labour. It also provides the right to form and join trade unions (Articles 8 and 22).

3.1.4 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),[20] 1979

It includes an Article directed at eliminating discrimination in employment on the basis of sex, addressing such issues as equal remuneration for work of equal value, and women's rights to the same employment opportunities available to men, to free choice of profession and employment, and to training, equal remuneration, social security, and health and safety. The Convention further specifies the prohibition of dismissal on the grounds of pregnancy. Also of relevance to migrant workers is a provision directing the suppression. Article 11, establishes the obligation of all the State Parties to work for the elimination of discrimination against women in the field of employment and General Recommendation Number 26, considers that countries of destination should ensure that migrant women workers enjoy the same rights as national women workers.

3.1.5 UN Convention on the Rights of the Child, 1989[21]

Article 2 (1) notes that States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the

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18 https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

19 https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

20 https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx

21 https://www.ohchr.org/en/professionalinterest/pages/crc.aspx

child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Article 32: recognizes the right of the child to be protected from economic exploitation and from performing any work.

3.1.6   UN Convention on the Elimination of All Forms of Racial Discrimination, 1990 General

This Convention[22] does not prohibit discrimination on the basis of nationality, that is, according to whether an individual is a citizen or a non-citizen, but does cover instances where migrant workers are victims of discrimination because of their "race, color, descent, or national or ethnic origin." It prohibits a destination country from giving preferential treatment to migrant workers from one particular country over migrant workers from another country. Recommendation Number 30, recommends removing any obstacle preventing "the enjoyment of economic, social and cultural rights by non-citizens", notably in the area of employment among others, and any discrimination "in relation to working conditions and work requirements."

3.1.7   UN Convention for the Protection of the Rights of all Migrant Workers and members of their families, 1990[23]

This is the UN Convention devoted to the protection of migrant workers and the furtherance of their rights. The Convention provides a broad range of protections for migrant workers and their families in many areas of work and life. The Convention is a comprehensive international treaty focusing on the protection of migrant workers' rights. It emphasizes the link between migration and human rights—a policy topic that is drawing increasing attention worldwide. The Convention sets minimum standards for migrant workers and members of their families, with a focus on eliminating the exploitation of workers in the migration process.

The Convention defines groups of migrant workers in specific categories: frontier, seasonal, self-employed, seafarer, and itinerant, and consists of nine parts: scope and definitions; non-discrimination with respect to rights; human rights of all migrants; provisions applicable to particular categories of migrants; the promotion of sound, equitable, humane, and lawful conditions in connection with international migration; application of the convention; general provisions; and final provisions.[24]

The Convention requires States to make it unlawful for private individuals to confiscate, destroy or attempt to destroy migrant workers' identity or other documents authorizing their presence in the country. It gives migrant workers the right to the assistance of the consulates of their own countries. In terms of employment, all migrant workers are entitled to treatment not less favorable than that applying to nationals with regard to pay and conditions of work. All are entitled to join trade unions and engage in union activity, to receive emergency medical care, and to transfer their earnings out of the country upon the termination of their stay. Migrant workers in regular status are further accorded equality of treatment with nationals with regard to protection against dismissal and to unemployment benefits.

The protection of migrant workers is broadly broadened, as regards, inter alia, respect for fundamental freedoms, access to justice for all migrant workers, access to emergency medical care, guarantees in matters of expulsion (suspensive appeal, control of procedures, increased security for migrants in a regular situation), access to education for children of foreigners in an irregular situation, prevention of double taxation, the consequences of migration in terms of political participation, rights conferred on individuals with regard to the procedures for monitoring the application of the Convention.

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22 https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx
23 https://www.ohchr.org/en/professionalinterest/pages/cmw.aspx
24 https://www.ohchr.org/documents/publications/factsheet24rev.1en.pdf

Additional provisions contained in the Convention relate to the orderly return of migrant workers, preventing and eliminating irregular or clandestine movements, and employment of migrant workers in irregular status. These provisions include imposing sanctions against those who operate such movements or employ those in irregular status.

3.1.8 UN Convention against Transnational Organized Crime, 2000 and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air are important instruments in the fight against the trafficking and smuggling of persons.

These are important international instruments in the fight against the trafficking and smuggling of persons.

▶ The Convention against Transnational Organized Crime[25] covers criminal activity committed in or having effect in more than one State. It requires States to adopt legislation to establish certain criminal offenses, contains provisions on such crimes as money laundering and corruption involving public officials, and requires law enforcement cooperation among signatory States. Even though it came into effect relatively recently, this Convention has been widely ratified.

▶ The Trafficking Protocol[26] is directed not only at preventing and combating trafficking in persons, but also at protecting and assisting victims, particularly women and children. Trafficking in persons is defined as "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation" (Article 3(a)).

▶ The Smuggling Protocol is directed against smugglers, that is, those who profit by assisting people to enter illegally into other countries. The individuals transported by smugglers, unlike those trafficked, voluntarily cross borders with the assistance of smugglers because they cannot cross through regular means. However, the Protocol explicitly states that smuggled migrants themselves shall not become liable to criminal prosecution under the Protocol (Article 5).

3.2 ILO's International Labour Standards

The protection of the human rights of migrant workers and the promotion of their right to equal opportunity and treatment is also embedded in the Preamble to the Constitution of the International Labour Organization (ILO) of 1919, and in the Declaration of Philadelphia of 1944. The ILO has over the years given special attention to the rights of migrant workers, and this is reflected in the Organization establishing the following legal instruments, which include Conventions, Protocols and Recommendations:

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25 https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html
26 https://www.ohchr.org/EN/ProfessionalInterest/Pages/TransnationalOrganizedCrime.aspx

3.2.1   ILO Fundamental Conventions, Protocols and Recommendations

In 1998, the ILO turned its focus on those principles and rights that have been expressed and developed in the form of specific rights and obligations in ILS[27] recognized as fundamental both inside and outside the Organization. These fundamental ILS contain human rights at work. The Conventions were categorized Conventions into four key categories of rights in its Declaration on Fundamental Principles and Rights at Work. All member States of the ILO have an obligation arising from the very fact of membership to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, Protocol and Recommendations, regardless of whether or not they have ratified them.

These principles are: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation[28]. The Preamble of the Declaration specifically states that "the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers." The core Conventions containing these four fundamental principles and rights at work apply to all migrant workers, irrespective of their migration status, and are the following:

a. Freedom of association and collective bargaining The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), guarantees the right of workers and employers to establish and join organizations of their own choosing without previous authorization. Right to Organise and Collective Bargaining Convention, 1949 (No. 98), protects workers and employers who exercise the right to organize, forbids interference in the activities of workers' and employers' organizations, and promotes voluntary collective bargaining. Representation by trade unions and the right to a collective voice at work are important means through which migrant workers, just like other workers, can secure other labour and employment rights and improve their working conditions.	**b. Elimination of forced labour** The Forced Labour Convention, 1930 (No. 29), prohibits work exacted under the menace of penalty where the individual has not offered him- or herself voluntarily. It prohibits forced labour for private entities and severely restricts its use by public authorities to imminent necessity, when it requires that wages be paid to workers. Abolition of Forced Labour Convention, 1957 (No. 105), requires States to implement "effective measures to secure the immediate and complete abolition of forced or compulsory labour." The ILO has defined the incidence of forced labour in relation to migrant workers, particularly as a result of cross-border trafficking, as a major area of concern.

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27 International labour standards are a comprehensive set of legal instruments that establish basic principles and rights at work, with a goal to improve working conditions on a global scale. The Conventions and Recommendations of the ILO form the international labor standards. Conventions are legally binding international treaties that may be ratified by member states. Recommendations are non-binding guidelines. In many cases, a convention lays down the basic principles to be implemented by ratifying countries, while a related recommendation supplements the convention by providing more detailed guidelines on how it could be applied. Recommendations can also be autonomous, ie: not linked to a convention. (https://unimelb.libguides.com/internationallaw/labour_law)

28 https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm

c. Abolition of child labour

Minimum Age Convention, 1973 (No. 138), prescribes specific age limits for the admission of children to work, including a prohibition on children under 18 years engaging in hazardous work.

Worst Forms of Child Labour Convention, 1999 (No. 182), calls for "immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency". It defines the worst forms of child labour as - (a) slavery and forced labour, including child trafficking and forced recruitment for armed conflict; (b) child prostitution and pornography; (c) production and trafficking of drugs; and (d) work likely to harm the health, safety or morals of children.

The exact types of work to be prohibited as hazardous work under category (d) are to be determined at the national level, after consultation with employers' and workers' organizations and taking into consideration relevant international standards.

d. The elimination of discrimination in respect of employment and occupation

Discrimination (Employment and Occupation) Convention, 1958 (No. 111), requires ratifying States to declare and pursue a national policy aimed at promoting equality of opportunity and treatment and eliminating all forms of discrimination in employment and occupation based on race, color, sex, religion, political opinion, national extraction and social origin.

Equal Remuneration Convention, 1951 (No. 100), requires States to pursue a policy of equal remuneration for work of equal value carried out by men and women workers.

The two Conventions apply to nationals and non-nationals alike without distinction of status. Although nationality is not listed among the grounds of discrimination expressly prohibited by Convention No. 111, ILO supervisory bodies have repeatedly affirmed that migrant workers are protected by this instrument in so far as they are victims of discrimination in employment and occupation on the basis of any of the expressly prohibited grounds of discrimination set out in the Convention.

3.2.2 ILO's International Legal Framework on Labour Migration

Unless otherwise specified, all ILO Conventions, Protocols and Recommendations apply to all workers irrespective of their nationality, unless otherwise stated. The ILO has adopted a full range of Conventions, Protocols and Recommendations that can support Tus work promoting the protection of migrant workers' rights. The International Legal Framework guiding ILO's Labour Migration and Labour Mobility Work is mainly composed of:

In Africa:

ILO's Convention No. 97 has been ratified by Algeria, Burkina Faso, Cameroon, Kenya, Madagascar, Malawi, Mauritius, Nigeria, Tanzania Zanzibar, Somalia, Zambia.

ILO's Convention No. 143 has been ratified by Benin, Burkina Faso, Cameroon, Guinea, Kenya, Mauritania, Togo, Somalia, Uganda.

▶ ILO fundamental principles and rights at work and Governance ILS;

▶ Migrant workers' International Labour Standards (ILS);

▶ Specific ILS related to migrant workers' social protection;

▶ ILS containing specific provisions on migrant workers; and,

▶ Other technical ILS of general application that are particularly relevant to migrant workers

3.2.3 Migrant Workers' International Labour Standards[29]

▶ **Migration for Employment Convention (revised), 1949 (No. 97)** - provides for equality of treatment and non-discrimination in respect of nationality, race, religion or sex between migrant workers who have been regularly admitted and nationals, arising out of laws or regulations or the practices of the administrative authorities in four areas: living and working conditions, social security, employment taxes and access to justice. The provisions include, among others, equal remuneration, membership of trade unions, and enjoyment of the benefits of collective bargaining.

▶ **Migration for Employment Recommendation (revised), 1949 (No. 86)** - The Recommendation supplements the Migration for Employment Convention (Revised 1949), No.97 by including provisions for migrants who are refugees and displaced persons. The Recommendation contains guidance on, among other matters, the organization of the free service provided to assist migrants and the types of assistance that it should provide, as well as the information that States should make available to the ILO. It provides for the regulation of intermediaries undertaking the recruitment, introduction or placing of migrants for employment.

▶ **Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)** - aims to eliminate illegal migration and illegal employment and sets requirements for the respect of rights of migrants with an irregular status, while providing for measures to end clandestine trafficking and to penalize employers of irregular migrants. The Convention is aimed at protecting migrant workers from working in abusive conditions. It seeks to promote equality of opportunity and treatment of migrant workers.

▶ **Migrant Workers Recommendation, 1975 (No. 151)** - The Recommendation addresses the equality of treatment of irregular migrant workers and the equality of opportunity and treatment of regular migrant workers in further detail. With regards to the equal treatment of undocumented migrants, the Recommendation, just as the 1974 Convention, by article 8.1 limits its scope to past employment, but adds trade union membership and the exercise of trade union rights to the fields in which the migrant worker should be treated equally to nationals.

Conventions Nos 97 and 143 **recognize a very important set of labour rights for migrant workers,** laying the foundations for promoting a rights-based approach to achieving fair labour migration. Recognizing that migrant workers are workers endowed with labour rights can also help to promote tolerance and reduce discrimination and xenophobia in and outside the workplace, and enhance economic productivity and social cohesion. The following can be highlighted:

▶ National Labour Migration Policy: ILO Convention No. 143 and Recommendation No. 151 require countries of destination of migrant workers to formulate and implement a national policy designed to promote and guarantee equality of opportunity and treatment "by methods adapted to national circumstances and practices."

▶ Bilateral labour agreements: Convention No. 97 promotes the conclusion of bilateral labour agreements between States where there is a considerable flow of migrant workers.

▶ Recognition of fundamental rights at work of all migrant workers: Convention No. 143 recognizes the need to ensure full respect of human rights of all migrant workers, including those in an irregular situation (Article 1).

▶ Equal treatment between migrant workers in a regular situation and national workers: Convention No. 97 (Article 6) requires that States shall apply without discrimination on the basis of nationality, race, religion or sex, no less favorable treatment to migrants lawfully within the territory of countries of destination than that applied to nationals.

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29 For more detailed contents and provisions of all International Labour Standards (ILS), visit the NORMLEX (Information System on International Labour Standards) website: https://www.ilo.org/dyn/normlex/en/f?p=1000:1:::::: . **NORMLEX** is a new information system which brings together information on International Labour Standards (such as ratification information, reporting requirements, comments of the ILO's supervisory bodies, etc.) as well as national labour and social security laws.

▶ Equality of opportunity and treatment between migrant workers in a regular situation and national workers: Convention No. 143 (Article 10) takes this principle further and calls on member States to pursue a national policy designed to promote and guarantee, by methods appropriate to national conditions and practice, for persons who, as migrant workers or as members of their families, are lawfully within its territory, equality of opportunity and treatment, in respect of: employment and occupation; social security; trade union and cultural rights; and, individual and collective freedoms.

▶ Recognition of skills: Convention No. 143 (Article. 14(b)) provides for the recognition of occupational qualifications as a prerequisite to migrant workers being capable of competing on equal terms with national workers in the labour market, and calls for making regulations concerning the recognition of occupational qualifications acquired abroad, including certificates and diplomas.

▶ Fair recruitment: ILO migrant workers Conventions contain provisions dealing with regulation of recruitment, the provision of services to facilitate recruitment, arrival and employment, and unregulated recruitment. They mention the importance to take measures by both countries of origin and employment to prevent abusive and fraudulent practices (including trafficking in persons and forced labour) in the recruitment for employment and placement abroad.

▶ Model Employment Contracts: Article 5 of Annex I and Article 6 of Annex II of Convention No. 97 mention the need to issue to migrant workers (prior to departure from the country of origin) an employment contract setting out the conditions of work and remuneration, and information on living and working conditions in the country of destination. As far as possible, the information provided to migrant workers on the terms and conditions of employment should be in their own language or in a language with which they are familiar. Contracts of employment should regulate such essential matters as hours of work, weekly rest periods and annual leave.

▶ Address Irregular migration: Convention No. 143 is the first attempt of the international community to address the problems arising out of irregular migration and illegal employment of migrants, while laying down the general obligation to respect basic human rights of all migrant workers. In fact, it aims to prevent all forms of irregular migration in abusive conditions, including the unlawful or unauthorized employment of migrant workers.

▶ Equal treatment between migrant workers in an irregular situation and those in a regular situation (or nationals) with regard to rights arising out of past employment: Convention No. 143 (Article 9) establishes that equal treatment must be guaranteed to migrant workers in an irregular situation with regard to rights arising out of past employment concerning: remuneration due; social security and other benefits accrued as entitlements; and access to justice in defending these rights before a competent body;

▶ **No costs of expulsion:** Convention No. 143 (Article 9(c) requires that migrant workers and their families whose situation cannot be regularized shall not pay the cost of their expulsion.

In 2014, ILO constituents decided to give new impetus to the global fight against forced labour, including trafficking in persons and slavery-like practices and adopted the **Protocol to the Forced labour Convention, 1930**. The Protocol calls on Members to take measures that prevent forced or compulsory labour, which should include protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process.

3.2.4 International Labour Standards containing specific provisions on migrant workers

▶ **Private Employment Agencies Convention, 1997 (No. 181)** - One purpose of this Convention is to allow the operation of private employment agencies as well as the protection of the workers using their services, within the framework of its provisions. Convention No.181 states that a Member shall, after consulting the most representative organizations of employers and workers, adopt all necessary

and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment. A main principle of the Convention particularly relevant to migrant workers, is that private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. These principle has been further developed in the ILO General Principles and Operational Guidelines on Fair Recruitment, and the definition of recruitment fees and related cost (2018), adopted by the tripartite meeting of experts.

▶ **HIV and AIDS Recommendation, 2010 (No. 200)** - Recommendation No. 200, recognizes that migrant workers often encounter high levels of stigma and discrimination that, especially when coupled with risk factors in the migration process itself, may make migrants particularly vulnerable to HIV. For this reason, Recommendation No. 200 provides explicitly that there should be no stigma or discrimination against workers due to the fact that, they belong to regions of the world or segments of the population deemed to be at greater risk or more vulnerable to HIV infection. The Recommendation stipulates that migrant workers, or those seeking to migrate for employment, should not be excluded from migration by the countries of origin, of transit or of destination on the basis of their real or perceived HIV status.

▶ **Domestic Workers Convention, 2011 (No. 189)** - Convention No. 189 establishes norms on a wide range of labour, occupational safety, and health and social security protections. The instrument addresses enforcement mechanisms—including labour inspection and effective and accessible complaints-based mechanisms. Of particular importance, the Convention and Recommendation both emphasize domestic workers' right to exercise collective autonomy. Although the Convention is not framed as a migrant workers' instrument, it addresses the issue of labour migration and does so in a number of different ways. These range from holding Members responsible for taking measures to ensure that domestic workers are entitled to keep their travel and identity documents in their possession to establishing standards to prevent abuse by employment or placement agencies. The Convention also addresses issues arise in conditions of forced labor or human trafficking.

▶ **Domestic Workers Recommendation, 2011 (No. 201)** - Recommendation No. 201 notes that Members should consider additional measures to ensure the effective protection of domestic workers and, in particular, migrant domestic workers, and assist in the effective protection of the rights of these workers, by informing them of their rights before departure, establishing legal assistance funds, social services and specialized consular services and through any other appropriate measures. The Recommendation also calls for Members, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, consider specifying by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation at no cost to themselves on the expiry or termination of the employment contract for which they were recruited.

▶ **Social Protection Floors Recommendation, 2012 (No. 202)** - This Recommendation provides guidance to Members to: (a) establish and maintain, as applicable, social protection floors as a fundamental element of their national social security systems; and (b) implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards.

▶ **Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203)** - Recommendation No. 203 provides non-binding practical guidance in the areas of prevention, protection of victims and ensuring their access to justice and remedies, enforcement and international cooperation. In terms of preventive measures Recommendation No. 23 calls on Members to take the most effective preventive measures, such as: (a) orientation and information for migrants, before departure and upon arrival, in order for them to be better prepared to work and live abroad and to create awareness and better understanding about trafficking for forced labour situations; and (b) coherent policies, such as

employment and labour migration policies, which take into account the risks faced by specific groups of migrants, including those in an irregular situation, and address circumstances that could result in forced labour situations.

It also calls on Members to take the most effective protective measures for migrants subjected to forced or compulsory labour, irrespective of their legal status in the national territory, including: (a) provision of a reflection and recovery period in order to allow the person concerned to take an informed decision relating to protective measures and participation in legal proceedings, during which the person shall be authorized to remain in the territory of the member State concerned when there are reasonable grounds to believe that the person is a victim of forced or compulsory labour; (b) provision of temporary or permanent residence permits and access to the labour market; and, (c) facilitation of safe and preferably voluntary repatriation.

▶ **Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)** - The ILO's Recommendation No. 204 encompasses twelve (12) guiding principles aimed at supporting the formalization of the informal economy, promoting the economic inclusion of workers, recognizing the fundamental rights of workers, and fostering an entrepreneurial spirit as well as contributing to Decent Work, social dialogue and civic participation. It notes the need to pay special attention to those who are especially vulnerable to the most serious decent work deficits in the informal economy, including but not limited to women, young people, migrants, older people, indigenous and tribal peoples, persons living with HIV or affected by HIV or AIDS, persons with disabilities, domestic workers and subsistence farmers. Recommendation No. 204 calls for labour migration policies that take into account labour market needs and promote decent work and the rights of migrant workers.

▶ **Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)** - The Convention provides a unique normative framework focusing on world of work related measures to prevent and respond to the devastating effects of crises on economies and societies. Recommendation No. 205 takes into account that special attention should be given to migrants, especially migrant workers, who have been made particularly vulnerable by crisis. Members should take measures, in accordance with national law and applicable international law, to: (a) eliminate forced or compulsory labour, including trafficking in persons; (b) promote, as appropriate, the inclusion of migrants in host societies, through access to labour markets, including entrepreneurship and income-generation opportunities, and through decent work; (c) protect and seek to ensure labour rights and a safe environment for migrant workers, including those in precarious employment, women migrant workers, youth migrant workers and migrant workers with disabilities, in all sectors; (d) give due consideration to migrant workers and their families in shaping labour policies and programmes dealing with responses to conflicts and disasters, as appropriate; and (e) facilitate the voluntary return of migrants and their families in conditions of safety and dignity.

▶ **Violence and Harassment Convention, 2019 (No. 190)** - Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as "a range of unacceptable behaviors and practices" that "aim at, result in, or are likely to result in physical, psychological, sexual or economic harm." This covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things. Along with its supplementing Recommendation (No. 206), it sets out a common framework for action to prevent and address violence and harassment in the world of work. The Convention requires that each Member, in consultation with representative employers' and workers' organizations, shall seek to ensure that violence and harassment in the world of work is addressed in relevant national policies, such as those concerning occupational safety and health, equality and non-discrimination, and migration.

▶ **Violence and Harassment Recommendation, 2019 (No. 206)** - Recommendation No.206 recognizes the right of everyone to a world of work free from violence and harassment including gender-based violence and harassment. It calls on Members to take legislative or other measures to protect migrant workers, particularly women migrant workers, regardless of migrant status, in origin, transit and destination countries as appropriate, from violence and harassment in the world of work.

3.2.5 Specific International Labour Standards related to Migrant Workers' Social Protection

▶ **Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)** - Convention No. 19 calls on States to include migrant workers under their national employment injury compensation fund under the same conditions. It notes that equality of treatment shall be guaranteed to foreign workers and their dependents without any condition as to residence. With regard to the payments which a Member or its nationals would have to make outside that Member's territory in the application of this principle, the measures to be adopted shall be regulated, if necessary, by special arrangements between the Members concerned. It applies between ratifying countries, even in the absence of a bilateral agreement. However, no obligation for payment of benefits abroad.

▶ **Social Security (Minimum Standards) Convention, 1952 (No. 102)** - A reference for the development of social security systems, Convention No. 102 is the flagship of the up-to-date social security Conventions since it is deemed to embody the internationally accepted definition of the very principle of social security. Convention No. 102 is unique for both its conceptual formulation of social security, and the guidance it provides for establishing social security systems. It sets out, into a single, comprehensive and legally binding instrument, the minimum standards for each of the nine branches of social security (medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit, survivors' benefit) and places them under the principles for good and sustainable governance.

▶ **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** - Convention No. 118 addresses the issue of the social security of migrant workers in a global manner. It covers the nine branches of social security and provides that, for each branch accepted under the Convention, a ratifying State undertake to grant equality of treatment to nationals of other ratifying States (and their dependents) with its own nationals (including refugees and stateless persons, if specifically accepted) within its territory. Convention No. 118 further lays down the principle of the provision of benefits abroad and the need to endeavor to participate in schemes for the maintenance of acquired rights and rights in the course of acquisition under the legislation of the nationals of the States for which the Convention is also in force.

▶ **Employment Injury Benefits Convention, 1964 (No. 121)** - The contingency covered by Convention No. 121 includes: a morbid condition, incapacity for work, invalidity or a loss of faculty due to an industrial accident or a prescribed occupational disease, and the loss of support as a result of the death of the breadwinner following employment injury. It belongs to ratifying States to define the notion of "industrial accident", including the conditions under which this notion applies to commuting accidents. The Convention further lays down three types of benefits: medical care, cash benefits in the event of incapacity for work and loss of earning capacity (invalidity), and cash benefits in the event of the death of the breadwinner.

▶ **Maintenance of Social Security Rights Convention, 1982 (No. 157)** - The objective of Convention No. 157 is to promote a flexible and broad form of coordination between national security schemes and in particular through the conclusion of bilateral or multilateral social security agreements. Convention No. 157 also establishes a system based on the principle of the maintenance of acquired rights and the rights in the course of acquisition. Article 14 states that, Each Member shall promote the development of social services to assist persons covered by this Convention, particularly migrant workers, in their dealings with the authorities, institutions and jurisdictions, particularly with respect to the award and receipt of benefits to which they are entitled and the exercise of their right of appeal, as well as in order to promote their personal and family welfare.

▶ **Maintenance of Social Security Rights Recommendation, 1982 (No. 167)** - Recommendation No. 167 proposes model provisions for the conclusion of bilateral or multilateral social security agreements regarding all contingencies and provides rules on maintaining social security rights and exporting benefits. It also proposes a model agreement for the coordination of bilateral or multilateral social security instruments.

Other ILS of particular relevance to coherence with employment policies and migrant workers' living and working conditions are:

▶ Labour Clauses (Public Contracts) Convention, 1949 (No. 94);

▶ Protection of Wages Convention, 1949 (No. 95);

▶ Plantations Convention, 1958 (No. 110);

▶ Minimum Wage Fixing Convention, 1970 (No. 131);

▶ Nursing Personnel Convention, 1977 (No. 149);

▶ Occupational Safety and Health Convention, 1981 (No. 155);

▶ Occupational Health Services Convention, 1985 (No. 161);

▶ Safety and Health in Construction Convention, 1988 (No. 167);

▶ Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172);

▶ Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173)

▶ Safety and Health in Mines Convention, 1995 (No. 176);

▶ Safety and Health in Agriculture Convention, 2001 (No. 184); and,

▶ Maternity Protection Convention, 2000 (No. 183).

3.2.6 Other instruments

The other international instruments that speak to labour migration, and the central elements in the international regime of refugee protection are:

▶ 1951 Refugee Convention - The Convention is a United Nations multilateral treaty that defines who a refugee is, and sets out the rights of individuals who are granted asylum and the responsibilities of nations that grant asylum. The 1951 Refugee Convention defines the term "refugee", enumerates the rights of refugees, and establishes the legal obligation of States to protect refugees. The Convention prohibits the expulsion or forcible return of persons accorded refugee status: no refugee should be returned in any manner to a country or territory in which his or her life or freedom would be threatened (non-refoulement).

▶ The 1967 Protocol extended the application of the 1951 Convention to persons who became refugees after 1 January 1951, without any geographic limitation. The Convention also gives states party to the Convention the option of interpreting this as "events occurring in Europe" or "events occurring in Europe or elsewhere", the 1967 Protocol removed both the temporal and geographic restrictions.

3.3 Trade Unions, making use of International Legal Frameworks

Trade unions play an essential role in the governance of labour migration and in the ILO ILS System, thus:

▶ they participate in drafting the texts, and their votes determine whether or not the International Labour Conference (ILC) adopts the standard;

▶ if a convention or a Protocol is adopted, trade unions can advocate the ILO member State to ratify it;

▶ if the convention or protocol is ratified, governments are required to periodically report on how they are applying it in law and practice. Trade unions can submit comments or initiate complaints regarding non-observance of ratified Conventions and Protocols, or regarding the violation of the principle of Freedom of Association regardless of ratification of the FoA related Conventions. Trade unions play

a key role to strengthen the ILO ILS System by providing their comments about the application of a particular ILS in law and practice;

▶ they have the responsibility to track and monitor the implementation of international instruments both in law and practice. Monitoring and enforcement of labour standards should be viewed as an opportunity to increase growth prospects.

▶ they are responsible to ensure that international provisions are incorporated into collective bargaining agreements; and,

▶ as pertains to non-ratified Conventions, the Governing Body decides each year on a subject (Convention and Recommendation, as appropriate) for detailed reporting by member States, even if they are not party to the Convention in question.[30] Here again, trade union organizations can play a critical role by sending their own comments and thereby enabling the Committee of Experts to prepare the most objective possible general survey which will also be discussed during the annual meeting of the Conference Committee on the Application of Standards.

A range of possibilities exist for trade unions to ensure that the provisions of ILO Conventions, Protocols and Recommendations are reflected not only in their national laws, but also in practice.

Reports on ratified Conventions and Protocols

Trade unions have a right to submit comments on the implementation of ratified Conventions and Protocols in law and practice, to the International Labour Office so that it can gauge the situation exactly. In the absence of these comments, only those submitted by the governments will serve to determine the situation in a given country. These comments are examined by a, independent Committee of Experts on the Application of Conventions and Recommendations from a legal standpoint. Not a single year goes by without the CEACR deploring the paucity of comments received from trade union organizations in its general remarks. Yet it is a crucial stage in the hierarchy of means made available to trade union organizations as it very often serves to prevent more extensive violations. Trade unions can also participate in the ILO ILS System by providing the answers to several questionnaires linked to General Surveys, Standard Setting Reports (white and brown), anticipated reporting obligations deriving from conclusions of the ILC Committee on the Application of Standards (CAS), among others.

[How to report: (a) Use report forms prepared for each Convention (available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:14002:0::NO:::); and (b) Check CEACR comments - visit www.ilo.org/normlex, and click "Country profile".

Reports on non-ratified Conventions

As pertains to non-ratified Conventions, the Governing Body decides each year on a subject (Convention and Recommendation, as appropriate) for detailed reporting by member States, even if they are not party to the Convention in question. Here again, trade union organizations can play a critical role by sending their own comments and thereby enabling the Committee of Experts to prepare the most objective possible general survey which will also be discussed during the annual meeting of the Conference Committee on the Application of Standards.

[How to report • Use a report form prepared specifically for each report, i.e. changes every year (available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:14002:0::NO:::)]

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30 On the basis of article 19 of the Constitution, the Committee of Experts publishes an in-depth annual General Survey on the national law and practice of member States on certain Conventions and/or Recommendations chosen by the Governing Body. These surveys are established mainly on the basis of reports received from member States and information transmitted by employers' and workers' organizations. They allow the Committee of Experts to examine the impact of Conventions and Recommendations, analyze the difficulties reported by governments in their application and identify means of overcoming these obstacles. (https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/general-surveys/lang--en/index.htm)

Representations

In the event of more serious infringements, trade union organizations may resort to the representations envisaged in Article 24 of the Constitution. Representation is a special procedure on ratified Conventions and Protocols and is subject to strict criteria of receivability. When the receivability criteria are met, the representation is transmitted to a tripartite ad Hoc committee appointed by the Governing Body for examination.

https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/representations/lang--en/index.htm

Complaints procedure (At. 26)
This has been used with regard to the situation of MW in Qatar for example. see Rules of the Game
https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_672549/lang--en/index.htm

Committee on Freedom of Association:
Insert from rules of the game
https://www.ilo.org/global/standards/information-resources-and-publications/publications/WCMS_672549/lang--en/index.htm

Follow-up to the Declaration

The Declaration and its Follow-up provides three ways to help countries, employers and workers achieve the full realization of the Declaration's objective: Annual Review Reports composed of reports from countries that have not yet ratified one or more of the ILO Conventions that directly relate to the specific principles and rights stated in the Declaration. This reporting process provides Governments with an opportunity to state what measures they have taken towards achieving respect for the Declaration. It also gives organizations of employers and workers a chance to voice their views on progress made and actions taken.

https://www.ilo.org/declaration/follow-up/lang--en/index.htm

Learning Exercises for Module 3
Monitoring compliance to Instruments on labour migrant

Activity: Monitoring compliance to Instruments on labour migrant

Aims: To establish monitoring mechanisms of trade unions of international labour instruments

Task:

1. Which international instruments on labour migration has your country ratified?

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_____

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2. How can ILO ILS be best domesticated in your country?

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3. What is the role of worker organizations in this identified mechanism?

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4. Share your thoughts on the relevant ILS in informing action towards the protection of migrant workers and their rights in your country.

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Module 4.

Regional policy, legal frameworks and programmes on labour migration governance in Africa

Overview

This Module:

▶ Details the various regional policy frameworks, legal instruments, and programmes that govern labour migration in Africa.

▶ Highlights the work undertaken by Regional Economic Communities (RECs) in Africa on responding to international labour migrations.

Learning Outcomes

By the end of this module, you will be able to:

▶ Understand AU frameworks on labour migration governance;

▶ Elaborate the subjects covered by AU instruments on labour migration and their content;

▶ Articulate the responses made by RECs to labour migration; and,

▶ Explain the role of the JLMP in labour migration in Africa.

Content

The module addresses the following themes:

4.1 Regional policy frameworks on labour migration governance: The Regional frameworks on labour migration governance are highlighted in this section.

4.2 Regional Instruments on labour migration: The African Union has developed legal instruments on the governance of labour migration on the continent and these are provided for in this section.

4.3 Regional Economic Communities (RECs) Response to Labour Migration: Regional Economic Communities (RECs) in Africa do significant work on labour migration governance. Section 4.3 provides a summary of some of the work undertaken by RECs.

4.4 Regional Labour Migration Programmes: The Joint Programme on Labour Migration Governance (JLMP) for Development and Integration in Africa, which is a significant response to Africa's implementation of the Global Compact on safe, orderly and regular migration, is detailed in this section.

Principal questions which this module addresses

▶ What are the Regional frameworks to govern labour migration in Africa?

▶ What are the Regional instruments on labour migration in Africa?

▶ What has been Regional Economic Community (REC) response to labour migration?

▶ What is the Joint Programme on Labour Migration Governance (JLMP) for Development and Integration in Africa and what is its role in labour migration on the continent?

4.0 Introduction

Economic integration is a key pathway to development and demands labour migration and other forms of economic engagement that necessitate the movement of persons and the African Union (AU) believes that if managed in a coherent manner and if the key factors causing labour migration on the continent are addressed, nations and regions can reap the benefits of the linkages between labour migration and development as the continent strives towards the ideals of Agenda 2063.

4.1 Regional Policy Frameworks on labour migration governance

4.1.1 African Union Assembly Declaration on Migration, 2015

In 2015, the Heads of State and Government of the African Union, met at the 25th Ordinary Session of the AU Assembly,[31] under theme "Year of Women Empowerment and Development towards Africa's Agenda 2063." Following discussions on the strategic issue of Migration, reaffirmed their commitments aimed at accelerating mobility and integration on the continent, migration in development while addressing regular and irregular migration. In order to achieve the above the Assembly committed to undertake the following actions:

▶ Speed up the implementation of continent-wide visa free regimes including issuance of visas at ports of entry for Africans and based on the principle of reciprocity where those countries that offer free movement should receive same;

▶ Offer all Africans the same opportunities accorded to the citizens of countries within our respective Regional Economic Communities (RECs) by 2018;

▶ Expedite the operationalization of the African Passport that would, as a start facilitate free movement of persons that will be issued by Member States;

▶ Establish a harmonized mechanism to ensure that higher education in Africa is compatible, comparable, with acceptability and enable recognition of credentials that will facilitate transferability of knowledge, skills and expertise;

▶ Establish a mechanism on practical modalities for the empowerment of African women and youth in education and, encourage their sustained growth in knowledge acquisition; and to include exchange programmes and self-employment in the education curriculum;

▶ Strengthen efforts to combat human trafficking and smuggling of migrants through the implementation of the provisions of the UN Convention on Transnational Organized Crime and its supplementing Protocols against Trafficking in Persons and Smuggling of Migrants by improving legislation, provision of victim support enhanced international cooperation and training; and,

▶ Assist in the stabilization of the elected government of Libya.

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31 http://www.saflii.org/au/AUDECLARATIONS/2015/3.pdf

4.1.2 Revised Migration Policy Framework for Africa (MPFA) and Plan of Action (2018–2030)

The AU revised MPFA (2018–2030)[32] and Plan of Action was adopted in 2018. The MPFA reflects the current migration dynamics in Africa, and Labour migration is a current and historical reality in Africa impacting directly on the economies and societies of African States in important ways. It takes into account AU priorities, policies, Agenda 2063, the Sustainable Development Goals (SDGs) and international migration management policies and standards. It provides Member States and RECs with comprehensive policy guidelines and principles to assist them in the formulation and implementation of their own national and regional migration policies in accordance with their priorities and resources.

In addition to eleven cross-cutting issues, the revised MPFA identifies the following eight key pillars: (i) Migration Governance; (ii) Labour Migration and Education; (iii) Diaspora Engagement; (iv) Border Governance; (v) Irregular Migration; (vi) Forced Displacement; (vii) Internal Migration; and, (viii) Migration and Trade.

Better migration governance as the overarching objective of the MPFA aims at facilitating safe, orderly and dignified migration. It advocates for the socio-economic well-being of migrants and society through compliance with international standards and laws. The security of migrants' rights and addressing the migration aspects of crises are key elements. Better migration governance can furthermore be achieved through the development of evidence-based policies through a "whole of government" approach. In terms of labour migration and education the MPFA calls for the establishment of regular, transparent, comprehensive and gender-responsive labour migration policies, legislation and structures at national and regional levels.

It provides comprehensive and integrated policy guidelines to AU Member States and RECs to take into consideration in their endeavors to promote migration and development and address migration challenges on the continent. The revised MPFA takes into account AU priorities, policies, Agenda 2063, the Sustainable Development Goals (SDGs) and international migration management policies and standards. It provides Member States and RECs with comprehensive policy guidelines and principles to assist them in the formulation and implementation of their own national and regional migration policies in accordance with their priorities and resources. In addition to eleven cross-cutting issues, the revised MPFA identifies the following eight key pillars: (i) Migration Governance; (ii) Labour Migration and Education; (iii) Diaspora Engagement; (iv) Border Governance; (v) Irregular Migration; (vi) Forced Displacement; (vii) Internal Migration; and, (viii) Migration and Trade.

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In terms of labour migration and education the MPFA calls for the establishment of regular, transparent, comprehensive and gender-responsive labour migration policies, legislation and structures at national and regional levels. The MPFA recommends the creation of accountable labour recruitment and admission systems, and the promotion of standardized bilateral labour agreements to ensure the protection of migrant workers and facilitation of remittance transfers. The framework advocates for the integration of migrants into the labour market and the education and training sector, as well as the provision of social protection and social security benefits for labour migrants while working abroad, as well as upon their return. The Revised MPFA recommends the harmonization and strengthened implementation of AU and REC free movement provisions related to residence

In addition to the above key thematic areas, the MPFA also addresses the following eleven cross-cutting

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issues: Migration and Development; Migration Data and Research; Human Rights of Migrants; Principles of Non-Discrimination; Migration, Poverty and Conflict; Migration and Health; Migration and Environment; Migration and Gender; Migration, Children, Adolescents and Youths; Migration and Older Persons; and Inter-State and Inter-Regional Cooperation. Annexed to the MPFA is a Plan of Action (2018 – 2030) which documents activities that will be undertaken by the AU Commission during the plan period in an effort to facilitate the coherent management of migration on the Continent within the framework of the MPFA. It does this by focusing on specific topics or aspects of the themes that are identified in the MPFA, and takes into consideration work that is already underway on the Continent and seeks to forge synergies with institutions that are working on the identified activities.

4.1.3 African Union Commission's Ouagadougou + 10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa - Link to AU Five-year Priority Programme (5YPP): Key Priority Area (KPA)[33]

Labour Migration and Regional Economic Integration AUC's Ouagadougou + 10 Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development, which was adopted by AU Assembly of Heads of States, in January 2015, places labour migration and regional economic integration as one, and social protection as another of its six key priority policy areas. In order to facilitate its implementation, a 5YPP on Employment, Poverty Eradication and Inclusive Development, (2018–2022), accompanies the Ouaga +10 Declaration with the following expected outcomes on labour migration:

▶ **Outcome 1:** Increased ratification, domestication and implementation of key international labour standards on labour migration;

▶ **Outcome 2:** Improved use of databases on labour migrants' skills, economic activities, education, working conditions and social protection;

▶ **Outcome 3:** Inter-regional and intra-regional skills and labour matching operational;

▶ **Outcome 4:** Social security extended to migrant workers and their families through access and portability regimes compatible with international standards and good practice;

▶ **Outcome 5:** Labour migration governance, policy and administrative responsibilities effectively carried out by capable labour market institutions in RECs and Member States; and,

▶ **Outcome 6:** Tripartite policy consultation and coordination on labour migration operational at continental and regional levels

4.1.4 African Union Commission's (AUC) Agenda 2063

In January 2015, the AU Assembly of Heads of State and Government adopted Agenda 2063: *The Africa We Want.*[34] Agenda 2063 was developed as a strategic framework for Africa's inclusive growth and sustainable development. It was set to optimize the use of the continent's resources for the benefit of all Africans, together with the First Ten-Year Implementation Plan (2014-2023) of Agenda 2063, in which flagship projects, priority areas and policy measures to support the implementation of the Regional development framework were outlined.

Africa's Agenda 2063 is integrated with the Global 2030 Agenda for Sustainable Development and shares common priorities for Africa's transformation. One of the Flagship Projects of Agenda 2063 is the ***African***

33 https://au.int/sites/default/files/pages/32899-file-assembly_au_20_xxiv_e.pdf
34 https://au.int/sites/default/files/documents/36204-doc-agenda2063_popular_version_en.pdf

Passport and Free Movement of People, this would see the removal of restrictions on Africans ability to travel, work and live within their own continent. International migration, and particularly labour migration, is included in Africa's Agenda 2063 in Aspirations 1 and 2 and several Continental and Regional Economic Communities (RECs) strategies as follows:

▶ *Aspiration 1. A prosperous Africa based on inclusive growth and sustainable development,* **Goal 1:** A High Standard of Living, Quality of Life and Well-being for All Indicative National Strategies

　　▶ 5. Implement AU frameworks on labour migration governance for development and integration and public-private partnership for jobs creation and inclusive development;

　　▶ 6. Develop/implement policies that will enhance free movement of people and workers; and,

　　▶ 7. Initiate policies that would lead to better and more responsible labour migration flows

▶ *Aspiration 2. An integrated continent, politically united and based on the ideals of Pan Africanism and vision of Africa's Renaissance,* **Goal 8:** United Africa (Federal or Confederate) Indicative National Strategies.

▶ 1. Domesticate all protocols leading to free movement of persons within RECs;

▶ 2. Domesticate all the ILO Conventions on labour migration as appropriate to each Member State;

▶ 3. Review all labour bilateral agreements with other Member States and non-member States; and,

▶ 13. Develop capacity to manage the flow of cross-border migration with attention to the concerns of women, youth and vulnerable groups.

▶ *Regional/RECs Strategies*

▶ 1. Develop/Implement advocacy strategies/ programmes for ratification by Member States; and,

▶ 4. Develop/implement regional frameworks that enhance access at points of entry to women involved in cross-border trade.

The AU Declaration on the Protection and Promotion of the Rights of Migrant Workers, 2021 (Draft), focuses on:

▶ Universal Human Rights;

▶ Rights of Migrant Workers;

▶ Acceleration of the facilitation of the movement of migrant workers in Africa;

▶ Joint responsibilities of both countries of origin and destination at all stages of migration;

▶ International Cooperation within the African Union;

▶ International Cooperation with Regions Outside Africa; and,

▶ Bilateral Cooperation and Sub-Regional Cooperation.

4.2   Regional Instruments on labour migration

Noting that labour migration is one of the key pathway to development, the African union has also established a number of legal instruments that speak to labour migration, and these are:

4.2.1   Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1969

The Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, also called the OAU Refugee Convention, or the 1969 Refugee Convention, is regional legal instrument governing refugee protection in Africa. The Convention has made some significant advances from the 1951 Refugee Convention, and states that:

▶ Discrimination against refugees is prohibited on the additional grounds of membership of a particular social group, nationality, or political opinion. These grounds were absent in the 1951 Refugee Convention.

▶ Any refugee who has "committed a serious non-political crime outside his country of refuge after his admission to that country as a refugee" or who "acts contrary to the purposes and principles of the OAU" will be excluded from the definition. It also contains a prohibition for refugees and asylum seekers to engage in any subversive activities against any member states.

▶ It contains suggestions for burden- and responsibility sharing, solidarity and cooperation between the member states, such as regional resettlement and financial support.

▶ It de-politicized the concept of asylum, a peaceful and humanitarian act, and declared that it shall no longer be perceived by member states as an unfriendly act and it urges the member states to grant asylum to those individuals who fall within the refugee definition. Whereas it advances here from the 1951 Refugee Convention it does still not grant an individual the right to asylum (it remains the state's discretion to grant this right).

▶ It introduced the "absolute" prohibition of refoulement, whereas the 1951 Refugee Convention allowed return or expulsion of refugees if the national security of the state would be at risk. However, if asylum seekers commit certain serious crimes, they will be excluded from the refugee definition and could still be returned or expelled. Refoulement is thus only limited but not absolutely prohibited.

▶ The principle of voluntary repatriation was first codified. However, the situation in the country of origin to which the refugee would return, was not defined and thus a fundamental change in circumstances and human rights standards in that country is not needed.

4.2.2 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009

The Kampala Convention is a treaty of the African Union (AU) that addresses internal displacement caused by armed conflict, natural disasters and large-scale development projects in Africa. The objectives of this Convention are to:

▶ Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;

▶ Establish a legal framework for preventing internal displacement, and protecting and assisting internally displaced persons in Africa;

▶ Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences;

▶ Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons; and,

▶ Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons.

4.2.3 Protocol to the Treaty Establishing the African Economic Community Relating to Free Movement of Persons, Right of Residence and Right of Establishment, 2018

The Protocol was adopted in 2018, and contains the following labour migration mobility-related provisions, under:

Article 5. Progressive Realization

1. The free movement of persons, right of residence and right of establishment shall be achieved progressively through the following phases:

   a. phase one, during which States Parties shall implement the right of entry and abolition of visa requirements;

   b. phase two, during which States Parties shall implement the right of residence; and,

   c. phase three, during which States Parties shall implement the right of establishment.

Article 14. Free Movement of Workers

1. Nationals of a Member State shall have the right to seek and accept employment without discrimination in any other Member State in accordance with the laws and policies of the host Member State.

2. A national of a Member State accepting and taking up employment in another Member State may be accompanied by a spouse and dependents.

Article 15. Permits and Passes

1. A host States Party shall issue residence permits, work permits, or other appropriate permits or passes to nationals of other Member States seeking and taking up residence or work in the host Member State.

2. Permits and passes shall be issued in accordance with the immigration procedures applicable to persons seeking or taking up residence or work in the host Member State.

3. The procedures referred to in paragraph 2 shall include the right of a national of another Member State to appeal against a decision denying them a permit or pass.

Article 18. Mutual Recognition of Qualifications

1. States Parties shall individually or through bilateral, multilateral or regional arrangements, mutually recognize academic, professional and technical qualifications of their nationals to promote the movement of persons among the Member States.

2. States Parties shall establish a continental qualifications framework to encourage and promote the free movement of persons.

Article 19. Portability of Social Security Benefits

1. States Parties shall, through bilateral, regional or continental arrangements, facilitate the portability of social security benefits to nationals of another Member State residing or established in that Member State.

Article 23. Remittances

1. States Parties shall through, bilateral, regional, continental or international agreements facilitate the transfer of earnings and savings of nationals of other Member States working, residing or established in their territory.

Article 24. Procedure for the Movement of Specific Groups

1. States Parties may in addition to the measures provided for by international, regional and continental instruments, establish specific procedures for the movement of specific vulnerable groups including refugees, victims of human trafficking and smuggled migrants, asylum seekers and pastoralists.

2. Procedures established by a Member State under this article shall be consistent with the obligations of that Member State under the international, regional and continental instruments relating to the protection of each group of persons referred to in paragraph 1.

Article 25. Cooperation between Member States

1. States Parties shall in accordance with the African Union Convention on Cross-Border Cooperation coordinate their border management systems in order to facilitate the free and orderly movement of persons.

2. States Parties shall record, document, and upon request, make available all forms of aggregated migration data at the ports or points of entry or exit from their territory.

3. States Parties shall through bilateral or regional arrangements cooperate with each other by exchanging information related to the free movement of persons and the implementation of this Protocol.

Article 26. Coordination and Harmonization

1. In accordance with article 88 of the Abuja Treaty and guided, as appropriate, by the Implementation Roadmap annexed to this Protocol, States Parties shall harmonize and coordinate the laws, policies, systems and activities of the regional economic communities of which they are members which relate to free movement of persons with the laws, policies, systems and activities of the Union.

2. States Parties shall harmonize their national policies, laws and systems with this Protocol and guided, as appropriate, by the Implementation Roadmap annexed to this Protocol.

4.3 AU Guidelines Manual On Bilateral Labour Agreements (BLAs)

In 2021, the AU developed the Guidelines focus on BLAs as the term of reference used by the AU and Member States to refer to international bilateral agreements between states – in this case concerning labour – that are usually considered binding under international treaty law. The objectives for preparing these Guidelines, were to:

▶ Provide a model template and guidelines for use by policy makers, practitioners and concerned stakeholders to develop BLAs and MOUs based on international instruments on human and labour rights, global frameworks (the UN 2030 Sustainable Development Agenda and the Global Compact for Safe, Orderly and Regular Migration (GCM) existing African protocols/legal instruments on free movement, and migration policy frameworks, as well as relevant tools and good practices.

▶ Address gaps in existing BLAs and other arrangements regarding migrant protection and labour migration governance and propose steps to enhance the promotion and protection of migrant workers' rights.

▶ Propose an intra-African BLA template that complements where needed and promotes implementation of the AU Protocol on free movement and the respective REC free movement and labour mobility systems, and is aligned with regional integration objectives/considerations.

(Annex 7 of the AU Guidelines Manual On Bilateral Labour Agreements (BLAs), contains a list of 89 BLAs and other bilateral arrangements involving African countries identified and in many cases reviewed in preparation of this manual and its guidelines.)

4.4 Regional Economic Communities (RECs) Response to Labour Migration

Regional Economic Communities (RECs) in Africa do significant work on labour migration governance. Most of them cover recurring issues such as high exploitation of migrants; migrant workers' skills and job mismatch; and portability of social security benefits within the following frameworks:

4.4.1 Arab Maghreb Union – AMU

The progressive realization of the free movement of persons is one of the main objectives of AMU. Three AMU member States have implemented the *Freedom of Movement Protocol*, namely, Libya, Morocco and Tunisia. Of these, Tunisia is currently the only state that allows citizens from fellow member States to access its territories freely. The remaining require a travel visa for residents of member States. Moreover, permission to reside in the territory of a member State must be obtained by applying for a permanent or temporary residence permit from the authorities of the concerned State.[35]

4.4.2 Community of Sahel-Saharan States-CEN-SAD

One of the objectives of CEN-SAD (the first) is adopting the necessary measures to facilitate the free movement of persons, capital, freedom of residence, work, ownership and economic activity. The REC has also established an agreement on the Free Movement and Establishment of Persons within the territory of Member States of the Community of Sahel-Saharan States. It explains that the following people from member states do not need a visa to enter another state: holders of diplomatic passports, special passports and service passports; members of an official delegation; and the spouse and children of a resident who is in possession of a valid visa.

4.4.3 Common Market for Eastern and Southern Africa – COMESA

There are two primary legal instruments governing the free movement of people in COMESA, the *Protocol on the Gradual Relaxation and Eventual Elimination of Visa Requirements*, and the Protocol on Free Movement of Persons, Labour, Services, the Right of Establishment and Residence. Since the adoption of the Free Movement Protocol in June 1998, only Burundi, Kenya, Rwanda and Zambia have signed, and Burundi

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35 https://www.uneca.org/pages/amu-free-movement-persons

being the only country ratifying it. Mauritius, Rwanda and[36] Seychelles have since waived visas to all COMESA citizens, while Zambia has issued a circular waiving visas and visa fees for all COMESA nationals on official business.

In order to meet national implementation challenges, the regional economic community set up the COMESA Model Law on Immigration to harmonize national laws and practices of member States, yet domestication is still slow. On a much greater platform, TFTA only included a narrow element of free movement of business persons in the greater tripartite area. While the COMESA Business Council is actively working on movement of business people in COMESA region, the same programme has also been addresses at the tripartite level.

4.4.4 East African Community – EAC

Under Article 104 of the *Treaty for East African Cooperation*, the Partner States agreed to adopt measures to achieve free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community. In order to facilitation citizen's enjoyment of the aforementioned rights and freedoms, the Partner States concluded the *Protocol for Establishment of the East African Community Common Market.* By virtue of Article 151 of the treaty, protocols are integral parts of the Treaty. The Protocol came into force on the 1st of July 2010 upon ratification by all the Partner States.

Migration in the context of the protocol may be reflected under several provisions. These include Article 5 which provides for the scope of the protocol in the implementation of the Common Market and strategies for realization of the rights and freedoms of citizens; ease of cross border movement of persons and adaption of integrated border management; removal of restrictions on movement of labour; services and the right of establishment and residence.

The freedom of movement of workers is catered for under Article 10, where Partner States guaranteed free movement of workers who are citizens of other Partner States within their territories. The article also provides for entitlement of workers in regard to application for employment, free movement in Partner States, conclude contracts of employment, and enjoy rights and freedoms of association. Under Article 11, Partner States undertook to mutually recognize the academic and professional qualifications granted, experience obtained requirements met, licenses or certifications granted in other Partner States; and harmonize their educational curricula, examinations, standards, certification and accreditation of education and training institutions. This article is intended to actualize free movement of labour.

In regard to harmonization of labour policies and for purposes of guaranteeing free movement of labour, Article 12 provides that, Partner States agreed to harmonization of labour policies, laws, and national laws and programmes to enable free movement of labour within the community. In addition, national social security policies, laws and systems of partner states are expected to be reviewed and harmonized. Furthermore, the Protocol under Articles 13 and 16 provide the establishment of nationals of the Partner States within their territories; and free movement of movement of services supplied by nationals of Partner States and the free movement of service suppliers who are nationals of the Partner States within the Community respectively.[37]

The official launch of the EAC passport was in 1999 and is presently operational for EAC citizens to travel freely in the EAC region for a period of six months. Plans to have it formally adopted as an international travel document are ongoing.

36 https://www.uneca.org/pages/comesa-free-movement-persons
37 https://www.eac.int/immigration

In 2018 and 2019 the ILO contributed to the development of a roadmap for the finalization of the East African Community (EAC) Draft Council Directive on the coordination of social security benefits within the EAC Common Market (an EAC social security coordination and portability instrument) to be adopted by EAC Partner States.

4.4.5 Economic Community of Central African States – ECCAS

In the ECCAS region, there has been little progress to implement the free movement of people as set out in the Treaty Establishing ECCAS. In 1983, ECCAS adopted the *Protocol on Freedom of Movement and Rights of Establishment of Nationals of Members States.* This protocol includes provisions for the freedom of movement, residence and establishment for all citizens in the ECCAS region.

In practice, the free movement of people is only effective in four member States namely Cameroon, Chad, Congo and the Democratic Republic of the Congo. The rest of the member States require visa for fellow ECCAS citizens. Some member States underline security issues as the main reason for delaying implementation. The political commitment is able to solve the problem of free movement of persons and is, arguably, the main reason for the slow implementation of the Protocol. More recently, however, more member States are offering fellow ECCAS citizens' visa on arrival and in some countries, the movement of people is relatively fluid.[38]

4.4.6 Economic Community of West African States – ECOWAS

In May 1979, ECOWAS member States adopted their first protocol relating to the *Free Movement of Persons, Residence and Establishment.* It stipulated the right of ECOWAS citizens to enter, reside and establish economic activities in the territory of other member states and offers a three step roadmap of five years each to achieve freedom of movement of persons after fifteen years. The first phase regards the right of visa-free entry, phase two dealt with the right of residency, and phase three concerns the right of establishment in another member State. The first phase has been fully implemented. The second phase, the right of residency, has also been implemented, given that citizens had obtained an ECOWAS residence card or permit in fellow member State. The third phase, the right of establishment, is still under implementation in most member States.

The member States are currently in the process of implementing a joint visa for non-ECOWAS citizens that cover the whole region, the Eco-Visa. ECOWAS has also implemented measures to ease the movement of persons transported in private and commercial vehicles by harmonizing policies that enable vehicles to enter and temporary reside in a member State for up to ninety and fifteen days respectively. Most ECOWAS member States have, in this regard, instituted the ECOWAS brown card, which is an insurance of motor vehicles that covers the civil responsibly of the owner in the ECOWAS region.[39]

ILO - through the "Support to the Free Movement of Persons and Migration in West Africa" Projects - supported the ECOWAS Tripartite Social Dialogue Forum focusing on Labour Migration, Mobility and Protection of the migrant workers' rights. Under the theme 'Labour Migration, Mobility and Protection of the migrant workers' rights in the region', the 2017 Assembly addressed topical issues related to effective implementation of the migrant workers' rights through the adoption of a number of administrative, programmatic and legal measures to better ensure the applicability of the labour laws. The interactive platform also provided an opportunity to present new innovations in regional policy, share national experiences in collective bargaining, and revise the Forum's action plans.

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38 https://www.uneca.org/pages/eccas-free-movement-persons
39 https://www.uneca.org/pages/ecowas-free-movement-persons

4.4.7 Intergovernmental Authority on Development – IGAD

The aims and objectives listed in *Article 7 of the Agreement Establishing IGAD*, states that member States are to promote the free movement of goods, services, and persons as well as the establishment of residence. Nevertheless, IGAD does not have a protocol on free movement of persons. Member States do, however, practice the free movement of persons in the region on a bilateral basis. Ethiopia and Kenya, Ethiopia and Djibouti, along with Kenya and Uganda, all have bilateral agreements in place to waive visa requirements. With the exception of a few member States, most offer visa-on-arrival for a period of 90 days to nationals of other IGAD member States.

IGAD developed a Regional Migration Policy Framework, called hereinafter IGAD-RMPF, which was adopted by the 45th Ordinary session of the IGAD Council of Ministers in July 2012 in Addis Ababa, Ethiopia. The framework provides a coherent strategy aimed at guiding IGAD in migration management programmes aligned with its mandate and priorities. The IGAD-RMPF is a comprehensive and integrated reference document that is non-binding in nature, scope and content. Thematically, IGAD-RMPF includes the migration issues and elements incorporated under the MFPA. These migration issues and elements include: Labour migration, Border management, Irregular migration, Forced displacement, Internal migration, Migration data, Migration and development, and Inter-state and Inter-regional cooperation.

> **IGAD**'s Free Movement of Persons Protocol and Roadmap and production of 5 regional / national reports representing unprecedented baseline studies on Labour Migration and Mobility Governance, Skills, Climate induced migration, and Integration of migrant workers in Labour markets.

4.4.8 Southern African Development Community – SADC

One of the main objectives of the *SADC Treaty* is the promotion of policies that aim to eliminate obstacles to the free movement of persons in the region. A draft *Protocol on the Free Movement of Persons within SADC* was introduced in 1996, but was replaced by the more restrictive Protocol on the Facilitation of Movement of Persons in 1997. The restriction was due to the income disparities that create imbalances in migration flows between member States. The 1997 Protocol was further revised and adopted in 2005, which ensures granting visa-free entry, with lawful purpose, to citizens from other member States for a maximum of 90 days. The protocol is however not operational due to inadequate ratifications by member States.

> The Protocol falls under SADC's Politics, Defence and Security section, rather than Economic Development, Social and Human Development. This suggests that migration is still viewed primarily as a security issue, rather than one of rights and protections for migrants themselves.

The SADC Protocol on Education and Training was established in 1997 and came into force on 2000. Its main objective is for Member States "to work towards the relaxation and eventual elimination of immigration formalities in order to facilitate freer movement of students and staff within the Region for the specific purposes of study, teaching, research and any other pursuits relating to education and training." *The draft SADC Labour Migration Policy framework* was drafted within the spirit of the SADC Treaty in 2013. The Policy framework was approved in principle by the SADC Ministers responsible for Employment and Labour and Social Partners and awaits endorsement by the SADC Ministers responsible for Migration issues. The policy framework seeks to promote sound management of intra-regional labour migration for the benefit of both the sending and receiving countries as well as the migrant workers. The policy framework has eleven (11) policy areas organized into 3 clusters namely: Law, Policy Harmonization and Data; Workers and Sectors; and Protection and Regulation.

The SADC Protocol on Employment and Labour was approved by SADC Council of Ministers in 2014 and signed by SADC Heads of State in the same year. In the Protocol, labour migrants are classified under "vulnerable groups." Articles 3 (General Objectives) and Article 19 (Labour Migration and Migrant Workers) speak specifically to labour migration.

A SADC Labour Migration Policy (LMP) Framework was adopted in 2013 "to reflect, contribute to, and refine existing legal frameworks at regional, bilateral and national level, and international and regional legal instruments and obligations relating to migration and labour." Its overall objective is to "develop a harmonized regional policy framework to regulate labour migration within SADC that benefits sending and receiving countries, protects the rights of migrant workers, contributes to equitable and just development in the region, and builds on principles of mutual respect and cooperation." Some of the specific objectives include:

▶ to achieve legal and policy convergence in the region in the area of labour migration;

▶ to establish, maintain, and disseminate a system of sub-regional data collection in key areas of labour migration including but not limited to migration stocks & flows; labour market data, legislations; comparative sector based qualitative research; impact assessment;

▶ to develop an integrated and evidence-based strategy aimed at retaining existing skills within the sub-region, improving and expanding the skills pool within SADC and attracting new skills from outside the region that will contribute to the development of the region's economy;

▶ to ensure the full integration of migrant workers into national and sub-regional workers' organizations without discrimination based on their citizenship or length of residence;

▶ to create a harmonized social protection regime across SADC for migrant workers and nationals that takes into consideration a minimum floor of social security for migrant workers; and,

▶ to create mechanisms for monitoring and evaluation of labour market integration.

The SADC Labour Migration Policy Framework provides an important sub-regional framework and mechanisms for cooperation between SADC Member States in the development of national labour migration policies and the management of labour migration. It was followed by three labour migration action plans designed to implement. In January 2021, the Southern African Development Community (SADC) adopted a new *Labour Migration Action Plan (2020-2025)* as part of efforts to promote skills transfer and match labour supply and demand for regional development and integration. The Action Plan, adopted through the Employment and Labour Sector in the Region, is in line with Article 19 of the SADC Protocol on Employment and Labour, which seeks to protect and safeguard the rights and welfare of migrant workers, to give them better opportunities to contribute to countries of origin and destination.

The Action Plan is an integral part of measures aimed at the progressive elimination of obstacles to the free movement of capital and labour, goods and services, and of the people of the region generally, in line with Article 5 of the SADC Treaty. The Employment and Labour Sector also adopted the *SADC Guidelines on Portability of Social Security Benefits* to ensure that workers moving within the SADC region maintain social security rights and benefits acquired under the jurisdiction of different Member States, including pension benefits and occupational injury and diseases benefits.

4.5 Regional Labour Migration Programmes

4.5.1 The African Union Labour Migration Advisory Committee (AU/LMAC)

As per the African Union (AU) Plan of Action on Employment, Poverty Eradication and Inclusive Development adopted by the 24th Ordinary Session of the AU Assembly in January 2015, the AU operationalized in April 2019 the tripartite Labour Migration Advisory Committee (LMAC). The Labour Migration Advisory Committee (LMAC) ensures the follow-up on the implementation, promotion and protection of the rights of migrant workers and members of their families enshrined in the appropriate AU and International Conventions, Charters and Protocols.

The LMAC is a regional tripartite mechanism, which provides advice to Governments to promote improved labour migration governance and protect the rights of migrant workers and members of their families. It ensures the follow-up on the implementation, promotion and protection of the rights of migrant workers and members of their families enshrined in the appropriate AU and International Conventions, Charters and Protocols.

The work of the LMAC is gender-sensitive and facilitates effective communication on the benefits of labour migration, thus mitigating exaggerated fears or negative attitudes toward migrant workers. It is also guided by ILO Standards and the UN Global Compact on Safe, Orderly and Regular Migration. It provides advice to Governments to protect the rights of migrant workers and members of their families. The Rules of Procedure of the AU Labour Migration Advisory Committee (LMAC), as well as its Terms Reference adopted in May 2018 were developed in consultation with the regional social partners, Trade Union Confederation-Africa (ITUC-Africa), Organization of African Trade Union Unity (OATUU) and Business Africa.

It contributes to consolidating an ongoing results-oriented dialogue on labour migration among social partners and relevant government entities, particularly ministries of labour/employment to support and facilitate national and regional governance of free movement and labour migration in Africa.

▶ **Box 4.1 LMAC Achievements**

In 2019–20, the Labour Migration Advisory Committee (LMAC) has undergone field assessments to six RECs (UMA, COMESA, ECCAS, ECA, IGAD and ECOWAS). The field assessments have provided the opportunity for Members to better understand existing programmes and initiatives at the RECs and Member States and, on that basis, made recommendations for improved effectiveness, synergy and coordination on labour migration governance. Also, LMAC has created awareness about the expected results of the Joint Labour Migration Programme, with the aim of engaging stakeholders, capacity building and advocacy for the ratification of key AU instruments relating to migration. The recommendations have been consolidated for presentation at the next Specialized Technical Committee on Migration.

In addition, RECs have identified opportunities for cooperation and concrete interventions on specific labour migration issues along four windows namely ECOWAS & UMA; ECOWAS & IGAD; ECOWAS & ECCAS and IGAD & EAC. These windows were selected due to the significant flows between them and the need for effective dialogue, protection of labour migrants, resource mobilization, information exchange and cross-learning opportunities. Also, LMAC Members are bringing their expertise to bare in the negotiations with the GCC and Middle East, to ensure that Member States are equipped with the right information to guide negotiations for decent working conditions for African migrant workers.

In May 2020, LMAC also carried out an advocacy visit to the Pan African Parliament, to seek ways to better engage national parliaments on the ratification of labour migration related international and continental instruments. In 2020, it also organized three virtual workshops and prepared the following documents:

▶ Mobility and migration of African Health workers post COVID-19: https://ethiopia.iom.int/sites/default/files/Mobility%20and%20Migration%20of%20African%20Health%20Workers%20Post%20COVID-19.pdf

▶ Protecting migrant workers in the informal economy: inclusion of migrant workers in COVID-19 responses: https://ethiopia.iom.int/sites/default/files/Protecting%20Migrant%20Workers%20in%20the%20Informal%20Economy-%20Inclusion%20of%20MW%20in%20COVID-19%20Responses.pdf

▶ Africa labour migration outlook in the post COVID-19 era: https://ethiopia.iom.int/sites/default/files/Preparing%20Africa%20for%20Post%20COVID-19%20Labour%20Migration.pdf

Learning exercises for Module 4
Regional frameworks on labour migrant

Activity: Regional Frameworks and migrant workers' rights

Aims: To review what Regional frameworks say about migrants labour rights

Task:

1. Choose one Regional labour migration framework from the frameworks presented in the module.

2. Check and list migrant workers' rights highlighted in the framework that you have selected.

3. Identify whether the framework addresses the rights of all groups of migrant workers.

4. Use the table below to present your findings.

Labour migration framework	Rights protected	Groups of migrants covered	Observations/remarks

Module 5.

Gender equality and women's empowerment in labour migration governance

Overview

This Module:

▶ Describes labour migration governance as it relates to gender equality.

▶ Details how migration governance can be engendered to ensure the empowerment and protection of women in the migration discourse.

▶ Highlights the key international instruments that promote the empowerment of women migrant workers and their attainment of their rights.

Learning Outcomes

By the end of this module, you will be able to:

▶ Understand and explain the challenges faced by women migrant workers;

▶ Highlight the legal instruments that exist, that aim to protect and empowerment women migrant workers;

▶ Describe gender-responsive policies and programme in the labour migration arena; and,

▶ Understand how to protect women migrant workers from violence, harassment and abuse.

Content

The module addresses the following themes:

5.1 Engendering migration: The section looks at the growth in the number of women migrant workers and the challenges that come along with the growth.

5.2 Understanding the challenges faced by women migrant workers: The challenges faced by women migrant workers are highlighted in this section.

5.3 International instruments that promote gender equality and women empowerment: The UN and ILO have developed instruments set to protect the rights and interests of women migrant workers. These instruments are highlighted in the section.

5.4 Gender-responsive migration governance: how do we know and ensure that labour migration policies and programmes are gender-responsive? This is explained the section.

5.5 Harnessing the potential for migrant women's empowerment: Empowered women have great potential, the section looks at how to harness this potential.

5.6 How to protect women migrant workers from violence, harassment and abuse through labour migration governance: Labour migration governance can be used as a tool to protect migration workers, especially women migrant workers. The sections explores the various means available.

Principal questions which this module addresses

▶ Why do we need to engender labour migration?

▶ What re the challenges faced by women migrant workers and why should they be addressed?

▶ Are there any international instruments that protect the rights of women migrant workers and promote the empowerment of women?

▶ What is gender responsive migration governance?

▶ How do we harness the potential of women migrant workers for development of both origin and destination country?

Definition of key terms

Women empowerment[40]

Empowerment refers to increasing the personal, political, social or economic strength of individuals and communities. Empowerment of women and girls concerns women and girls gaining power and control over their own lives. It involves awareness-raising, building self-confidence, expansion of choices, increased access to and control over resources and actions to transform the structures and institutions which reinforce and perpetuate gender discrimination and inequality. The core of empowerment lies in the ability of a person to control their own destiny. This implies that to be empowered women and girls must not only have equal capabilities and equal access to resources and opportunities, but they must also have the agency to use these rights, capabilities, resources and opportunities to make strategic choices and decisions.

Gender equity

The process of being fair to men and women, boys and girls, and importantly the equality of outcomes and results. Gender equity may involve the use of temporary special measures to compensate for historical or systemic bias or discrimination. It refers to differential treatment that is fair and positively addresses a bias or disadvantage that is due to gender roles or norms or differences between the sexes. Equity ensures that women and men and girls and boys have an equal chance, not only at the starting point, but also when reaching the finishing line. It is about the fair and just treatment of both sexes that takes into account the different needs of the men and women, cultural barriers and (past) discrimination of the specific group.

Gender sensitivity

Planning, programming and budgeting that contributes to the advancement of gender equality and the fulfillment of women's rights. It entails identifying and reflecting needed interventions to address gender gaps in sector and policies, plans and budgets. Gender-sensitive programming and policies- programmes and policies that are aware of and address gender differences.

Gender responsive

Intentionally employing gender considerations to affect the design, implementation and results of programmes and policies. Gender-responsive programmes and policies reflect girls' and women's realities and needs, in components such as site selection, project staff, content, monitoring, etc. Gender-responsiveness means paying attention to the unique needs of women, valuing their perspectives, respecting their experiences, understanding developmental differences between girls and boys, women and men and ultimately empowering girls and women.

Gender equality

Gender equality, refers to the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not a women's issue but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centered development

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40 UNICEF, 2017. Gender Equality: Glossary of Terms and Concepts.

5.0 Introduction

The Figure 1.2 shows that, for all the regions in Africa the share of women migrants by 2017 had increased in all the region except for Middle Africa which had a decrease between the years 2015 and 2017. In 2017, migrant workers were estimated to be 58.4 per cent male and 41.6 per cent female (ILO, 2018). At 63.5 per cent and 48.1 per cent respectively, the labour force participation rate of migrant women was higher than that of non-migrant women in 2017. Since 2013, the labour force participation rates of women migrants are higher than that of non-migrant women, but there is little difference in the labour force participation rates of male migrants compared to non-migrant males.

Gender influences the sectors and roles in which migrants are employed, hence the majority of women migrant workers are found in care work, especially domestic work. Being a woman or a man may well trigger very distinctive migration pathways as a result of gender-related disparities and discrimination. It is therefore crucial to assess the full picture of gendered realities to shape policies accordingly. The global context of gender dynamics in migration requires that we look beyond mere differences in male and female migration flows. Thus it becomes imperative to contextualize the relationship between gender and migration in the current trends of migration and recognize current attitudes and awareness of gender itself.

5.1 Engendering migration

In migrating for work abroad, many women gain opportunities they would not have at home and are thus economically empowered by migration, enabling them to make constructive contributions to destination countries as well as to their families in countries of origin.[41] Addressing the challenges of gender inequality in the context of migration demands an acknowledgment of the degree of violence that migrant women and girls endure. Without proper protections, women migrant workers disproportionately experience rights violations, which including exploitation, forced labour trafficking, and violence. Gender-based restrictions and bans mean that women migrant workers are less likely to be able to access regular and safe migration channels, while the hidden nature of domestic workers' employment in private homes also exacerbates the risk of violence and harassment.[42] Migrant women are also more frequently affected by socioeconomic challenges, such as unemployment, underemployment and deskilling.

With the increase in the number and percentage of women migrating independently, as opposed to within the context of other migrating family members, there has been a growing notion of the feminization of migration. This growing awareness has been driving the migration governance agenda and has seen policy dialogue, such as the negotiations of the Global Compact for Safe, Orderly and Regular Migration, offering new fora to discuss these structural trends and facilitate the achievement of the gender equality.

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41 https://www.ohchr.org/documents/publications/migrationhr_and_governance_hr_pub_15_3_en.pdf
42 https://www.ilo.org/wcmsp5/groups/public/–ed_protect/–protrav/–migrant/documents/briefingnote/wcms_467722.pdf

The need for proactive engagement of women migrant workers in the development, implementation, monitoring and review of labour migration policies and procedures has been noted as an effective strategy for ensuring the policies and systems which facilitate migration are rights-based and inclusive. This has also been noted as key in reducing risks and enhancing labour migration outcomes to the benefit of women migrant workers, their families, their employers, and countries of origin and destination. Achieving gender equality within the context of migration governance requires two-fold action:

▶ assessing inequalities and, in particular, gender-based discrimination and vulnerabilities is needed to inform policymaking; and,

▶ promoting the opportunities offered by migration for women and girls – such as their education and economic independence – is essential to support their own empowerment.

5.2 Understanding the challenges faced by women migrant workers

Labour migration is a complex and fluid process that intersects with governance structures, transnational identities and communities, and socio-cultural norms and practices – all of which are highly gendered.[43] Thus, women find themselves having to navigate not only physical borders and spaces, but also discursive, legal and social bordering practices, which constrain and structure their mobility and work relationships. Women migrant workers must cope with legislative and regulative gaps based on their gender and occupation; gender-based violence and harassment; multiple roles and expectations affected by gender norms; and potential vulnerabilities and rights violations that are heightened by precarious workplaces and non-permanent migration statuses.

The protection of women migrant workers' rights is critical for a number of reasons:

▶ it advances the human rights agenda;

▶ protection of rights has a positive bearing on irregular migration and exploitation;

▶ it improves the manage¬ment of labour migration and migration governance; and,

▶ it supports women migrant workers' economic and social empowerment and is critical for economic growth and development.

Retaining the right to remain in a country – through legal permanent or temporary status, is often the most important variable determining women migrants' options in the country of destination. Status regulates the workforce and divides migrant workers into those who retain it and those who do not, the latter of which are open to increased precarity, violence and persecution. Precarity is the lived experience of working or living in an environment where vulnerabilities and risks associated with the workplace are compounded by the lack of legal status, threats, discrimination, inability to negotiate pay or leave, or wider inaccessibility to wider social security.

For women, precarity is further entrenched through patriarchal norms and gender discrimination on the part of employers and others in the work environment. Women migrant workers are subject to a gendered division of labour where particular roles, expectations and responsibilities exist for women and not men. The gender bias is present in the division of labour and valuation of skills, where men perform the 'heavy' tasks and women carry out the 'care' tasks. Women are particularly at risk of discrimination, abuse and exploitative treatment when they are

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43 https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/documents/other_documents/35316-doc-au-mpfa_2018-eng.pdf

migrant workers. The United Nations Committee on the Elimination of Discrimination against Women, which monitors how States Parties apply the Convention on the Elimination of All Forms of Discrimination Against Women, issued a General Recommendation on this subject in 2009. The Recommendation provides a comprehensive overview of the situation and issues facing migrant women.[44]

The more these occupations (such as sex work and domestic work) are constructed and represented as "feminine", the more these have the major gaps in protection from the law. Women are sometimes found in these occupations that are below their skill level- '*deskilling*'. Women migrants are often *'deskilled'* when they accept work in another country, and work below their qualifications and certifications. The deskilling of many women migrants in the care industry is a reality; many are working low-skilled jobs that are not reflective of their education.

The recruitment of women migrant workers is also underpinned with precarity as many women experience discriminatory or informal recruitment practices such as fee arrangements between employers and recruiters, coercion or control of a worker through an offer of employment[45]. Often, recruiters would charge high fees for their services and not be able (or be unwilling) to place migrant women in employment because they lacked the necessary connections. Recruitment is often based on word of mouth, racialized and class-based. Further, finding future employment through the recruitment agency may serve as an incentive not to report unsafe working conditions, abuse or infringement of labour rights (e.g. withholding pay or breach of contract).

Existing gender norms that emphasize their lower status, the low value assigned to domestic and care work, and expected gender behaviors like obedience and submission to the authority of men and elders make women migrant workers particularly vulnerable to fraudulent recruitment practices. Exploitative fees may be charged by employment agents, which sometimes cause women, who generally have less access to resources, to suffer greater financial hardships and make them more dependent, for example, if they need to borrow from family, friends, or moneylenders at usurious rates. During preparation for departure, women migrant workers are sometimes detained by recruiting agents for training, during which time they may be subject to financial, physical, sexual or psychological abuse.

5.3 International instruments that promote gender equality and women empowerment

Legal frameworks and conventions at the global level have varying efficacy regarding improving state responses to vulnerable groups; yet, security regulations have had considerable uptake at the national levels, in SADC the movement of persons is under the Peace and Security Cluster. Thus, while many global institutions and actors, such as UN and the ILO, aim to empower women migrants, the realities of state intervention often focuses on the security and integrity of the state and the protections of citizens over the rights of 'others', leaving women migrants stuck between two discursive and practical realities. Table 5.1 Outlines the challenges faced by migrant women and girls that the 2030 Agenda aims to address and eliminate.

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44 https://www.ohchr.org/documents/publications/migrationhr_and_governance_hr_pub_15_3_en.pdf
45 UNWomen, 2016. Guide On Mainstreaming Migration into Development Planning from A Gender Perspective.

▶ **Table 5.1 Women and girls, migration and the 2030 Agenda**

Goal 5: Achieve gender equality and empower all women and girls	
Selected targets	Migration challenges
5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.	Migrant and refugee women and girls may experience violence at all stages of the migration process, whether at home or in the community. Gender-based violence or conflict-related sexual violence may force women and girls to migrate, and they may be subject to violence during transit (e.g. at refugee camps) or at their destination (e.g. by an employer). Irregular migrants and young migrants are at greater risk of violence, trafficking and exploitation. Migrant girls are more likely to be trafficked or experience sexual exploitation than boys (Temin et al., 2013).
5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation (FGM).	Girls facing harmful practices such as FGM or forced marriage may use migration as a means of escape (Temin et al., 2013). Migration can expose girls and young women to different social norms and practices (including FGM) in new locations (Goldberg et al., 2016). Migrant communities may use early marriage as a coping strategy in the face of girls' insecurity or economic hardship.
5.4 Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.	11.5 million (17.2%) of the world's 67.1 million domestic workers are international migrants; 8.4 million (73.4%) of migrant domestic workers are women or adolescent girls (ILO, 2015). Actions that increase the value of domestic work, including changes in underlying gender norms, would reduce women's burden of unpaid work and enhance the wellbeing, dignity and status of paid and unpaid care and domestic workers, including migrants.
Goal 8: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all	
Selected targets	Migration challenges
8.5 Achieve full and productive employment and decent work for all women and men.	Many host countries limit or bar refugees from employment opportunities. Similarly, migrant spouses may be prevented from working. Women migrants and refugees that do work may experience deskilling or be confined to 'feminine' jobs, often paid or valued less than other work. Ensuring full and productive employment and decent work requires access to work that is aligned with refugees' and migrants' skills and qualifications. It also means improving social and economic value afforded to work typically performed by women and girls.
8.7 Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking, and secure the prohibition and elimination of the worst forms of child labour.	Migrants (particularly irregular migrants and children) are at risk of forced labour, trafficking, and exploitation and abuse, and in particular women migrants. To eradicate these forms of labour requires improving labour standards, increasing the opportunities for decent work, protecting migrants, and prosecuting the perpetrators of such violations.

Goal 5: Achieve gender equality and empower all women and girls	
Selected targets	Migration challenges
8.8 Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.	Protection of labour rights is particularly important for migrants, particularly women and children, who are at greater risk of exploitation or abuse. Women migrants in stereotypically feminine roles (such as live-in care and domestic work) are frequently isolated and therefore more vulnerable to exploitation, violence and abuse.

Source: Extract from ODA Briefing 2016

At the UN human rights instruments' level, the **Convention to Eliminate all Forms of Discrimination Against Women (CEDAW)** that belongs to the nine core human rights treaties, protects all women, including migrant women, against sex– and gender-based discrimination that result in causes and consequences of the violations of their human rights.

CEDAW's General Recommendation No. 26 on women migrant workers addresses the situations of migrant women, who as workers, are in low-paid jobs, may be at high risk of abuse and discrimination and who may never acquire eligibility for permanent stay or citizenship:

> Women migrant workers who migrate independently, those who join their spouses or other members of their families who are also workers, and undocumented women migrant workers who may fall into any of the above categories.

Recommendation No. 26 states that women migration should be considered from the perspective of **gender inequality, traditional female roles, a gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration.** It includes recommendation to States parties as follows:

▶ Common responsibilities of countries of origin and destination;

▶ Responsibilities specific to countries of origin;

▶ Responsibilities specific to countries of transit;

▶ Responsibilities specific to countries of destination;

▶ Bilateral and regional cooperation; and,

▶ Recommendations concerning monitoring and reporting.

Committee on Migrant Workers: General Comment no. 1 on migrant domestic workers which states:

> 60. […] Recognizing that most domestic workers are women and girls and taking into consideration traditional roles, the gendered labour market, the universal prevalence of gender-based violence and the worldwide feminization of poverty and labour migration, **States should incorporate a gender perspective in efforts to understand their specific problems and develop remedies to the gender-based discrimination that they face throughout the migration process.**

▶▶ 61. States parties should repeal sex-specific bans and discriminatory restrictions on women's migration on the basis of age, marital status, pregnancy or maternity status (articles 1 and 7), including restrictions that require women to get permission from their spouse or male guardian to obtain a passport or to travel (article 8) or bans on women migrant domestic workers marrying nationals or permanent residents (article 14), or securing independent housing […]

Committee on Migrant Workers: General Comment no. 2 on the rights of migrant workers in an irregular situation and members of their families that mentions:

▶▶ 21. Migrant workers in an irregular situation, **particularly women,** are at increased risk of ill-treatment and other forms of violence at the hands of both private actors, including employers, and State officials which includes **sexual violence, beatings, threats, psychological abuse, and denial of access to medical care,** for example. Under article 16, paragraph 2, States parties have an obligation to protect all migrant workers and members of their families against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions. This obligation requires States parties to:

▶ Adopt and implement legislation prohibiting such acts;

▶ Effectively investigate cases of abuse and violence;

▶ Prosecute and punish those responsible with appropriate punishments;

▶ Provide adequate reparation to victims and members of their families;

▶ Provide human rights training for public officials; and,

▶ Effectively monitor the conduct of State agents, and regulate that of private persons and entities, with a view to preventing such acts."

At the same time, the following **ILO Conventions and Recommendations** are of particular relevance to women migrant workers' empowerment and to gender equality:

▶ Discrimination in respect to Employment and Occupation Convention, 1958 (No.111)

▶ Equal Remuneration for Men and Women Workers for Work of Equal Value Convention, 1951 (No.100)

▶ Maternity Protection Convention, 2000 (No. 183)

▶ Workers with Family Responsibilities Convention, 1981 (No. 156)

▶ HIV and AIDS Recommendation, 2010 (No. 200)

▶ Domestic Workers Convention, 2011 (No. 189)

▶ Domestic Workers Recommendation, 2011 (No. 201)

▶ Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)

▶ Violence and Harassment Convention, 2019 (No. 190)

▶ Violence and Harassment Recommendation, 2019 (No. 206)

Why do women migrants need specific legal protection?

a. Low regard for women and the types of mostly low-skilled and semi-skilled jobs they perform, thus often resulting in de-skilling and other discriminatory practices;

b. More likely to face multiple discrimination and various forms of exploitation and abuse (e.g. non-payment or withholding of wages, lowest wages, workplace violence, non-freedom of movement, bad working conditions) and inequality (no right to family reunification, nor to family life, neither to child care support services);

c. Often no right to contribute to social security, mainly health coverage and pension (e.g. domestic workers);

d. Relatively more job opportunities for men migrant workers into safe, orderly and regular migration opportunities;

e. Remain outside the scope of national legislation; and,

f. Too dependent on the employer for their working and residence permit.

https://www.osce.org/files/f/documents/f/8/196656.pdf

A comprehensive response in relation to women migrant workers' empowerment and the attainment of gender equality, needs to consider at least the following:

▶ Ensure reproductive rights of men and women migrants of child bearing age (e.g. prohibition of exposure to hazardous substances during pregnancy) and maternity protection for women migrant workers (including maternity leave and benefits and protection against dismissal);

▶ Eliminate discrimination on the basis of pregnancy (e.g. prohibition to oblige women migrants to undergo obligatory pregnancy tests before they travel or to dismiss and/or deport them when they become pregnant during employment); Extend labour protection to all economic sectors and occupations including those where there is high concentration of women migrant workers;

▶ Design special measures to combat harmful gender stereotypes and eliminate discrimination in migration for employment;

▶ Eliminate "protective" measures for women which restrict their entry into safe and productive migrant work;

▶ Give voice and representation to women migrants to ensure their views and perspectives are taken into account in policy and decision making; and,

▶ Provide them with flexibility in changing employers, ensuring non contract substitution, no withholding of identity documents and fair recruitment practices.

5.4 Gender-responsive migration governance

A gender-responsive approach to labour migration incorporates the principles of gender equality, rights and empowerment into the formulation, monitoring and review of policies and interventions. It considers the extent to which policies and interventions are effective in realizing these principles. In terms of legal instruments, the importance of gender-responsive governance is highlighted in the CEDAW-General Recommendation No. 26 (as mentioned before), and the ILO Violence and Harassment Convention, 2019 (No. 190).

▶ General Recommendation No. 26 provides a framework for developing gender-responsive migration policies to eliminate discrimination in line with State obligations under CEDAW. The Recommendation highlights the formulation of evidence-based, gender-responsive and human rights-based migration policies as a core common responsibility; including through active involvement of women migrant workers and relevant non-governmental organizations (para. 26); and,

▶ ILO Convention 190, Article 11 provides for each Member, in consultation with representative employers' and workers' organizations, shall seek to ensure that: (a) violence and harassment in the world of work is addressed in relevant national policies, such as those concerning occupational safety and health, equality and non-discrimination, and migration; (b) employers and workers and their organizations, and relevant authorities, are provided with guidance, resources, training or other tools, in accessible formats as appropriate, on violence and harassment in the world of work, including on gender-based violence and harassment; and (c) initiatives, including awareness-raising campaigns, are undertaken.

a. Gender-responsive policy framework identifies and addresses gender-based barriers throughout the migration cycle.

b. Gender-responsive policy implementation ensures laws, processes, information, training and services respond effectively to the needs of women migrants.

c. An enabling environment ensures women migrant workers are equipped to claim their rights and participate in implementation, monitoring and review of policies.

In terms of global frameworks, the Global Compact for Safe, Orderly and Regular Migration (GCM) and the ILO Centenary Declaration for the Future of Work also provide for gender-responsive governance mechanisms.

▶ The GCM is guided by a gender-responsive principle which seeks to mainstream a gender perspective, promote gender equality and the empowerment of all women and girls, recognizing their independence, agency and leadership, moving away from addressing migrant women primarily through a lens of victimhood. The GCM promotes more inclusive migration governance through a whole-of-society approach including migrants, diasporas, communities, civil society, academia, private sector, parliamentarians, trade unions, National Human Rights Institutions, media, among others. To enhance availability and flexibility of regular migration pathways, the GCM calls for the development of human rights-based and gender-responsive bilateral, regional and multilateral labour mobility agreements with sector-specific standard terms of employment in cooperation with relevant stakeholders (Article 21 (a)). The GCM calls for the application of a human rights-based, gender- and disability-responsive approach in reviewing relevant policies and practices to ensure they do not create, exacerbate or unintentionally increase vulnerabilities of migrants (Article 23 (a)). It further calls for the development of gender-responsive migration policies, with specific reference to assistance, health care, psychological and counselling services, access to justice and remedy (Article 23 (c)).

▶ ILO Centenary Declaration for the Future of Work noted that, in discharging its constitutional mandate, taking into account the profound transformations in the world of work, and further developing its human-centred approach to the future of work, the ILO must direct its efforts to: achieving gender equality at work through a transformative agenda, with regular evaluation of progress made, which: – ensures equal opportunities, equal participation and equal treatment, including equal remuneration for women and men for work of equal value; – enables a more balanced sharing of family responsibilities; – provides scope for achieving better work–life balance by enabling workers and employers to agree on solutions, including on working time, that consider their respective needs and benefits; and – promotes investment in the care economy.

Women migrants have specific experiences, needs and barriers throughout the migration process. Globally, evidence shows that policies and programmes for labour migration are limited in their response to these issues. To make migration governance gender-responsive, gender-based barriers must be identified and proactively addressed. Recognizing and responding specifically to women's needs through migration policies is the most effective way to ensure equitable and positive migration outcomes.

5.4.1   Gender-responsive policy framework

Establishing an evidence-based, gender-responsive and rights-based approach to governance ensures policies effectively identify and address gender-based barriers throughout the migration cycle. For example, gender-responsive policy frameworks can be used to recognize the contribution of women migrant workers to sustainable development. This increases the value placed on feminized sectors of labour, specifically domestic work. This in turn contributes to increasing wages for domestic workers, strengthening social protection systems, and increasing women's labour force participation in countries of destination. Policies which have a strong evidence-base, and which are generated through gender-responsive governance processes, respond more effectively to the realities of target stakeholders.

5.4.2   Gender sensitivity in labour migration-related agreements and MOUs

Bilateral Labour Agreements (BLAs) and Memoranda of Understanding (MOUs) on labour migration have greatly increased in recent years. The value of such agreements has been recognized as facilitating and managing cross-border movement of temporary, mainly "low-skilled", workers and protecting their rights. However, the BLAs/MOUs vary significantly in scope -in terms of the sectors and issues covered- the inclusion or lack of implementation and monitoring mechanisms, and their effectiveness which translates into different outcomes for the origin and destination countries.

> *Bilateral labour agreements/Memoranda of understanding (BLAs/MOUs): refer to a format used when the agreements describe in detail the specific responsibilities of, and actions to be taken, by each of the parties, with a view to the accomplishment of their goals. BLAs create legally binding rights and obligations. Memoranda of understanding (MOUs): refer to a format entailing general principles of cooperation; they describe broad concepts of mutual understanding, goals and plans shared by the parties. MOUs are usually non-binding instruments.*

Most BLAs/MOUs conceived, negotiated and implemented at present, neglect gender issues and lack gender-sensitive monitoring mechanisms. They are largely gender-blind or gender-biased and therefore may not adequately address and remedy protection gaps, for extending real protection of migrant workers' rights, and cannot replace legal protection. It is essential to ensure BLAs/MOUs become gender-sensitive, and distinguish different types of impacts they have on gender dynamics. It is also important to look at how source (origin) and destination countries can use BLA/MOUs to promote gender equality and non-discrimination as human rights, including protecting women migrants in vulnerable situations from discrimination, exploitation and violence and harassment.

Gender-sensitive BLAs/MOUs necessarily consider factors rooted in the gender division of labour and power relations between men and women; they use gender-disaggregated data and take into account who benefits and who does not. They aim to bring about equality of opportunity, rights and obligations among men and women and can contain specific measures targeting women. Gender-sensitive BLAs/MOUs:

▶ recognize similarities in the migration experience of women and men – both women and men migrate for economic reasons and better employment opportunities, and they make significant economic and social contributions to national economies in both origin and destination countries;

▶ acknowledge the differences in migration experiences for male and women migrant workers – women migrant workers tend to experience more disadvantages and discrimination at all stages of the migration process due to their lack of access to and control over resources and gender stereotyping in the labour market;

▶ promote equality of employment opportunity and access to benefits for both migrant women and men, reinforcing human rights grounded in the universal values of equal treatment and nondiscrimination;

▶ provide for general migrant protection while at the same time specifically targeting women migrant workers in order to empower them with choices, access to resources and rights; and,

▶ give particular attention to especially vulnerable groups of women migrants including migrant domestic workers, to ensure their access to safe migration and legal employment opportunities and to protect them from exploitation, violence and abuse.

5.4.3 Gender-responsive policy implementation in labour migration governance

After establishing rights-based, gender-responsive and evidence-based policy frameworks, it is necessary to establish systems to ensure their implementation including through sufficient financial resources, training and technical support.

▶ Gender-responsive budgeting is one of the key processes that can be instituted to ensure governance reforms addressing public service delivery for women are adequately funded. Lead and line ministries must have adequate financial and human resources to implement gender-responsive policies. The implementation of policy and legislative frameworks requires targeted resourcing that takes into account the need for specific gender expertise. Gender-responsive budgeting practices ensure that policies and laws are properly financed.

▶ Increased and shared accountability in the protection of rights of women migrant workers. If labour migration policies address gender-responsive recruitment and pre-departure orientation, ministries mandated implement labour migration policies, alongside recruitment agencies and other relevant stakeholders, should share accountability for meeting the policy commitment. Investments should also be made in capacity development of these actors, for example gender-responsive approaches to training and information services.

▶ Establishing a dedicated gender unit within the ministry mandated to implement labour migration policies. This can provide sustained focus on the rights and needs of women migrant workers, to ensure that policy and practice prevent and respond to rights violations. Such a unit can fill evidence gaps, coordinate relevant stakeholder and ensure effective monitoring and review of policies from a gender perspective.

▶ Capacity strengthening. Duty bearers including recruitment agencies and employers must have the capacity to understand and implement gender responsive policies and practices. Recruitment agencies, employers and migrant women and their representatives, must be empowered with the practical skills to uphold and benefit from these commitments. The capacity of women migrants and their representatives should be developed to increase their ability to effectively engage with policymaking processes at the local, national, bilateral and regional/ global levels.

▶ Women inclusion in policy formulation. Women's inclusion and leadership should be promoted in all parts of the national labour migration machinery, including government, employer's organizations, recruitment agencies, trade unions and civil society organizations. Systems to ensure gender equitable hiring and promoting of women in relevant government and non-governmental institutions, including in recruitment agencies is a good practice.

▶ Ratify and domesticate international labour migration instrument. The state should ratify relevant human rights treaties, such as the International Convention on the Protection of the Rights of All Migrants Workers and Members of Their Families.

▶ Apply a human rights-based approach and principles of equality, non-discrimination, empowerment and autonomy of women for all measures regarding migration policies and frameworks, including in national development policies and other related plans for the implementation of the 2030 Agenda for Sustainable Development and the SDGs. Tackling all multiple and intersecting forms of discrimination, violence and abuse against women, adolescent and girls will contribute to the enjoyment and exercise of their human rights regardless of their migratory status.

▶ Foster cross-sectoral collaboration and interactions between all branches and levels of government, including national machineries for the advancement of women, interior and social development ministries, in the development, implementation, monitoring and evaluation of migration policies and plans in order to address this complex phenomenon in a holistic and comprehensive manner,

encompassing the social, political, cultural and economic dimensions and contributions of all migrants, including women migrants.

▶ Support efforts to raise awareness with gender-sensitive and human rights based approach education and training programmes on migration for national and local authorities, parliamentarians, the police, military forces, judiciary, social workers, immigration officials, the mass media, non-governmental organizations, diaspora networks, and migrant women themselves about their rights and duties, as well as on their contributions in the countries of destination. Training for migrant women and girls should strengthen their capacity to organize and advocate for their rights.

▶ Ensure that immigration policies incorporate a gender perspective and a human rights-based approach and be monitored with respect to their possible varied impacts on male and women migrants, and also ensure that policies and practices do not directly or indirectly discriminate against women, on the basis of age, disability, religion, marital status, legal partnership status, sexual orientation, pregnancy or maternity status. Areas of particular attention should include improving international recruitment regulation, upholding the rights of family migrants and low-skilled temporary workers, enabling family reunification, and addressing employer gender bias in worker selection.

▶ Collection of sex-disaggregated data, will provide a more complete understanding of the characteristics of migrant workers, their status and the challenges that policy will need to address, hence assisting in the development of better policies and programmes.

▶ Review current regional agreements to foster regular and safe pathways for migration, through ensuring better coordination and coherence among the countries of origin, transit and destination regarding the matching of skills and employment opportunities, and the promotion of programmes that facilitate the regularization of the status of migrants in order to benefit from the social, economic, cultural and political contributions of migrant women.

5.5 Harnessing the potential for migrant women's empowerment

Migration can contribute to the empowerment of women, when their rights are recognized and respected. Thus:

▶ migration can offer women access to education and careers that might not be available in their countries of origin. Upon returning home, they can take back and disseminate norms of behavior and practices that improve the position of women in their society of origin.

▶ migrant women may earn better incomes, enjoy greater degrees of autonomy and freedom, and exercise new leadership roles. This will see their social status enhanced, as can their ability to influence decision making within their social circle. Built confidence can lead to increased participation in society and structural changes in labour dynamics can also reflect empowerment trends, with women traditionally dominating international migration for care services as opposed to corporate leadership roles.

▶ many women migrant workers provide steady flows of remittances to their countries of origin. The very act of sending money to family back home can be a role redefining activity whereby women who have been in situations of dependency prior to departure can become a financial mainstay for their family, thus acquiring a new capital of influence and authority.

All things considered, however, the balance sheet for women can be positive, provided migration policies in both countries of origin and destination are formulated, with due regard for the particular needs and experiences of migrant women and girls. Based on gender analysis of labour migration dynamics, it is possible to adjust policies to take into account gender-specific trends, for instance by organizing programmes for admission of foreign workers specialized in particular fields.

5.6 How to protect women migrant workers from violence and abuse through labour migration governance

Labour migration governance can be used as a tool to protect migration workers, especially women migrant workers by:

▶ Adopting a gender-responsive workplace policy against violence to prevent and redress rights violations and violence against women and men national and migrant workers. A gender-responsive anti-violence policy in organizations in charge of labour migration and in companies using migrant workers addresses the gender-specific constraints and the types and patterns of rights violations faced by women and men migrant workers. It also provides support systems that match their specific needs, such as ensuring access to a complaint system, and enables them to seek redress;

▶ Having a clear and transparent organizational and/or workplace policy against violence in place with actionable measures to prevent harassment, and forced labour situations in the work of your organization or company, [for example, prohibiting charging migrants any recruitment fees, or withholding (parts of) their wages];

▶ Raising awareness and provide training to all relevant workplace actors to ensure implementation of gender-responsive policies on protecting migrant workers and preventing and redressing harassment, violence, and forced labour situations;

▶ Promoting, applying, and enforcing ethical codes of conduct, such as on fair recruitment of migrant workers within the organization, industry, sector, and in companies and employer households to protect migrant workers from sexual, racial, or other harassment and forced labour situations;

▶ Establishing effective and gender-responsive complaint and remedy mechanisms; and,

▶ Sharing information regularly and cooperate with relevant stakeholders, identifying potential problem areas and sharing good practices in gender-responsive action to promote migrant workers' rights and prevent and redress harassment, violence, and forced labour situations.

Learning exercises for Module 5
Gender equality and women's empowerment in labour migration governance

Activity: Promotion of gender equality

Aims: To outline the national legislation with regards to gender equality.

Task:

1. Has your country ratified the following conventions?	Yes (year)	No
UN Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW)		
UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Family Members, 1990		
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)		
Minimum Age Convention, 1973 (No. 138)		
ILO Conventions Workers with Family Responsibilities Convention, 1981 (No.156)		
Maternity Protection Convention, 2000 (No. 183)		
Domestic Workers Convention, 2011 (No. 189)		
Migration for Employment Convention (Revised), 1949 (No. 97)		
Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)		
Violence and Harassment Convention, 2019 (No. 190)		

2.   Write down the challenges faced incorporating women in the labour migration governance in your country?

_____

3.   How has labour migration governance in your country empowered women and promoted gender equality?

_____

4.   What are the benefits for women migrating for employment?

_____

5.   List benefits to the economies of countries of origin and destination? *Benefits to the families, benefits to migrating women as individuals, any benefits to the trade union movement?*

_____

_____

Module 6.

Women migrant domestic workers' particular challenges in working in private households.
The need for targeted TU actions.

Overview

Module 6 provides an in-depth look at women migrant domestic workers, describing the challenges they face, both working and living conditions in the countries of destination.

Learning Outcomes

By the end of this module, you will be able to:

▶ Describe the migrant domestic worker working and living conditions and the discrimination they face;

▶ Describe the acute decent work deficits for most women migrant domestic workers; and,

▶ Identify the targeted actions that could be undertaken by the trade union to address the decent work deficits.

Content

The module addresses the following themes:

6.1 The case of women migrant domestic workers: The section looks that the emergence of migrant domestic work and describes what migrant domestic work is.

6.2 Working in private households - challenges faced women migrant domestic workers: This section describes the working and living conditions of migrant workers: the types and amount of work they do, the discrimination they encounter – all of which add often up to high levels of decent work deficits.

6.3 Role of Trade Unions - What actions should they take? The actions that should be undertaken by trade unions to address the decent work deficits faced by women migrant domestic workers are discussed in this section.

Principal questions which this module addresses

▶ What is migrant domestic work?

▶ What are the particular challenges faced by women migrant domestic workers?

▶ What can the trade union do to protect the rights of women migrant domestic workers?

6.0 Introduction

In countries of destination, many women migrant workers are employed in relatively low-skilled jobs within the manufacturing, domestic service or entertainment sectors, often without legal status and little access to health services. Women migrant workers engaged in domestic services are one of the most vulnerable groups of migrant workers. They are often subject to exploitation and/or physical and sexual violence by their employers or clients. Migrant domestic workers have become increasingly important in the labour force of destination countries and regions.

When women engage in paid work outside the home, they either have to reduce their rest and leisure time, enlist the help of partners or other family members or – if the family or woman can afford it – pay someone else to do the care work that they would normally do. So to a large extent, it is due to the labour of domestic workers that other women have succeeded in entering the paid labour market in increasingly larger proportions and in breaking the glass ceiling. Thus, domestic workers' contribution to economic growth is substantial, and has enabled an increase in dual-income families.

At the onset of a care crisis, with the aging of the population, and continually increasing rates of female labour participation, families frequently turn to domestic workers to care for their homes, children, and aging relatives. This has seen governments responding to this demand by creating pathways for domestic work recruitment, such as temporary guest-worker streams for care/ domestic workers.

6.1 The case of women migrant domestic workers

6.1.1 What is domestic work?

Domestic work is defined as "work performed in or for a household or households" (ILO Convention 189). Domestic work is therefore defined according to the workplace, which is the **private household**. The term **domestic worker** means any person engaged in domestic work within an employment relationship, thus a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker. Domestic workers provide personal and household care. This work may include tasks such as cleaning the house, cooking, washing, grocery shopping and ironing clothes, taking care of children, the elderly and/or the sick, gardening, guarding the house, driving, even pet sitting. They may work part-time, full-time or on an hourly basis, and may live in the home of the employer or not.

According to this definition, in 2015 the ILO estimates there are at least 67 million domestic workers over the age of 15 - worldwide, 80% of which are women. It is further estimated that, there are 11.5 million migrant domestic workers around the world, approximately 8.5 million of whom are women. Migrant domestic workers are international migrants who are engaged in their main job as domestic workers in households. Migrant domestic workers operate in private homes, the most hidden of spaces, making it extraordinarily difficult to understand the scale and nature of their issues.

Domestic work is one of the sectors that is probably among the lowest paying jobs in the labour market. A number of reasons have been identified for the low remuneration of domestic work which include:

> *low formal skills and educational levels, high incidence of informality, lack of collective representation, weak individual bargaining power, lack of possibilities for income generation and vulnerable social status.*[46]

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46 ILO, 2015. Domestic work, wages, and gender equality: lessons from developing countries.

Another factor is the gender-based undervaluation of domestic work, as these workers also perform the traditional role of care and household tasks (unpaid work) within their own households. The capacity to perform these tasks is perceived as *"innate"*, as they mirror work that has traditionally been carried out by women in their own homes and having no economic value.

Despite their contributions to households and national economies, domestic work is situated at the low end of the care economy, working some of the longest hours, for very low wages[47]. These conditions result in part from exclusion of domestic workers from labour and social rights in many countries, which effectively legitimizes discrimination of a female-dominated class of workers. Even when they are covered by the law, domestic workers suffer severe decent work deficits due to high levels of non-compliance, fostered in part by high levels of informality, status in migration, and low level of collective organization. Long term caregivers in particular work extremely long hours for very low pay. The toll on their health and well-being is clear, but often unrecognized in law and policy.

Delivering quality care goes hand in hand with ensuring decent working conditions. Assuring decent work for domestic workers establishes the principle that domestic workers, like any other workers, are entitled to a minimum set of protections under labour law. The mere fact of regulating domestic work is an acknowledgment of the crucial social and economic contribution of care work. In turn, ensuring decent working conditions for domestic workers will contribute to reducing gender inequalities in the world of work while improving the quality of care received by households.

6.2 Working in private households - challenges faced by women migrant domestic workers

Migrant domestic workers are recognized as being particularly susceptible to abuse and exploitation, with this vulnerability attributed to a number of factors including: the isolated and invisible nature of their work, their level of dependence on their employer (for income, accommodation and migration status), a lack of clear legal regulation of the specific occupational challenges which they face, and often a restrictive migration status. Domestic workers have traditionally lacked recognition as *"real"* workers and this is deeply rooted in the perceptions and behavior of employing households and society at large.

Domestic work is typically governed and con¬trolled closely by an employer in their own home. The relationship between employer and domestic worker is therefore unequal and has been identified as a major problem in domestic worker schemes. Thus, the power imbalance between the employer and the employee in the domestic-work scenario, is exacerbated by restrictions on mobility and access to social security associated with the migration status of the workers. The lack of mobility of women migrant workers impacts their ability to access reporting and support services in case of abuse and gender-based violence. The nature of domestic work lends itself to certain forms of abuse, which can more easily take place unnoticed and with impunity in private households.

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47 https://www.ilo.org/global/topics/care-economy/domestic-workers/lang--en/index.htm

C189 - Domestic Workers Convention, 2011 (No. 189) Articles that speak to migration[48]

Article 8

1. National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.

2. The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.

3. Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.

4. Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

Article 15

1. To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:

   a. determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;

   b. ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;

   c. adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;

   d. consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and

   e. take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.

2. In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

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48 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189

Domestic work has been characterized by acute decent work deficit, manifesting in the form of- (a) low wages and non-payment of wages; (b) excessive and undefined working hours; (c) insufficient rest and leisure time; (d) lack of social protection; and, (e) exposure to psychological and physical abuse. These problems are largely unseen for the rest of society, with the classic gendered divide between the public and the private sphere parity explaining the lack of public attention given to exploitation of women migrant domestic workers. The following are some of the challenges faced by women domestic migrant workers.

Key highlights from the study- "The Plight of Kenyan Domestic Workers in Gulf Countries"

▶ **Passport Confiscation:** Virtually all workers had their passports confiscated upon arrival to their respective receiving countries.

▶ **Physical Abuse:** Some domestic workers were physically abused by their employers. [Frustrated with the mistreatment, the worker decided to run away and go to the police station. At the station, the police called her employer who came and said that she never mistreats her worker, so the worker was handed back her employer.]

▶ **Sexual Abuse:** Sexual abuse or sexual advances were prevalent.

▶ **Verbal Abuse:** Verbal abuse was also rampant.

▶ **Sleep Deprivation:** Another abusive technique used on the workers was sleep deprivation.

▶ **Food Deprivation:** Domestic workers were deprived of food.

▶ **Labour Exploitation:** The single most cited problem by the workers interviewed all across the board was the issue of being overworked.

▶ **Movement Restriction:** Migrant workers were not permitted to move around, outside the household.

▶ **Imprisonment Prior to Deportation:** Along with the limitation of movement outside the household comes the vulnerability to arrest once a woman is caught roaming in the streets alone. The women who dared to run away from their abusive employers took this risk, and ended up in jail. Imprisonment is justified as punishment for breaking the contract, which states that a worker should remain employed to her sponsor for two years.

▶ **Psychological Abuse:** All of the above mentioned abuses have their negative effects on the body, but just as important is how they affect someone psychologically. They can have far reaching effects that can change the way a person view themselves or responds to the world around them.

Due to reports of rampant abuses of domestic workers, some of which have resulted in death compelled the Kenyan government to take action in order to minimize further abuse. The remedy took the form of a travel ban. The Kenyan government implemented the travel ban in June 2012, with the goal of keeping Kenyans from migrating to Middle Eastern countries for domestic work.

Gikuru, Caroline Muthoni, "The Plight of Kenyan Domestic Workers in Gulf Countries" (2013). Master's Theses. 97.

Freedom of association

Women domestic migrant workers' ability to address their situations and to defend their rights is suppressed in situations where freedom of association and collective bargaining rights guaranteed under international law are denied in national legislation and policy or in practice. Women domestic migrant workers seeking to organize in the context of a union face numerous challenges in law and practice*. Legally*, domestic work is often excluded from the scope of labour legislation including those on the right to freedom of association. Women migrant domestic workers face therefore great difficulties or are prevented from forming or joining trade unions. **Operationally**, the workplace isolation of domestic workers does not fit into the traditional model of workplace organizing as in the case of construction and factory workers. From an **organizational culture** perspective, the female composition of the domestic workforce stands in contradiction with the overwhelmingly male composition of unions.

In many cases, women migrant domestic workers are specifically excluded from the right to join or form unions, or to hold elected positions within the unions. If domestic workers are in irregular situation, the task of organizing them is complicated further due to the fear of not only losing their jobs, but also being deported. Language barriers and cultural differences are another operational constraint to building organizations based on worker identity, rather than on nationality, ethnicity or language group. This may be particularly true where there are both local and migrant domestic workers.

Multiple-discrimination

Women domestic migrant workers often suffer multiple discrimination -- as women, as unprotected workers, as domestic workers and as migrants.[49] This fourfold discrimination of gender, class and nationality often compounded by race or ethnicity, has a major impact on women domestic migrants well-being—or lack of it. It also determines their marginalization from labour market participation, indeed from any participation in society.

Recruitment and deployment to destination countries, often takes place under intergovernmental bilateral agreements that ignore international norms, adding to the risks faced by women domestic migrant workers. A number of such agreements allow for restrictions of rights at work for migrant workers in destination countries and facilitate discriminatory treatment, including stipulations of different remuneration for work of equal value and explicit prohibitions on union organizing.

Violations of Dignity and Privacy

Women migrant domestic workers are often treated with disrespect. They may be insulted, shouted at, beaten, deprived of food or drink, or experience other forms of violence and harassment or ill-treatment, or psychological and physical abuse, that deny their dignity as human beings. Attitudes towards them may be condescending and abusive. Such abusive behavior seeks to humiliate and dehumanize the women domestic migrant worker, to affirm her inferiority or punish her. All these abuses strengthen the dominant/submissive relationship between employer and the migrant domestic worker.[50] Demeaning or degrading treatment is a particularly insidious form of abuse. Aggressively delivered orders, shouting and constant belittling criticism contain an underlying threat of violence or may be seen as violent. Employees may be belittled on a daily basis, such as name-calling and sometimes, names are changed to suit the employer.

Migrant domestic workers' right to privacy is often violated, thus, their telephone calls are monitored and their rooms and bags are searched. This invasion of their privacy is a form of harassment that violates their

49 Committee of Experts on the Application of Conventions and Recommendations, General Survey on migrant workers, 1999, http://www.ilo.org/ilolex/english/ceacrrepsq.htm

50 https://www.wiego.org/informal-economy/occupational-groups/domestic-workers#:~:text=Migrant%20domestic%20workers%20often%20live,%2C%20physical%2C%20or%20sexual%20harassment

dignity and strengthens the perception of inferiority or lack of respect. Migrant domestic workers may not have space to store their personal affairs, access to a lockable bathroom and toilet, or opportunities to be alone.

Access to Health Care and Health Services

Women migrant domestic workers are in most cases legally excluded, partly or completely, from health care and health services, they may be permitted to obtain only emergency medical care. In very rare cases where they are legally entitled to full health coverage, access may be limited in practice.[51] This is in cases where they are irregular-status migrant workers, many avoid using public and private health facilities for fear of arrest and deportation.

The cost of treatment which can way above what they can afford is also a limiting factor. Information asymmetry or the lack of information about the health system in the country of employment and their entitlements with respect to it, has seen more women migrant domestic workers not being able to access health services. Irregular-status migrant workers who work in private households may additionally be prevented from accessing health care because they cannot leave the house or because their employer withholds permission, or because of fear of deportation/arrest if they seek medical assistance. Women migrant domestic workers who are denied access to proper medical care can be provided with medication (pain killers in most cases) by their employers, without medical examinations.

> ◢◢ Migrant domestic workers face specific barriers to access social protection due to, amongst others, the exclusion from labour and social security law, lack of recognition of domestic work as work, difficulty to comply with eligibility criteria and other administrative conditions linked to the type of job they perform (multiple employers, private households, unpredictable hours of work, lack of written contracts), as well as limited organization and representation.
>
> **(ILO Guide Extending social protection to migrant workers, refugees and their families, forthcoming 2021).**

Domestic work may cause specific health problems linked to domestic tasks or overwork. Thus, working conditions that are insecure or oppressive may lead to anxiety and depression. The health of migrant domestic workers may also be undermined if they are malnourished or exposed to unhygienic environments and living conditions. Even when they are sick, migrant domestic workers in an irregular situation may not receive care and may be obliged or compelled to work. Following work accidents, they are often denied the right to see a doctor and receive necessary and appropriate medication or medical treatment.

Women's health needs, which are different from those of men, tend to be overlooked or neglected. In particular, sexual and reproductive health services are often not available or deprioritized. Discrimination may be especially acute in relation to pregnancy. Women migrant workers may face mandatory pregnancy tests followed by deportation if the test is positive, coercive abortion or lack of access to safe reproductive health services, maternity leave and benefits. They may also face dismissal from employment upon detection of pregnancy, sometimes resulting in irregular immigration status and deportation.

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51 https://www.ilo.org/wcmsp5/groups/public/–ed_protect/–protrav/–migrant/documents/briefingnote/wcms_467720.pdf

▶ Module 6. Women migrant domestic workers' particular challenges in working in private households.
The need for targeted TU actions.

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The Right to Family Life

Women migrant domestic workers may have limited or no access to maternity leave, even unpaid, and may have to continue working until they give birth. During pregnancy or once their child is born, they are at risk of being dismissed and having to leave their employer's house, sometimes with nowhere to go. Some women migrant domestic workers may also be forced to get an abortion. Once dismissed a woman migrant domestic worker may end up homeless and at risk of further abuse. If they remain in their employer's service, they may be expected to work very soon after delivery. They may be asked to entrust their child to someone else, or accept deductions from their pay for childcare.

Separation from their partners and children who have stayed behind in the country of origin can be a very difficult emotional burden, particularly because women migrant domestic workers will not usually be able to travel to visit their family back home. Among women migrant workers, such separation is one of the principal causes of mental health problems (anxiety, headaches, insomnia, stress, depression). In the event that their family members visit them, they are not allowed to offer them accommodation at the premises of work.

Inadequate Housing, Food, Water and Sanitation

Live-in women migrant domestic workers, who are the majority are often totally dependent on their employer to provide food, water, accommodation and sanitation. Employers can deprive such migrants of food and water, or force them to live in unsanitary or unsafe conditions. Women migrant domestic workers are forced to sleep in kitchens, storage rooms, hallways and corridors, or they may be compelled to sleep in the room of the child they are caring for. Some women migrant domestic workers are victims of physical or sexual violence because they have to share their room with other employees or cannot lock the door to their room.

Live-in domestic workers also face discrimination or abuse with regard to food and water. Some receive food that is insufficient in quantity or nutritional value, or is not in accordance with their cultural or religious values. Others are expected to eat the leftovers from their employer's meals, or are not allowed to sit at the table to eat, or are forced to eat on the floor. Many live-in domestic workers are not able to buy and to cook their own food and therefore cannot choose how or what they eat.

Social and Physical Isolation, accompanied with Restrictions on Freedom of Movement

Most employers of live-in women migrant domestic workers restrict their employees' freedom of movement and hence their ability to meet friends and maintain social contacts. Domestic workers may be refused permission to leave the house or are locked in; their phone calls may be monitored or they may not be allowed to own a mobile phone. Some of the techniques used to control and confine women migrant domestic workers include; limiting their ability to contact family and friends, confiscating passports and migration documents, and, forced confinement in the household. Employers and agents often defend these practices as necessary to protect the employer's household, the privacy of the family, and the personal security of the domestic worker, and to prevent domestic workers from running away.

Such Arbitrary denial of freedom of movement and association is abusive in its own right, and dramatically increases the vulnerability of domestic workers to economic exploitation, forced labor, intimidation, and sexual violence and harassment. For women migrant domestic workers, social networks are a vital source of solidarity and information and can help domestic worker to escape from their situation and also provide assistance. The ability to bargain collectively, and find support and assistance, is very important for women migrant domestic workers, as trades unions can represent them mediation procedures or labour courts, and can provide support and advice if their rights are violated.

Slavery-Like Practices: Exploitation, Forced Labour and Bondage

Labour exploitation of women migrant domestic workers, especially those who are in an irregular situation, is a widespread reality in all regions of the world. Women migrant domestic workers - may be asked to work excessive hours without rest; are subjected to wage-theft (may not be paid or may have arbitrary sums deducted from their pay); they may be forced to work in hazardous and dangerous conditions; may be refused sick leave or denied compensation following an accident; may be dismissed without justification; or they may have their passports confiscated by their employers.[52]

For some women migrant domestic workers, the circumstances and conditions of their work amount to forced labour: where employers have forbidden them from leaving the home; withheld or not paid wages; used violence or threats of violence; withheld their passports or identity document; limited their ability to have contact with family; or deceived them about their rights in order to compel them to work. Women migrant domestic workers can be coerced to work through the use or threat of violence, by their recruiter or employer.

They can also be subjected to debt bondage, retention of identity papers or threats of denunciation to migration authorities. Forced labour is an absolute violation of fundamental human rights and is considered a crime in most national legal systems. In practice, nevertheless, women migrants in an irregular situation who are victims of forced labour may be prevented from, or face difficulties in, lodging or pursuing a complaint. This may be owing to their situation or to procedures that do not allow them to bring complaints, or do not protect them from expulsion while their case is processed.

The perpetuation of precarity and vulnerability of women migrant domestic workers through policy and other governing mechanisms can also be understood through the lens of structural violence. For example, the Kafala system of migration sponsorship in the Gulf States deems the employer in charge of all the domestic workers' affairs including their repatriation. This system prevents the domestic worker from ever changing jobs and locks them in to a set employer. The employer is able to deem the worker incompetent under the various laws and provisions governing the recruitment of domestic labour and sends them home with no further recourse.

> A Tripartite Framework for the Support and Protection of Ethiopian Women Domestic Migrant Workers to the Gulf Cooperation Council (GCC) States, Lebanon and Sudan was established to protect women migrant domestic workers (MDWs). The ILO in collaboration with the Ministry of Labour and Social Affairs developed a gender-sensitive pre-departure training manual to be used by the overseas employment department. In this regard, gender has been mainstreamed in all interventions undertaken to promote fair and safe labour migration and work towards the protection of Ethiopian women MDWs in the GCC States, Lebanon and Sudan.
>
> https://www.ilo.org/wcmsp5/groups/public/–africa/documents/publication/wcms_682936.pdf

Detention and Deportation

Irregular-status migrant domestic workers who have been identified by the authorities of the country of destination will usually be expected to return to their home countries, either voluntarily or by being forcibly deported.[53] They may be detained in appalling conditions and for long periods of time prior to being deported. Migrant women and children are often not detained separately from men or unrelated adults respectively, and migrants are often detained together with persons who have been convicted of

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52 ILO 2021, Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189).

53 UN 2015, Behind closed doors: Protecting and promoting the human rights of migrant domestic workers in an irregular situation.

crimes. In detention, migrants' physical and psychological health tends to deteriorate and access to health services is likely to be poor. Pregnant women or women with babies and children rarely receive special care. Detention centers tend to be run by police or prison authorities or private security companies, often without appropriate training in the human rights of migrants or in the provision of health services, and tend to implement non-gender-responsive detention practices.

Both during detention and deportation, irregular migrant domestic workers, especially women, are at particular risk of physical and sexual violence. Irregular-status migrants often endure collective expulsions and forced returns, which are arbitrary and can lead to further multiple human rights violations. Concerns have been raised about the treatment of migrants during forced returns, including the use of excessive force and unnecessary restraint techniques and the administration of non-medically justified sedatives and other medications. Of great concern is the death of migrants during forced returns, owing primarily to the treatment they are subjected to while being returned.

Gaps in Legal Protection

In other countries, domestic work is regulated and some protection is available (with respect to minimum wages, hours of work and paid leave), but the legislation discriminates against women generally, and in particular migrant domestic workers.[54] Women migrant domestic workers may also be excluded from protection because of their nationality or their migration status. National laws often exclude migrants in an irregular situation, explicitly or by omission. As a result, they are often unable to access or enjoy essential services or social protection.

Women migrant domestic workers find it difficult to access legal remedies when their rights are violated, this is made worse when their situation is irregular. The legal system in many countries does not provide adequate protection for women migrant domestic workers. This is due to the fact that domestic work is not considered formal work and domestic workers (whether they are nationals or foreigners) are not covered by the general national legislation that protects workers' rights. Fear of expulsion often deters migrant domestic workers in an irregular situation from lodging complaints against an abusive employer. In some cases, employers play on these fears by threatening to denounce them and fear is well-founded wherever judicial or other public officials are obliged to report irregular migrants to the migration authorities. The effect is to cause many irregular migrants to choose to endure abusive conditions.

Victims of serious criminal offenses such as forced labour, slavery or physical or sexual violence can be granted a temporary residence permit that allows them to remain in the country of employment while their case is heard. However, conditions may be attached (willingness to collaborate with the police) and these often do not allow the complainant to work. In some countries, investigations are systematically dropped if the complainant leaves the country.

There are additional barriers to access to reporting and complaint mechanisms: Where no free legal aid is available, access to remedies may not be affordable for women migrant workers, who generally are more affected by poverty than men. Harmful gender stereotypes as well as unresponsive and hostile officials and/or, at times, collusion between officials and the perpetrator, may be impediments for women migrant workers to report human rights violations. Women migrant workers are more likely not to know the language of the country, not to be able to read and write, and/or not be aware of their rights, which is an obstacle to reporting. Women migrant workers, in particular working in the domestic sector, may lack mobility to report violations because they may be confined by employers to their work or living sites.

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54 ILO, 2021. Making decent work a reality for domestic workers: Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189).

6.3 Role of Trade Unions - What actions should they take?

Trade unions, have critical work they have to undertake to ensure the protection and advancement of rights of women domestic workers. These organizing actions can include:

▶ **Establishing trade unions and networks for domestic workers**

There is need for trade unions and especially national federation to facilitate the establishment of domestic workers' trade unions (for both nations and migrants) in places where there are none and strengthens existing organizations by:

> ▶ connecting workers' organizations to the global federation;
>
> ▶ capacity building programmes and exchange of best practice;
>
> ▶ advocacy and awareness campaigns; and,
>
> ▶ leveraging the support of strategic partners.

When domestic workers have their organizations, they can speak for themselves and participate in meetings with governments and other lawmakers in their countries. The development of popular materials, including audios and visuals, for domestic workers, who find themselves isolated, or who might be illiterate or not understand the language, or might not have time to attend capacity building activities, will be critical in informing them their rights. Once trade unions are established, trade unions should carry out a mapping exercise to identify the strategic areas where domestic workers are found, such as residential areas, marketplaces, churches/ mosques, bus-stops, tap water areas, as a recruitment strategy. The ability of women migrant domestic workers to unionize is critical to combat the structural power imbalances that permeate the current regime. Trade unions play an instrumental role in empowering women migrant domestic workers and ensuring fair terms and conditions of employment, and can be effective in facilitating the integration of women migrant domestic workers in countries of destination by fostering collective solidarity and establishing support networks.

▶ **Ratification of International Conventions and Protocols that protect the rights of women migrant domestic workers**

Promote wider ratification and domestication of all the fundamental principles and rights at work derive from ILO Conventions and Recommendations. Once ratified and domesticated, the Convention becomes legally binding for the country under international law, and the government has the obligation to implement it in law and practice. In the event of ratification, trade unions can then use the Convention to:

> ▶ defend the rights of workers who have suffered abuse or exploitation in national courts;
>
> ▶ pressure authorities in order to adopt national legislation in conformity with international labour standards;
>
> ▶ provide guidance and counseling to workers on the application of the convention; and,
>
> ▶ provide to the ILO their own comments on the application of the convention by a ratifying country and start procedures on the violation of the convention by ratifying countries.

▶ Ensuring access to and the portability of benefits and social security

It is imperative that trade unions ensure that migrant domestic workers are recognized as workers and ensure equal treatment of them regarding access to social protection as workers. Thus, trade unions should:

- ▶ promote greater coordination and cooperation of social security schemes, through the conclusion and implementation of bilateral or multilateral social security agreements between origin and destination countries, to ensure the maintenance of the rights acquired and in course of acquisition;

- ▶ advocate for the adequately extension of social protection to migrant domestic workers, through the inclusion of all domestic workers in labour and social security laws and/or social security and labour agreements;

- ▶ ensure that social protection schemes respond to gender-specific needs, including sexual and reproductive health needs;

- ▶ ensure migrant domestic workers' access to at least a minimum level of social protection as well as higher level of benefits in line with ILO instruments; and,

- ▶ promote the simplification and adaptation of eligibility criteria and administrative procedures to ensure that domestic workers have effective access to social protection.

▶ Improve inspections and data collection

With violation of rights taking place at the workplace, trade unions need to advocate for increased inspections of workplaces. For this to happen trade unions with the assistance of relevant authorities improve data collection methods on the number of women migrant domestic workers, their workplace and realities faced by women, in sex trafficking, care work, domestic work and other sectors. Trade unions need to invest in the targeted collection of data to increase understanding of the challenges faced by women migrant domestic workers and ensure the information is publicly available; and conduct studies that include data disaggregated by gender, age, sex, race and national origin, among other categories, on recruitment of women migrant domestic workers.

▶ Strengthen Migration Governance from Above

In order to provide the protection and promotion of the rights of all women migrant domestic workers, including those in the informal economies, trade unions must resurrect and replenish right-based approaches to migration governance through the multitude of high-level social dialogue, thus, meetings and forums (which come up with concrete agreements, implementable strategies and road maps) held at the global level including the Global Forum on Migration and Development. Such dialogues should focus on 'good practices' of migration management. The identified 'good practices' accompanied by international and regional instruments incorporating human rights and migration, must be aligned with national legal frameworks in countries of destination and origin.

▶ Participation in the crafting of bilateral labour migration agreements targeting domestic workers

Trade unions have to demand and secure space in the crafting and adoption of bilateral agreements by their government on labour migration. This will ensure that there are provisions in the agreements protecting the rights of women migrant domestic workers to unionize and bargain collectively. Not only would such efforts be critical for the promotion and achievement of decent work for all, but this will ensure that there are opportunities to increase the level of public involvement in the negotiation and drafting of agreements. This process will also include the dissemination of information to the public and introduce a range of participatory mechanisms that would enable women migrant domestic workers to submit queries, comment on or take part in the negotiation and drafting of all relevant agreements.

▶ Development of pre-departure and reintegration information packs

Trade unions need to develop pre-departure and reintegration information packs for women domestic workers. The aims of such work will be to:

- ▶ provide adequate information to departing migrants on the living and working conditions overseas, their rights, duties and responsibilities, and coping mechanisms in living and working abroad;

- ▶ provide contact list of relevant government institutions, trade union, diaspora associations or NGOs that can provide assistance in destination countries;

- ▶ advice migrants on essential matters needed before departure including completion of travel itineraries and requirements, documents to bring abroad such as training and medical certificates, airport, baggage and migration procedures;

- ▶ make departing migrants fully aware and understand the details of the employment contracts; and,

- ▶ ensure the upholding of the welfare of their nationals and protecting the rights of their migrant workers.

Trade unions can also establish support centers across the country that aid women migrant domestic workers by: addressing abusive employers and hazardous workplace and housing conditions; assisting with medical treatment, workers' compensation benefits and parental leave benefits; facilitating regularization processes; and, sponsoring courses on health and safety training and language. The information packs need to be designed and disseminated so that future domestic workers can access them (including language, gender-sensitive content, accessibility for those in remote areas and without access to internet, illiterate persons, among others).

▶ Entering bilateral trade union agreements: Cooperation and coordination agreements between unions

Cooperation and coordination agreements between unions in countries of origin and destination too are effective in addressing protection gaps and galvanizing migrants across borders. The rights of workers are best protected by the workers themselves. National workers can count on trade unions for collective bargaining and for action, including strikes, to uphold their rights. Migrant workers can join trade unions or form their own unions, but these rights are not always granted and are less available in the temporary labour migration system. In such cases migrant workers have a temporary migration status, they may be reluctant to join a union if they believe their employer will retaliate by firing them, causing them to lose the right to remain in the country.

Cooperation between unions in countries of origin and destination can be useful in addressing these protection gaps. For this reason, cooperation among trade unions in countries of origin and destination has become an innovative good practice, in the absence of possibility for migrants to protect their own rights. Thus, unions should commit to cooperate to ensure that national contracts include protection also of migrant workers, to work toward a unified employment contract for migrant workers, based on international labor standards, to monitor implementation through labour inspections and to cooperate on instruments for mechanisms concerning solution of labor disputes.

Learning exercises for Module 6
Challenges of women migrant domestic workers and how to address them

Activity: Women migrant domestic workers.

Aims: To develop a picture of women migrant domestic workers.

Task:

1. Imagine you are a woman migrant worker.

2. Write down the challenges you face as women, as unprotected workers, as domestic workers and as migrants.

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3. What could be the role of the trade union in assisting you?

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Module 7.

Enhancing fair recruitment practices and regulations

Overview

This Module describes the challenges faced in recruitment of migrant workers. It details what recruitment fees and related costs are and the regulations in the different countries on recruitment. The Module concludes by looking at the role of trade unions in promoting fair recruitment.

Learning Outcomes

By the end of this module, you will be able to:

▶ Understand and identify recruitment fees and related costs;

▶ Outline the global response to promote fair recruitment and ILO Conventions related to public employment services and private employment agencies;

▶ Understand the importance of National policies on regulating recruitment practices, including charging of recruitment fees and related costs; and,

▶ Highlight the role of trade unions in fair recruitment.

Content

The module addresses the following themes:

7.1 Recruitment challenges: The section describes the challenges faced by migrant workers in the recruitment process.

7.2 Global response to promote fair recruitment: The global response to address the challenges in recruitment of migrant workers is highlighted in this section.

7.3 What are recruitment fees and related costs? The section defines what recruitment fees and related costs as provided by the ILO.

7.4 ILO Conventions related to Recruitment: The section highlights the conventions that address recruitment costs and how they should be established.

7.5 National policies on regulation of recruitment, including the prohibition on / fee charging of recruitment and related costs to workers: The section highlights some of the national policies in selected African countries on charging recruitment fees and related costs.

7.6 Trade unions initiatives on promoting fair recruitment in Africa: The section details some of the initiatives by trade unions in promoting fair recruitment.

7.7 The role of trade unions in fair recruitment: The section highlights the role that trade unions should undertake to ensure that there is fair recruitment.

Principal questions which this module addresses

▶ What constitute recruitment fees and related costs?

▶ What are the merits of prohibiting recruitment fees vis a vis regulating recruitment fees?

▶ What is the role of trade unions in promoting, contributing, monitoring and advocating for fair recruitment?

7.0 Introduction

The growth of the labour migration over the past three decades, has also seen the growth in the number and role of - unscrupulous employment agencies, layers of informal labour intermediaries and other operators - acting outside the legal and regulatory framework that prey especially on low-skilled job related workers. There has been an increase in the number of reported cases of abuse involving the following: deception about the nature and conditions of work; retention of passports; illegal wage deductions; debt bondage linked to repayment of recruitment fees; threats if workers want to leave their employers; coupled with fears of subsequent expulsion from a country. A combination of these abuses can amount to human trafficking and forced labour.

7.1 Recruitment Challenges

Workers who are recruited across international borders are the most affected and can face multiple challenges in the recruitment process. Migrant workers, especially if they are in an irregular situation, might find themselves more exposed to fraudulent and unscrupulous labour and human rights violations and are at higher risk of being victims of forced labour than other workers. Women migrant workers, overrepresented in some sectors such as the domestic work, are particularly vulnerable to abuses, notably due to the fact that national labour laws frequently exclude this sector from coverage. Migrant workers face many significant challenges such as:

▶ limited access to information on safe recruitment channels and employment procedures;

▶ lack of protection and weak access to justice for victims of abusive and fraudulent practices;

▶ limited access and awareness on their rights;

▶ limited or no right to freedom of association and collective bargaining; and,

▶ lack of confidence in institutions.

There are various forms of unfairness in the recruitment process, which are not independent of each other and may partially overlap. The distinction between these forms, however, is useful for the better understanding of unfair recruitment practices. Forms of unfairness in recruitment include:[55]

▶ **deceptive recruitment**, in which the worker is deliberately caused to believe something that is not true, such as the terms and conditions of employment and living conditions;

▶ **coercive recruitment**, in which the recruitment is imposed on the worker under the threat of penalty and to which the worker does not agree voluntarily, notably using violence or its threat, abduction, forced marriage, forced adoption or selling of the victim, confiscation of documents, and debt bondage;

▶ **abusive recruitment**, in which the position of vulnerability of the worker is abused, with such vulnerability possibly related to difficult socioeconomic situation, irregular migration status, lack of education, lack of information or economic reasons;

▶ **discriminatory recruitment**, in which equality of opportunity and treatment in recruitment is nullified or impaired, notably on grounds such as race, color, sex, age, religion, political opinion, national extraction,

55 ILO, 2021- Africa regional fair recruitment report: The recruitment of migrant workers to, within and from Africa (upcoming publication).

social origin, ethnic origin, disability, marital or family status, sexual orientation or membership in a workers' organization.

▶ **corrupt recruitment**, in which the recruiter or a third party influencing the recruitment acts dishonestly in return for money or personal gain, with such acts possibly including offering, promising, giving, requesting or accepting bribes, including bribes from workers or bribes to employers or government officials;

▶ **fake recruitment**, in which the private employment agency or the job advertised do not exist, or the job exists but what is depicted as the recruitment process that the worker goes through is unrelated to the job, and;

▶ **worker-fee-charging recruitment**, in which recruitment fees and related costs are borne by the worker.

The payment of recruitment fees and related costs by migrant workers significantly increase the risk to workers of experiencing forced labour, debt bondage and human trafficking. The recruitment fees and related costs are a significant subset of labour migration costs, and can amount to nine months or more of average monthly earnings in some corridors.[56] As the recruitment processes, whether occurring within or across boundaries always entail costs. Many workers borrow heavily to pay fees and costs related to their search for employment and migration, with low skilled workers, tending to be particularly vulnerable to high recruitment costs. Migrant workers have to repay their debts for several months and sometimes years, during which they become bonded to their employers (and recruiters) for the entire season and sometimes for years or even a life time until they have paid back those advances.

Women and men migrant workers with low skills and low education are at risk of being exposed to recruitment malpractices, given their concentration in economic sectors prone to labour abuse. Existing gender norms that emphasize their lower status, the low value assigned to domestic and care work, and expected gender behaviors like obedience and submission to the authority of men and elders make women migrant workers particularly vulnerable to fraudulent recruitment practices. During preparation for departure, women migrant workers are sometimes detained by recruiting agents for training, during which time they may be subject to financial, physical, sexual or psychological abuse. Access to justice and complaints mechanisms may be restricted for women migrant workers. This is especially true for domestic workers, who carry out their responsibilities within a household setting and therefore face difficulties in obtaining remedies for recruitment-related abuses.

The ILO highlighted the relationship between inadequate mechanisms of recruitment and forced labour in its third Global Report on Forced Labour in 2009, stating that "there is growing awareness that many present-day arrangements for recruiting temporary workers display serious deficiencies. In part, these derive from loopholes in the existing labour laws, which fail to articulate the respective responsibilities of recruiting agents and final employers in providing safeguards against abusive practices, including forced labour. There are also many cases where detailed regulations on fee charging are simply not enforced and workers can, in practice, find themselves paying ten times or more the maximum amount provided for in national laws and regulations

In the endeavor to recover their initial costs as well as support their families abroad and accumulate some savings, migrant workers may risk overstaying their visas or permitted stays (resulting in them having an irregular status) and thereby becoming even more vulnerable to exploitative practices. Failure to pay debts can result in severe personal and social impacts, and eventually workers find themselves trapped in harsh working conditions, low wage work, abusive situations, and debt-traps. The payment of high recruitment fees contributes to the increased vulnerability of workers as they have to repay their debts for several months and sometimes years. During this period, they are highly dependent on their employers, who often deduct recruitment fees directly from their wages, sometimes at usury rates. Due to the cunning/

56 ILO, 2015- Fair recruitment initiative: regulating labour recruitment to prevent human trafficking and to foster fair migration: models, challenges and opportunities. (Working paper; No. 1/2015).

un-transparent nature of the agents/recruiters, workers are not informed of the full cost and specific costs they are being charged or the reasons that drive up individual cost components.

Workers' interests have been poorly reflected and in some cases non-existent in the recruitment legislation of many countries around the world. This is due to the fact that trade unions are often side-lined from policy discussions related to the regulation and monitoring of recruitment process. Also due to the fact that women are underrepresented in trade unions, and, policy and decision making and gender issues often neglected.

7.2 Global response to promote fair recruitment

To prevent forced labour, reduce labour migration costs and improve development outcomes for migrant workers and their families, the international community has recognized that fair recruitment is critical. The Addis Ababa Action Agenda of the Third International Conference on Financing for Development underscored the need to reduce the costs of labour migration, in particular the cost of recruitment, as these costs pose serious barriers to realizing sustainable development outcomes.

Businesses, especially those working in global supply chains, have also increasingly recognized that fair recruitment is critical to prevent forced labour, reduce labour migration costs and thereby improve development outcomes for migrant workers and their families. This has led to a proliferation of industry-led initiatives to promote fair recruitment and to eliminate the recruitment fees and costs paid by workers across global supply chains. ILO efforts to address recruitment-related abuses have gained further impetus in recent years.

In 2014, the International Labour Office adopted a five-year strategy to strengthen action towards elimination of forced labour and human trafficking. The strategy underlines that a "relevant entry point to prevent forced labour is to stop abuse and deception of workers during recruitment, transportation and placement, whether within or across countries." The Fair Recruitment Initiative (FRI) was launched in 2014 as part of the ILO Director General's call for a Fair Migration Agenda. Its centerpiece is the General Principles and Operational Guidelines for Fair Recruitment (GPOG), adopted in 2016, complemented by the Definition of Recruitment Fees and Related Costs, adopted in 2018 to be read jointly. Both documents were negotiated by a tripartite group of experts and adopted by the ILO's Governing Body. They constitute the most up-to-date, internationally agreed guidance in the area of recruitment. Continued from Phase I, the 2021-2025 FRI Strategy is grounded in relevant international labour standards (ILS), global guidance on fair recruitment, and social dialogue between governance institutions and actors of the labour market. The FRI has combined global policy dialogue, knowledge and data generation with on-the-ground interventions where tools are tested, implemented, and expertise created.

Phase II of the FRI was launched in 2021.[57] Its vision is to ensure that recruitment practices nationally and across borders are grounded in labour standards, are developed through social dialogue, and ensure gender equality. Specifically, they:

▶ are transparent and effectively regulated, monitored, and enforced;

▶ protect all workers' rights, including fundamental principles and rights at work (FPRW), and prevent human trafficking and forced labour; and,

▶ efficiently inform and respond to employment policies and labour market needs, including for recovery and resilience.

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57 https://www.ilo.org/global/topics/fair-recruitment/lang--en/index.htm

This multi-stakeholder initiative is being implemented by the ILO in close collaboration with governments, employers' and workers' representative organizations, the private sector and other key partners.[58] It has a four-pronged approach with social dialogue at the center. The four main pillars of work are:

▶ to enhance global knowledge on national and international recruitment practices and regulation;

▶ to strengthen laws, policies and enforcement mechanisms;

▶ to promote fair business practices; and,

▶ to empower workers who have suffered abuse in recruitment to lodge complaints and provide them with access to remedies.

The cost of recruitment is now a recommended indicator for Sustainable Development Goal (SDG) Target 10.7, the agreement upon a definition of "recruitment fees and related costs" became an urgent priority for measuring progress. The World Bank and ILO are the joint custodian agencies for SDG Indicator 10.7.1, expressed as "Recruitment costs borne by an employee as a proportion of monthly income earned in country of destination." A set of Guidelines for the collection of Statistics for SDG Indicator 10.7.1 have been developed in 2018 and endorsed by national statistical offices in a first international consultative workshops in 2018 in Washington, and in Istanbul in 2019. Within the framework of SDG Indicator 10.7.1, the Global Knowledge Partnership on Migration and Development – KNOMAD – of the World Bank and the ILO have been collecting data on recruitment costs and simultaneously, developing methodologies and survey instruments that countries can employ to gather data on recruitment costs.[59]

In September 2016, the ILO convened a three-day Tripartite Meeting of Experts to develop Guidance on Fair Recruitment, with the objective of adopting comprehensive guidelines on fair recruitment, encompassing both cross-border and national recruitment. In 2018, the ILO Governing Body approved the publication and dissemination of the definition of recruitment fees and related costs, adopted by a Tripartite Meeting of Experts. The ILO General Principles and Operational Guidelines for Fair Recruitment provides a definition of "recruitment fees or related costs", as "any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection." This comprehensive definition of recruitment fees, related costs, as well as illegitimate costs, should be read together with the General Principles and Operational Guidelines for Fair Recruitment. The definition reiterated that recruitment fees and related costs should not be borne by workers or jobseekers.

The experts participating at the Tripartite Meeting of Experts also restated the commitment to protect workers from exploitation and abuse, including trafficking and forced labour. The definitions represent a critical step forward in providing clarity on the nature and characteristics of recruitment fees and related costs, and is intended to support the development, monitoring, implementation and enforcement of laws, policies and measures aimed at the protection of workers' rights, recognizing the principle that workers must not be required to pay for access to employment.

Beyond providing the definitions, the objective of these non-binding ILO General Principles and Operational Guidelines for Fair Recruitment 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. These principles and guidelines are intended to cover the recruitment of all workers, including migrant workers, whether directly by employers or through intermediaries.

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58 https://www.ilo.org/wcmsp5/groups/public/–ed_protect/–protrav/–migrant/documents/publication/wcms_778540.pdf

59 ILO 2019, Operational Manual on Recruitment Costs - SDG 10.7.1.

In 2019, the International Training Centre of the ILO (ITCILO) developed and launched a "Training Toolkit on Establishing Fair Recruitment Processes" which contains 5 modules. -The module discusses the monitoring and enforcement of recruitment regulations by governments as well as by a number of other key actors. The general objectives of the toolkit are, for participants to be able to:

▶ understand governments' responsibilities in regards to the monitoring and enforcement of recruitment regulations;

▶ have an introductory knowledge of the use of monitoring as an enforcement mechanism and its contribution to ensuring the fair recruitment of workers;

▶ recognize the key challenges associated with complaints mechanisms and access to justice for workers, including migrant workers;

▶ explore the most commonly used legislative mechanisms for prosecuting recruitment abuses;

▶ appreciate the particular role of trade unions and non-governmental organizations in promoting and monitoring fair recruitment;

▶ become familiar with pilot initiatives of workers' organizations to protect and empower workers during the recruitment and placement process; and,

▶ become acquainted with self-regulation mechanisms adopted by private recruitment agencies.

> **▶ Box 7.1 The 13 General principles under the ILO General Principles and Operational Guidelines for Fair Recruitment**
>
> ▶ Recruitment should take place in a way that respects, protects and fulfills internationally recognized human rights, including those expressed in international labour standards, and in particular the right to freedom of association and collective bargaining, and prevention and elimination of forced labour, child labour and discrimination in respect of employment and occupation.
>
> ▶ Recruitment should respond to established labour market needs, and not serve as a means to displace or diminish an existing workforce, to lower labour standards, wages, or working conditions, or to otherwise undermine decent work.
>
> ▶ Appropriate legislation and policies on employment and recruitment should apply to all workers, labour recruiters and employers.
>
> ▶ Recruitment should take into account policies and practices that promote efficiency, transparency and protection for workers in the process, such as mutual recognition of skills and qualifications.
>
> ▶ Regulation of employment and recruitment activities should be clear and transparent and effectively enforced. The role of the labour inspectorate and the use of standardized registration, licensing or certification systems should be highlighted. The competent authorities should take specific measures against abusive and fraudulent recruitment methods, including those that could result in forced labour or trafficking in persons.
>
> ▶ Recruitment across international borders should respect the applicable national laws, regulations, employment contracts and applicable collective agreements of countries of origin, transit and destination, and internationally recognized human rights, including the fundamental principles and rights at work, and relevant international labour standards. These laws and standards should be effectively implemented.
>
> ▶ No recruitment fees or related costs should be charged to, or otherwise borne by, workers or jobseekers.
>
> ▶ The terms and conditions of a worker's employment should be specified in an appropriate, verifiable and easily understandable manner, and preferably through written contracts in accordance with national laws, regulations, employment contracts and applicable collective agreements. They should be clear and transparent, and should inform the workers of the location, requirements and tasks of the job for which they are being recruited. In the case of migrant workers, written contracts should be in a language that the worker can understand, should be provided sufficiently in advance of departure from the country of origin, should be subject to measures to prevent contract substitution, and should be enforceable.
>
> ▶ Workers' agreements to the terms and conditions of recruitment and employment should be voluntary and free from deception or coercion.
>
> ▶ Workers should have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.
>
> ▶ Freedom of workers to move within a country or to leave a country should be respected. Workers' identity documents and contracts should not be confiscated, destroyed or retained.
>
> ▶ Workers should be free to terminate their employment and, in the case of migrant workers, to return to their country. Migrant workers should not require the employer's or recruiter's permission to change employer.
>
> ▶ Workers, irrespective of their presence or legal status in a State, should have access to free or affordable grievance and other dispute resolution mechanisms in cases of alleged abuse of their rights in the recruitment process, and effective and appropriate remedies should be provided where abuse has occurred.

7.3   What are recruitment fees and related costs?

The terms 'recruitment fees' or 'related costs' refer to any fees or costs incurred in the recruitment process in order for workers to secure employment or placement, regardless of the manner, timing or location of their imposition or collection. Recruitment fees or related costs should not be collected from workers by an employer, their subsidiaries, labour recruiters or other third parties providing related services. Fees or related costs should not be collected directly or indirectly, such as through deductions from wages and benefits. The recruitment fees and related costs considered under this definition should not lead to direct or indirect discrimination between workers who have the right to freedom of movement for the purpose of employment, within the framework of regional economic integration areas.

Recruitment Fees

Recruitment fees include:

▶ payments for recruitment services offered by labour recruiters, whether public or private, in matching offers of and applications for employment;

▶ payments made in the case of recruitment of workers with a view to employing them to perform work for a third party;

▶ payments made in the case of direct recruitment by the employer; or,

▶ payments required to recover recruitment fees from workers.

These fees may be one-time or recurring and cover recruiting, referral and placement services which could include advertising, disseminating information, arranging interviews, submitting documents for government clearances, confirming credentials, organizing travel and transportation, and placement into employment.

Related Costs

Related costs are expenses integral to recruitment and placement within or across national borders, taking into account that the widest set of related costs are incurred for international recruitment. These costs are listed below and may apply to both national and international recruitment. Depending on the recruitment process and the context, these cost categories could be further developed by the governments and the social partners at the national level. It is recognized that the competent authority has flexibility to determine exceptions to their applicability, consistent with relevant international labour standards, through national regulations, and after consulting the most representative organizations of workers and employers. Such exceptions should be considered subject, but not limited, to the following conditions:

▶ they are in the interest of the workers concerned;

▶ they are limited to certain categories of workers and specified types of services; and,

▶ the corresponding related costs are disclosed to the worker before the job is accepted.

When initiated by an employer, labour recruiter or an agent acting on behalf of those parties; required to secure access to employment or placement; or imposed during the recruitment process, the following costs should be considered related to the recruitment process:

▶ Medical costs: payments for medical examinations, tests or vaccinations;

▶ Insurance costs: costs to insure the lives, health and safety of workers, including enrollment in migrant welfare funds;

▶ Costs for skills and qualification tests: costs to verify workers' language proficiency and level of skills and qualifications, as well as for location-specific credentialing, certification or licensing;

▶ Costs for training and orientation: expenses for required trainings, including on-site job orientation and pre-departure or post-arrival orientation of newly recruited workers;

▶ Equipment costs: costs for tools, uniforms, safety gear, and other equipment needed to perform assigned work safely and effectively;

▶ Travel and lodging costs: expenses incurred for travel, lodging and subsistence within or across national borders in the recruitment process, including for training, interviews, consular appointments, relocation, and return or repatriation; and,

▶ Administrative costs: application and service fees that are required for the sole purpose of fulfilling the recruitment process. These could include fees for representation and services aimed at preparing, obtaining or legalizing workers' employment contracts, identity documents, passports, visas, background checks, security and exit clearances, banking services, and work and residence permits.

Enumeration of related costs in this definition is generalized and not exhaustive. Other related costs required as a condition of recruitment could also be prohibited. These costs should be regulated in ways to respect the principle of equality of treatment for both national and migrant workers.

Illegitimate, Unreasonable and Undisclosed Costs

Extra-contractual, undisclosed, inflated or illicit costs are never legitimate. Anti-bribery and anti-corruption regulation should be complied with at all times and at any stage of the recruitment process. Examples of such illegitimate costs include: bribes, tributes, extortion or kickback payments, bonds, illicit cost-recovery fees and collaterals required by any actor in the recruitment chain.

The ILO has developed two tools on recruitment fees and related costs:

▶ **The Global study on recruitment fees and related costs:** The global comparative study was concluded in order to advance the ILO's work on promoting Fair Recruitment, in particular to reduce recruitment fees and related costs paid by workers. The Global Study was based on five regional reports, aimed to identify and analyze the national and international responses to addressing issues of high recruitment fees and related costs through a comparison of relevant national laws and policies in different regions. In particular, the study focused on: **a.** the definition of recruitment fees and related costs in national laws and policies, including bilateral and multi-country agreements, the cost categories and itemized costs, and how these were charged; **b.** an analysis of policy differences across the five regions, including their application to workers and jobseekers applying for employment nationally or internationally, as well as regulations applied to specific sectors or migration corridors, and the use of monitoring mechanisms and the imposition of penalties and sanctions for noncompliance; and, **c.** a review of multi-stakeholder initiatives providing guidance on the implementation of a no-fee-charging policy to workers and jobseekers. https://www.ilo.org/global/topics/labour-migration/publications/WCMS_761729/lang--en/index.htm

▶ **Global database:** Definition of fees and related costs in national laws and policies. This map displays a global database of national laws, policies and regulations (policies) that have defined recruitment fees and related costs. The data collection was undertaken in 2018 in preparation for a global study to support the Tripartite Meeting of Experts to Define Recruitment Fees and Costs. This meeting led to the adoption of the ILO definition of recruitment fees and related costs, to be read in conjunction with the ILO General Principles and Operational Guidelines for Fair Recruitment. The database contains policies of 90 countries that took a position or definition on the regulation or prohibition of recruitment fees and related costs. https://ilo.org/gimi/FRI.action.

7.4 ILO Conventions related to regulation of recruitment

One of the best ways to see a countries commitment to the establish a national regulatory framework for the recruitment and employment is demonstrated by its ratification and domestication of relevant international labor standards. In terms of recruitment costs there are three ILO Conventions that are relevant, thus, Convention No.88, No.97 and No.181.

> Each Member of the International Labour Organization for which this Convention is in force shall maintain or ensure the maintenance of a free public employment service. The essential duty of the employment service shall be to ensure, in co-operation where necessary with other public and private bodies concerned, the best possible organization of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources.
>
> **(ILO Convention No. 88 - Employment Service Convention, 1948).**

The provision of free recruitment and placement for workers and jobseekers is a central theme of ILO Employment Service Convention, 1948 (No. 88). The Convention provides general parameters for the regulation of the recruitment and employment of workers through public employment institutions. The growth of private labour intermediation, has also seen the evolution of ILO labour standards.

> **Annex I**- Recruitment, Placing and Conditions of Labour of Migrants for Employment Recruited Otherwise Than Under Government-Sponsored Arrangements for Group Transfer
>
> **Annex II**- Recruitment, Placing and Conditions of Labour of Migrants for Employment Recruited Under Government-Sponsored Arrangements for Group Transfer
>
> **(ILO Convention No.97-Migration for Employment Convention (Revised), 1949).**

The Annex note that each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of the Articles of the Annex.

> **(ILO Convention No. 181 - Private Employment Agencies Convention, 1997).**
>
> The legal status of private employment agencies shall be determined in accordance with national law and practice, and after consulting the most representative organizations of employers and workers. A Member shall determine the conditions governing the operation of private employment agencies in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice. Measures shall be taken to ensure that the workers recruited by private employment agencies providing the services referred to in Article 1 are not denied the right to freedom of association and the right to bargain collectively.

The ILO Private Employment Agencies Convention, 1997 (No. 181), specified its purpose as "to allow the operation of private employment agencies as well as the protection of the workers using their services" (Article 2(3)). The Convention guides Member States to establish clear policies, legislation and implementing mechanisms for effective registration and licensing of private employment agencies, reiterating the principle of no-fee charging of workers and jobseekers. Article 7 of Convention No. 181 stipulates, "Private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers." Of a total 54 African State, only 20 countries have ratified Convention No.88, 9 Convention No.96 and 8 Convention No.181, see Table 7.1.

▶ Table 7.1 Ratification of the Private Employment Agencies Convention, 1997 (No. 181) and the Employment Service Convention, 1948 (No. 88), in Africa		
Convention No. 88		**Convention No. 181**
Algeria,	Libya,	Algeria,
Angola,	Madagascar,	Ethiopia,
Central African Republic,	Mali,	Madagascar,
Democratic Republic of the Congo,	Mauritius, Mozambique,	Mali,
Djibouti,	Nigeria,	Morocco,
Egypt,	Sao Tome and Principe,	Niger,
Ethiopia,	Sierra Leone,	Rwanda,
Ghana,	Tunisia,	Zambia
Guinea Bissau,	United Republic of Tanzania	
Kenya,		

7.5 National policies on regulation of recruitment, including the prohibition on / fee charging of recruitment and related costs to workers

7.5.1 Regulation of fee and cost charging by private employment agencies

The ILO Global Report[60] noted that Africa has 16 national policies, coming from 15 countries, on regulating fee charging of recruitment fees and related costs to workers. Twelve of the policies prohibiting the charging of fees and costs to workers and jobseekers; while four regulate charging of fees and costs to workers and jobseekers. National policies and regulations on recruitment fees and costs pertaining to practices by private employment agencies are embedded in either:

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60 ILO, 2018- Findings from the global comparative study on the definition of recruitment fees and related costs, Background paper for discussion at the Tripartite Meeting of Experts on Recruitment Fees and Related Costs (Geneva, 14–16 November 2018), International Labour Office, Conditions of Work and Equality Department, Geneva.

▶ specific legislation governing the licensing and regulation of private employment agencies;

▶ national labour codes within a section on labour intermediation;

▶ legislation or policies on the protection of migrant workers; and,

▶ legislation or polices on action against trafficking in persons.

There are also instances were recruitment cost items are regulated at the corridor level through bilateral agreements between government of origin and host. In the case of international recruitment, some countries have established specialized government agencies or institutions responsible for migration. These include, in countries of origin, those overseeing the recruitment and placement of workers into jobs abroad, and in countries of destination, those supervising the entry and stay of migrant workers.

7.5.2 Regulation of public employment services

The ILO has always maintained a strong historical commitment to the principle of free placement services. This has seen a total of eighty-eight countries ratifying ILO Convention No. 88 on employment services, with its commitment to maintain a free public employment service. Public employment services recruit both nationally and internationally. In the last decade, public employment services have become particularly relevant as government-to-government programmes managing international recruitment have regained importance, with some explicitly limiting or excluding the role of private employment agencies.

Government-to-government agreements have radically reduced recruitment costs, but have not been able to eliminate them. Currently in government to-government programmes, the workers often pay for such services as pre-departure training orientation, visas and work permits, medical checks, language classes, insurance schemes, and travel, among other expenses. Thus, making public employment services the most preferred authority to conduct recruitment in particular sectors.

7.5.3 Prohibition of recruitment fees and related costs for workers

The ILO Global Report noted that most African countries prohibit charging fees to workers. Such prohibition may be for both national and international recruitment, as in Algeria, Mali, Morocco, Namibia, South Africa, Zambia and Zimbabwe. The prohibition of the charging of recruitment fees was found to be the dominant policy approach of most countries. The coverage of these policies might be limited to a specific sector or type of labour recruiter. A key limitation of the approach taken in many such policies is that once a general statement against fee charging is articulated, the policies are silent on related costs. With many countries clearly prohibiting the payment of recruitment fees and costs by workers for employment, research continues to show that enforcing these policies is not straightforward and that migrant workers continue to pay exorbitant fees for their recruitment. Table 7.2 illustrates examples of policies that prohibit the charging of recruitment fees in selected countries.

▶ **Table 7.2 Selected examples of policies that prohibit the charging of recruitment fees**

Country	Policy
Mali	The policy applies to both national and international recruitment of workers. The charging of recruitment fees and/or related costs to the worker is prohibited. ▶ Article 304 of the Labour Code (Code du Travail) states that all fees are to be borne by the employer only. ▶ Article L.304 of the Labour Code: Placement fees collected by fee charging employment agencies shall be borne entirely by the employers without any payment being received from the workers. ▶ Article L.305 of the Labour Code: Paid employment agency managers and their agents are prohibited from collecting or accepting from time to time any transactions made by them, deposits of surety of any kind whatsoever.
Morocco	The policy applies to both national and international recruitment of workers. The charging of recruitment fees and/or related costs to the worker is prohibited. ▶ Public employment services are free of charge for workers. Private employment agencies are also not allowed to charge workers any fees for their services. In case of a recruitment of a Moroccan worker abroad, the agency also has to pay the worker's repatriation costs. ▶ Article 476 of the Labor Code: Intermediation in matters employment is provided by services created for this purpose by the authority government responsible for labor. The services provided by these services for job seekers and employers are free ▶ Article 480 of the Labor Code: "It is prohibited for recruitment deprived of perceiving, directly or indirectly, job seekers emoluments or fees, in part or in totality." ▶ Article 490 of the Labor Code: The private recruitment agency, by through which an employment contract abroad has been concluded, bears the cost of returning the employee to his country as well as all the costs incurred by him in the event of non-performance of the contract for reasons beyond his control.
South Africa	The policy applies to both national and international recruitment of workers. The charging of recruitment fees and/or related costs to the worker is prohibited. Employment Services Act, Chapter 3, Article 15 (private employment agencies): ▶ No person may charge a fee to any work seeker for providing employment services to that work seeker. ▶ Despite subsection (1), the Minister may, after consulting the Board, by notice in the Gazette permit private employment agencies to charge fees in terms of a specified fee to specified categories of employees or for the provision of specialized services. ▶ A notice in terms of subsection (2) may specify categories of employees by reference to the work performed or to the earnings of such employees. ▶ A private employment agency must not deduct any amount from the remuneration of an employee or require or permit an employee to pay any amount in respect of the placing of that employee with an employer. ▶ Any agreement between a private employment agency and a client in terms of which employees perform work for the client, must specify separately the remuneration that employees will receive and the fee that the client is paying to the private employment agency.

Source: ILO, 2020 - A global comparative study on defining recruitment fees and related costs: Interregional research on law, policy and practice.

7.5.4 Regulation of recruitment fees and related costs

For countries that choose not to prohibit but regulate recruitment fees and costs, do so in three ways:[61]

▶ articulating a general policy statement that allows labour recruiters to charge fees for their services;

▶ capping of the fees, that is, prescribing a maximum amount to be paid by the worker or jobseeker; and,

▶ detailing costs and charges that should not be charged to the workers or describing which costs are to be charged to employers, workers and labour recruiters.

Africa has 4 countries that regulate the payment of recruitment fees and related costs through one of these three means: 1 have issued general statements allowing the charging of fees and related costs to workers; 1 have capped the allowable fees and related costs; and 4 have detailed or itemized different cost categories. To regulate the recruitment of migrant workers for employment in the Arab States, Ethiopia, Ghana, Kenya, Nigeria and Uganda have put in policies that regulate recruitment fees. The three typologies noted above for the regulation of fees and related costs are seen on the continent:

▶ ***Ghana*** has articulated a general policy statement that allows labour recruiters to charge fees for their services. The Labour Act, 2003, (Act 651) stipulates that fee charging to workers is allowed. The Minister may make regulations prescribing the scale of fees chargeable by PEAs (section 174(h)). The Act also specifies that a PEA must refund 50 per cent of the fees paid to it by a client, if the PEA is unable to secure a job placement for the client within three months (section 7(7)). According to principle 3 of the Ghana Association of Private Employment Agencies Code of Conduct, PEAs may charge fees for their services; however, these fees must be "appropriate" in relation to the costs of the agency. No definition of "appropriate" is provided.

▶ ***Uganda*** has prescribed a maximum amount that can be charged to the worker. The Rules and Regulations Governing the Recruitment and Employment of Ugandan Migrant Workers, 2005, addresses in section 29 the fees chargeable to migrant workers by PEAs. Workers may also be charged a placement fee to cover related costs, such as a trade or skill tests, medical examinations, and passport and visa costs. These fees may only be collected once the employment contract has been signed, and receipts need to be issued upon payment.

> ▟▟ In Uganda, some recruitment agencies still charge recruitment fees that range between USD 57 and USD 677 for recruiting workers to Saudi Arabia and Jordan. Recruitment agencies in Ethiopia, Ghana, Kenya and Nigeria have also been known to charge recruitment fees, contrary to the laws in these countries. Some recruitment agencies also do not provide employment contracts and pre-departure training as stated in the law. Government agencies have taken the responsibility of providing these trainings and also verifies the employment contracts that are issued with the recruitment agency both in the country of origin and destination.
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> **(ECDPM, 2021).**

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61 ILO, 2018- Findings from the global comparative study on the definition of recruitment fees and related costs, Background paper for discussion at the Tripartite Meeting of Experts on Recruitment Fees and Related Costs (Geneva, 14–16 November 2018), International Labour Office, Conditions of Work and Equality Department, Geneva.

▶ ***Ethiopia***, the Overseas Employment Proclamation No. 923/2016 provides a detailed articulation of which expenses are to be paid by the worker and which by the employer. From a worker's point of view, it is not only key to minimize the costs associated with migration in general, and recruitment in particular, but also to obtain transparent and precise information on recruitment costs and related fees, so as to better understand the conditions of their recruitment and employment. If asked to pay, workers need to understand what they are being charged for in detail, and why a fee is being charged. As recruitment fees and related costs can negatively affect workers' incomes and working conditions, this information is especially important when considering various options for employment.

7.6   Trade unions initiatives on promoting fair recruitment in Africa

▶ **The Recruitment Advisor and the Abuse Case Documentation System**

The International Trade Union Confederation established and launched the Migrant Workers Recruitment Advisor Platform.[62] The Recruitment Advisor is a web-based review platform of labour recruiters and is set to increase knowledge of safe recruitment options and facilitate the sharing of migrant workers' recruitment experiences. This enables the ITUC and its affiliates to create a global platform that provides accurate information on recruitment to both prospective workers and migrant workers already living and working in countries of destination. The ultimate objective behind this website is to create a global repository of information on the various labour recruiters in any given country.

The Migrant Recruitment Advisor is currently being tested in several countries (including Nepal, Indonesia, the Philippines and **Kenya)**.

▶ **Trade union-run Migrant Worker Resource Centres**

The process of service provision for migrant workers led by the Tunisian General Labour Union (UGTT) is an example of emerging good practice and a replicable model. With the support of the ILO's FAIR project, UGTT began discussions on the protection and organization of migrant workers in Tunisia in light of changing migrant trends in Tunisia. UGTT launched a regional network of focal points on labour migration across Tunisia, responsible for being the first point of contact for migrant workers. Thereafter, training sessions on fair recruitment and labour migration governance as well as on the role and responsibilities of trade unions on these issues were delivered to UGTT's members. UGTT then established migrant resource centres ("Espace migrants") which provide reliable information to migrant workers (for example on available basic services, rights at work), deliver training, and provide services in the case of labour disputes. They have also developed a very comprehensive guide targeting migrant workers which provides practicable information on rights with legal references, and a directory of useful organizations.

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62 https://www.ituc-csi.org/ituc-launches-migrant-worker?lang=en

▶ **African Regional Organisation of the International Trade Union Confederation (ITUC-AFRICA) Study on Africa Labour Migration to the GCC States: The Case of Ghana, Kenya, Nigeria and Uganda**

The study was undertaken a one of the initiative to ensure that trade unions had an understanding (evidence-based) of the situation and challenges faced by migrant workers in the GCC states. Thus was critical as it would enable trade unions to effectively protect migrants by improving their own interventions, improving regulation of recruitment agencies and intermediaries, strengthening legal and institutional safeguards against abuses. The study is focused on understanding and/or addressing the following:

▶ Why do migrants still decide to migrate to the GCC states in the midst of increasing challenges and abuses?

▶ How do recruitment agencies behave and why they do that?

▶ How prospective migrants get to be recruited?

▶ What are the challenges and experiences in the process and course of migrating and working/ living in the GCC states (forms of exploitations and violations)?

▶ What are the existing protection mechanisms–legal, policy and institutions, to respond and/ or regulate, and how accessible and effective they are?

▶ What are the experiences of the African migrants in the GCC states and how can they be addressed?

▶ How can trade unions help to better defend and protect the rights of migrants and labour migrants, especially international labour migrants?

▶ How can the lessons learnt on how to better protect the human and labour rights of international labour migrants be transferred and applied by African trade unions in the protection of the rights of migrants in their own countries?

7.7 The role of trade unions in fair recruitment

The promotion of fair recruitment and fair migration is a trade union issue. As primary advocates of workers' rights and interests, workers' organizations also play a crucial role as monitors, capacity-builders and policy-influencers. Taking into account that migrant workers are: (i) workers; (ii) represent a significant part of the world's workforce; and, (iii) are in most cases vulnerable and need protection, the needed present, involvement and participation of the trade unions is amplified. Trade unions have a key role by taking the lead in promoting a rights-based approached to labour migration. As human and worker's rights defenders, trade union are obligated to protect the rights of migrant workers regardless of their status. The fight for equality, decent work for all, for social protection and against child labour or forced labour, mandates trade unions to take an active role in the recruitment and employment of migrant workers. Among their membership, trade unions can train workers to recognize and deal with recruitment abuses, or shed light on living and working conditions in destination countries during the pre-departure phase.

Guidelines for fair recruitment of migrant labour – Trade Unions

To tackle abusive and fraudulent recruitment practices, the ILO has developed general principles and operational guidelines for fair recruitment of migrant labour. This video shows guidelines that can be helpful specifically to trade unions in the recruitment process. (follow link below)

https://www.ilo.org/global/about-the-ilo/multimedia/video/institutional-videos/WCMS_720819/lang--en/index.htm

It is also important to note that protecting the rights of migrant workers are the best way to protect the rights of national workers and avoid attempts to place migrant and national workers in competition with each other, as this would only serve the interests of unscrupulous employers looking for cheap labour. With the drop in union density in most countries due to changes in the labour market, existing unions can revitalize their membership by organizing migrants and improve their membership density. Trade unions can have a key role in this critical issue as policy-influencers; monitors, as well as capacity-builders and service providers. In practice, unions must take the following first steps:

▶ engage with migrant workers;

▶ conduct surveys on migrant workers' conditions in order to identify and report possible abuses;

▶ understand the labour and recruitment regulations applied in the countries of origin and destination,

▶ understand and address gender-specific challenges with regard to unethical recruitment practices; and,

▶ identify workers' needs and gaps in legal protection and enforcement.

The ILO Brief on Trade union action to promote fair recruitment for migrant workers, notes the following actions that can be taken by trade unions:[63]

▶ **Advocate for fair recruitment**

Trade unions have an instrumental role in promoting fair recruitment and social dialogue in bipartite and tripartite mechanisms and collective bargaining agreements. Social dialogue is a vital aspect of ensuring fair recruitment, particularly when it comes to advising governments on legislation and policy. Trade union should:

▶ advocate for the creation of functional bipartite and tripartite labour inspection committees and play constructive roles in these bodies;

▶ play an active role in the formulation of sound labour inspection legislation and policies and in the monitoring of their implementation could also be envisaged;

▶ be participate in the governmental bilateral labour migration agreement (BLMAs) negotiations (including development, negotiation, monitoring, and evaluation), as they can effectively provide mechanisms that will protect and promote migrant workers' rights, including those that deal with fair recruitment;

▶ engage in public and worker awareness campaigns, including outreaches to migrant workers to inform them of their rights; and,

▶ use evidence-based documentation for policy advocacy in order to improve the recruitment landscape and the legal framework, including by pushing for the ratification of relevant ILO Conventions and Protocols.

▶ **Monitoring and oversight role**

Labour inspection services and grievance mechanisms are crucial for ensure fair recruitment. Labour inspectors are mandated to conduct regular or ad hoc inspections, provide guidance and advice to both employers and workers, including migrant workers, prevent abuses, and support effective and appropriate enforcement in cases of non-compliance. In collaboration with the labour administration system and/or by complementing the work performed by the State inspectorate or enterprises, trade unions have a key role in:

▶ detecting if fair recruitment principles are respected by recruiters and employers, and, if not, denouncing;

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63 https://www.ilo.org/wcmsp5/groups/public/–ed_protect/–protrav/–migrant/documents/briefingnote/wcms_740198.pdf

> ▶ checking if complaint and dispute resolution mechanisms are available, accessible and function properly and effectively;

> ▶ develop mechanisms and procedures to conduct inspections of recruitment agencies;[64] and,

> ▶ facilitating workers' access to these mechanisms and supporting workers in going through the labour courts.

To do so, trade unions can:

> ▶ carry out field visits to the location of workers;

> ▶ conduct surveys on recruitment procedures migrant workers go through and how this has impacted their working conditions (The ILO has worked with trade unions in Hong Kong[65] to monitor how recruitment agencies are adhering to the governments code of practice, this could be replicated in Africa);

> ▶ support the identification and reporting of abuses of workers' working conditions;

> ▶ identify recruiters who comply with the ILO fair recruitment principles and guidelines and definition, and provide that information to the workers to encourage them to use only compliant recruiters;

> ▶ participate in human rights due diligence procedures at the enterprise level in order to influence and monitor the procedures; and,

> ▶ monitor recruitment agencies, including intermediary recruiters, in order to detect the payment of recruitment fees and other costs by workers.

▶ Service provision

This area of action aims to offer very concrete and practical support to workers, including migrant workers throughout the migration cycle, and in collaboration with other trade unions across the migration corridors. Considering the specific context of countries (e.g. lack of regulation, weak enforcement of laws, limited freedom of association which challenges the organization of workers, limited access to justice), workers may face some particular barriers with regard to their rights. To address this, trade unions have a key role in:

> ▶ *Protecting workers,* for example, through case management and providing assistance to workers in areas such as legal representation, follow up on medical treatment, support for immigration issues, dispute resolution with workers or recruitment agencies, or collaboration with labour attachés of countries of origin. In the area of justice, it may be by filing cases to labour and civil courts, or representing a claimant during industrial disputes and labour claims.

> ▶ *Organizing workers,* for example, by establishing contact with and between workers (through a registration system or an exchange group on a social media), trade unions may facilitate the development of workers' networks. *(A more detailed look at organizing migrant workers in given in Module 10).*

> ▶ *Informing workers,* for example, disseminating information (e.g. on living conditions, rights, and the ILO fair recruitment principles and guidelines and definition) and providing counselling on safe migration and rights at work. Trainings may be delivered for example in financial education, occupational, safety and health at work, vocational training and education, or language courses.

These services may be provided physically through trainings or at a dedicated center (such as a migrant worker resource centers), remotely (either online or through phone) or through broadcasts on local radio and television.

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64 Tunisia is currently establishing a team of such inspectors and the UK has a similar oversight body (the gangmaster licencing authority).

65 https://idwfed.org/en/resources/agents-of-change-assessing-hong-kong-employment-agencies-compliance-with-the-code-of-practice

Learning exercises for Module 7
Regulation recruitment fees

▶ Exercise 1

Activity: National policy on recruitment fees

Aims: To outline and understand national legislation of recruitment fees.

Task:

1. What regulations exist in your country on recruitment fees?

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2. Write down the challenges faced by workers in your country with regards to recruitment fees?

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3. What are the elements of recruitment fees and related costs in your country?

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4. What could be the role of the trade union in promoting fair recruitment and fair migration in your country and region?

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▶ **Exercise 2**

Activity: Recruitment journey of a migrant workers

Aims: To understand the plight of a migrant worker in the recruitment process.

Task:

1. Unfair recruitment rarely leads to decent work and employment, and instead heightens the risk of being subjected to forced labour.

   a. Follow the journey of a migrant worker being recruited into a job abroad and write down as many forms of **fraudulent and abusive recruitment practices** as you can identify.

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   b. Next, rewrite an **alternative scenario** to transform this worker›s journey into one that begins with a fair recruitment process. What would that story look like?

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Module 8.

Labour exploitation and abuse of migrant workers

Overview

Migrant workers faced abuse and labour exploitation in their search and pursuit for employment. Module 8 provides an insight into some of the abuse and labour exploitation that migrant workers face. The Module provides definition of these abuses and details on the violation of the rights of migrant workers.

Learning Outcomes

By the end of this module, you will be able to:

▶ Identify the root causes of the abuse and exploitation faced by migrant workers;

▶ Describe the different types of abuse and exploitation faced by migrant domestic workers; and,

▶ Identify the available policy option to address the the abuse and exploitation faced by migrant workers.

Content

The module addresses the following themes:

8.1 Causes of migrant workers' abuse and labour exploitation: The section highlights the causes of abuse and exploitation.

8.2 Labour exploitation and abuse of migrant workers: The types/forms of abuse and exploitation faced by migrant domestic workers are explained in this section.

8.3 Policy priorities on the road to freedom from abuse and exploitation: Possible policy options to address the challenges faced by migrant workers are highlighted in the section.

Principal questions which this module addresses

▶ What are the different forms of abuse and exploitation that migrant workers face?

▶ What are the possible remedies to the abuse and exploitation of migrant workers?

8.0 Introduction

There are different types of abuse and exploitation that migrant workers are subjected to, and these include: trafficking in persons, forced labour, child commercial sexual exploitation, slavery-like practices, slavery and worst forms of child labour. The adoption of Sustainable Development Goals (SDGs) has seen renewed efforts to address global challenges to achieve a better and more sustainable future for all. SDG 8.7 aims to eradicate modern slavery, trafficking, forced labour and the worst forms of child labour by 2030, and to end child labour by 2025. Worker Organisations are activity involved in the achievement of SDG8.7, through the Alliance 8.7.[66] SDG 10.7, which aims to facilitate orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies. In addition, the Global Compact for Safe, Orderly and Regular Migration seeks to embody the first intergovernmental agreement on international migration under the auspices of the United Nations. Also SDG 5.2 aims at eliminating all forms of violence against all females in the public and private spheres including trafficking, sexual and other types of exploitation.

8.1 Causes of migrant workers' abuse and labour exploitation

The causes of workers' abuse and labour exploitation are numerous, interconnected and often complex. Some of the causes, such as poverty and a lack of legal avenues for migration, overlap with the drivers of irregular migration and smuggling of migrants. Migrant workers tend to look for assistance - from third parties - in their search for employment due to limited access to networks, information or resources.

If proper and adequate information is not readily available through official channels, then employment agents, intermediaries and employers will be able to leverage their superior control of resources to exploit migrant workers with relatively low cost and risk. These include having superior access to information about migration processes and employment systems, local networks (particularly for potential employment), financial resources and control of space, including workplaces. This results in migrants' frequent use of recruitment agencies, brokers, smugglers and other intermediaries, including extended networks through family and friends, to find overseas employment and facilitate their migration.

Transactions with recruiters or recruitment agencies are one of the most common situations in which migrants are confronted with choices that lead to their exploitation. Other causes of abuse and exploitation include poverty, inequity, gender discrimination within the family and the community, as well as a tolerance of violence against women and children. Lack of appropriate legislation and political will to address the problem, restrictive immigration policies, globalization of the sex industry, and the involvement of transnational organized criminal networks are other causal factors. The sites of vulnerability - these are places where migrant workers are particularly vulnerable to exploitation - include: recruitment agencies, private businesses, private dwellings, irregular migration routes, and, border crossings.

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66 Alliance 8.7 is an inclusive global partnership committed to achieving target 8.7 of the 2030 sustainable development goals. Workers' organizations are essential vehicles to involve workers, small producers, enterprises, the self-employed and other groups in the Alliance by supporting and empowering them to engage in dialogue and collective bargaining.

8.2 Labour exploitation and abuse of migrant workers

The labour migration discourse has different terms/categories of abuses and exploitation terms that describe the challenges faced by migrant workers. The terms can be useful to describe the different experiences, vulnerabilities and rights attaching to a given person. Below are some of the abuses and exploitations faced by migrant workers.

8.2.1 Labour exploitation

Exploitation is best understood as a continuum from decent work to forced labour or slavery. The ILO has used the term *"exploitation"* only in limited circumstances where the potential victims are particularly vulnerable because of criminal activity involved (trafficking and commercial sexual exploitation); their outsider status (indigenous peoples) their foreign status (migrant workers); or the circumstances of their employment make them particularly vulnerable.

In the context of an international instrument on trafficking in persons, the United Nations has defined exploitation as follows:

�▶ Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The ILO Committee of Experts on the Application of Conventions and Recommendations referenced this definition as an appropriate way to link the Palermo Protocol and the Forced Labour Convention, 1930 (No. 29). In the same report, the Committee of Experts also stated:

▶▶ In certain cases, the Committee has considered it appropriate to examine the links between an obligation to perform overtime work and protection against the imposition of forced labour. Exploitation of the vulnerability of workers who are facing a menace of dismissal or forced to work beyond normal working hours to attain productivity targets so that they can earn the minimum wage, limits the workers' liberty and right to refuse work imposed on them under the menace of a penalty. The Committee has considered that, in certain situations, an obligation to perform overtime work may constitute an infringement of [the Forced Labour] Convention No. 29.

Additionally, the Committee of Experts noted that "The Migration for Employment Convention (Revised), 1949 (No. 97), contains provisions aiming at the assistance to migrants for employment, in particular through the establishment of free services to provide them with various kinds of assistance and accurate information. In addition, it requires ratifying States to take all appropriate steps against misleading propaganda relating to emigration and immigration (Articles 2 and 3). These provisions may be viewed in the context, as preventing of conditions conducive to trafficking in persons for the purpose of exploitation." Part I of Convention No. 143 aims to address the phenomenon of migration in abusive conditions or irregular migration. It requires member States to take a number of measures to detect, suppress and address migration in abusive conditions, and the irregular employment of migrant workers. At the same time, it requires these States to respect the basic human rights of all migrant workers, irrespective of migrant status and to adopt some minimum standards of protection (including equality of treatment with regard to rights arising out of past employment) (see Module 3).

8.2.2 Trafficking

Trafficking in persons (often termed "human trafficking") is an extreme form of irregular migration. Human trafficking is the process of trapping people through the use of violence, deception or coercion and exploiting them for financial or personal gain. With labour migration on the rise, accompanied by the increasing feminization of migration – the increasing participation of women in the global labour market – the UN and other actors started to focus their attentions on creating a framework for reducing the vulnerabilities faced by trafficked or smuggled individuals, along with those subjected to forced labour. Trafficking typically includes recruitment under false pretenses, movement or transportation (either domestically to an unfamiliar city or region, or internationally), the presence of coercion or control involving the use of or threat of force, and exploitation. Trafficking often results in forced labour, which encompasses the use of violence, coercion, and debt to subjugate individuals and exploit them for their labour.

In 2000, the General Assembly passed the United Nations Convention against Transnational Organized Crime, which included several associated protocols, including the Protocol to Prevent, Suppress and Punish the Trafficking in Persons, Especially Women and Children, known as the Palermo Protocol. In the Palermo Protocol trafficking is defined as:

> ◢◤ The recruitment, transportation, transfer, harboring or receipt of persons, by
> means of the threat or use of force or other forms of coercion, of abduction,
> of fraud, of deception, of the abuse of power or of a position of vulnerability or
> of the giving or receiving of payments or benefits to achieve the consent of
> a person having control over another person, for the purpose of exploitation.
> Exploitation shall include, at a minimum, the exploitation of the prostitution of
> others or other forms of sexual exploitation, forced labour or services, slavery
> or practices similar to slavery, servitude or the removal of organs.

In short, the definition contains three main elements: (a) action: the recruitment, transportation, or receipt of persons; (b) means: threat or use of force, coercion or deception; and, (c) purpose: exploitation (e.g. sexual exploitation, forced labour, slavery or removal of organs). The last part of the definition demonstrates what kinds of exploitation are the most relevant for trafficking, namely in the areas of prostitution, forced labour, slavery, servitude and organ removal.

The link between labour migration and trafficking has long been understood. In 1975, the ILO was the first to develop an international instrument introducing specific measures to combat trafficking in persons. The ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which aims to eliminate irregular employment and sets requirements for the respect of rights of migrants with an irregular status, while providing for measures to end clandestine trafficking and to penalize employers of irregular migrants. In 2000 the Committee of Experts on the Application of Conventions and Recommendations adopted a General Observation on the issue under ILO - Forced Labour Convention, 1930 (No. 29), and requested all governments to include in their next reports under the Convention information on measures taken or contemplated to prevent, suppress and punish trafficking in persons for the purpose of exploitation.

At the 2014 International Labour Conference (ILC), adopted a new Forced Labour Protocol, bringing the ILO Convention No. 29 on Forced Labour, adopted in 1930, into the modern era to address practices including human trafficking. The legally binding Protocol, once ratified, aims to advance prevention, protection and compensation measures, as well as to intensify efforts to eliminate contemporary forms of forced labour and exploitation. The Protocol explicitly addresses migrant workers and the link between migration and human trafficking, and was overwhelmingly supported by the ILO's tripartite members.

The Special Rapporteur on trafficking in persons, 2016 noted the following:

> ▐▌ The Kafala system, bounding every worker to a particular employer as
> a sponsor, creates a situation of vulnerability which favors abusive and
> exploitative work relationships. It happens that domestic workers are
> deprived of their documents and of their mobile phones, are prevented from
> communicating with their families and from establishing social relationships
> outside the family, are obliged to work long working hours, and are eventually
> mistreated and beaten. In this context, hundreds of them flee their employers
> every year. In order to be successful in the struggle against trafficking, the
> government of Kuwait should also consider to deal with the general context of
> migration and labour regulations that produce social vulnerabilities. This is the
> reason why the Kafala system should be abolished and replaced by a different
> regulation, allowing migrant workers to enjoy substantial freedom in the
> labour market. Moreover, in line with the recent law acknowledging the rights
> of domestic workers, the area of domestic work should be placed under the
> competence of the Ministry of Labour and the Authority for Manpower, which
> implies full recognition of equal rights if domestic workers.[67]

8.2.3 Forced labour

Forced or compulsory labour is any work or service that is exacted from any person under the menace or threat of a penalty, and which the person has not entered into of his or her own free will. Almost all slavery practices contain some element of forced labour. Forced labour is a violation of the basic human right to work in freedom and freely choose one's work.

> ▐▌ Forced or compulsory labour is all work or service which is exacted from any
> person under the threat of a penalty and for which the person has not offered
> himself or herself voluntarily.
>
> **(International Labour Organization Forced Labour Convention, 1930 (No. 29)).**

Two elements characterize forced or compulsory labour:

1. **Threat of penalty.** The penalty may consist in a penal sanction, such as arrest or jail, or in the suppression of rights or privileges, such as the refusal to pay wages or forbidding a worker from traveling freely. Threats of retaliation may be realized in different forms, from the most blatant, which include the use of violence, physical obligations or even death threats, to the more-subtle, often psychological, such as the threat to denounce an irregular migrant worker to the authorities.

2. **Work or service undertaken involuntarily.** Deciding whether work is performed voluntarily often involves looking at external and indirect pressures, such as the withholding of part of a worker's salary as part repayment of a loan, or the absence of wages or remuneration, or the seizure of the worker's identity documents. The principle that all work relationships should be founded on the mutual consent of the contracting parties implies that both may leave the work relationship at any moment, subject

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67 It is worth noting that there have been positive changes in some GCC towards abolishing the Kafala system. https://www.cgdev.org/end-of-kafala-labor-mobility

to giving reasonable notice in accordance with national law or a collective agreement. If the worker cannot withdraw his/her consent, without fear of suffering a penalty, the work may be considered to be forced labour, starting from the moment he or she has been denied the right to stop working.

Migrant workers may be coerced through withholding of their passports or identity documents. The employer may be holding the workers' identity documents for safekeeping. In such cases, the workers must have access at all times to the documents, and there should be no constraints on the ability of the worker to leave the enterprise.

> To address this intersection between forced labour and trafficking, the ILO utilizes a 'forced labour continuum' in which it identifies three categories of labour – trafficked victims of forced labour, non-trafficked victims of forced labour and successful migrants. It argues that trafficked victims of forced labour are subject to the worst abuses because they often have the least freedom of movement and are the most vulnerable while non-trafficked victims of forced labour face a range of exploitative conditions, including non-payment of wages, retention of identity documents, long working hours and unacceptable working conditions. The advantage of the 'forced labour continuum' over the traditional distinction between 'victims of trafficking' and 'irregular migrants' is that it provides a means to examine the 'varying degrees to which migrants can become victim of exploitation, routes that lead into forced labour and individual strategies to escape from coercion and control.'
>
> **Ford, M., Lyons, L., van Schendel, W. (2012).**
> **Labour Migration and Human Trafficking: An Introduction.**

▶ Box 8.1 ILO Indicators of Forced Labour[68]

These indicators are intended to help "front-line" criminal law enforcement officials, labour inspectors, trade union officers, NGO workers and others to identify persons who are possibly trapped in a forced labour situation, and who may require urgent assistance. The indicators represent the most common signs or "clues" that point to the possible existence of a forced labour case. The indicators are derived from theoretical and practical experience of the ILO's Special Action Programme to Combat Forced Labour (SAP-FL). They are based upon the definition of forced labour specified in the ILO Forced Labour Convention, 1930 (No. 29) as: "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."

The indicators are:

a.	Abuse of vulnerability;	g.	Retention of identity documents;
b.	Deception;	h.	Withholding of wages;
c.	Restriction of movement;	i.	Debt bondage;
d.	Isolation;	j.	Abusive working and living conditions; and,
e.	Physical and sexual violence;	k.	Excessive overtime.
f.	Intimidation and threats;		

The presence of a single indicator in a given situation may in some cases imply the existence of forced labour. However, in other cases you may need to look for several indicators which, taken together, point to a forced labour case. Overall, the set of eleven indicators covers the main possible elements of a forced labour situation, and hence provides the basis to assess whether or not an individual worker is a victim of this crime.

Further guidance on how to use the indicators in practice is provided in the ILO e-learning tool on identifying and investigating cases of forced labour.

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68 ILO Special Action Programme to combat Forced Labour (SAP-FL).

8.2.4 Irregular migration and migrant workers in an irregular situation

The term "migrant workers in an irregular situation" is defined in Article 5 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the Convention), which specifies that migrant workers or members of their families are considered as non-documented or in an irregular situation if they are not authorized to enter, to stay or to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which it is a party.[69]

Article 5 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990):

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

The situation of migrant workers may be irregular either because they have entered the State of employment in an unauthorized way and are thus not authorized to stay, reside or work in that State, or because they overstay the period or otherwise violate the conditions of their authorized stay. Regular migrants may also lose their status through no fault of their own due to illness or other unforeseen circumstances affecting them or family members.[70]

In the case of irregular migration, for example, border policies produce an 'unauthorized' migrant category immediately as a migrant crosses an international border. As a result of state-imposed immobility, those categorized as 'irregular' are made invisible and "must negotiate in order to survive." For migrant workers in irregular situations, they experience the "border" in their everyday world because "the borderline is not just at physical entry points at ports, airports, and land crossings" it is a process that has the potential to be materialized anywhere.

The UN General Assembly Resolution 3449, noted that, the use of the term **"illegal"** to describe migrant workers in an irregular situation is inappropriate and should be avoided as it tends to stigmatize them by associating them with criminality.

8.2.5 Smuggling of persons

People smuggling is a sub-set of irregular migration. The international legal definition of smuggling is found in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000).

> Smuggling of migrants shall mean "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (Article 3(a)).

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69 General Comment No. 2 on the Rights of Migrant Workers in an Irregular Situation and Members of their Families.
70 Ibid.

A most important clause of the protocol establishes that:

> Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of (smuggling).

Many people who wish to migrate and who cannot or choose not to use regular channels may rely on the assistance of others to migrate irregularly. Those who assist migrants may include friends or relatives, small-scale brokers, or groups associated with transnational organized crime. People smuggling can be for the purposes of employment, or not. Thus, people smuggling may intersect with labour migration, or it may not. For example, when seeking protection, refugees who are at risk in their home country may also utilize people smugglers to cross borders in order to gain access to safety and protection.

8.2.6 Modern Slavery

Modern forms of slavery can include debt bondage, where a person is forced to work for free to pay off a debt, child slavery, forced marriage, domestic servitude and forced labour, where victims are made to work through violence and intimidation. Modern slavery is the severe exploitation of other people for personal or commercial gain. Modern slavery is all around us, but often just out of sight. People end up trapped in modern slavery because they are vulnerable to being tricked, trapped and exploited, often as a result of poverty and exclusion.

Child and adolescent migrants are highly vulnerable to modern slavery, in particularly those travel alone or having been separated from their families. Crimes against children tend to be underreported and child migrants face additional barriers to reporting, including fear of detention and deportation. The issue of gender is relevant to vulnerability, with women experiencing higher rates of modern slavery in domestic work, the sex industry and forced marriage, while men are more likely to be exploited in state sponsored forced labour and forced labour in the construction and manufacturing sectors.

Facts and Figures

▶ At any given time in 2016, an estimated 40.3 million people are in modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage.

▶ It means there are 5.4 victims of modern slavery for every 1,000 people in the world.

▶ 1 in 4 victims of modern slavery are children.

▶ Out of the 24.9 million people trapped in forced labour, 16 million people are exploited in the private sector such as domestic work, construction or agriculture; 4.8 million persons in forced sexual exploitation, and 4 million persons in forced labour imposed by state authorities.

▶ Women and girls are disproportionately affected by forced labour, accounting for 99% of victims in the commercial sex industry, and 58% in other sectors.

Source: Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, Geneva, September 2017.

Undocumented migrants are at a higher risk of modern slavery than those who are documented. Restrictive immigration policies (such as restrictions applied to certain visas or arbitrary changes to asylum procedures for nationals from certain countries) and weak migration governance structures are frequently noted as major causes of vulnerability to modern slavery, especially when combined with low-wage migration. In many contexts, migrant workers are excluded from or fall outside the protection of organized labour, where it exists.

8.2.7 Child Labour[71]

The term "child labour" is often defined as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. It refers to work that: is mentally, physically, socially or morally dangerous and harmful to children; and/or interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.

According to the ILO Convention concerning Worst Forms of Child Labour Convention, 1999 (No. 182), the term **the worst forms of child labour** comprises: (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties; (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Hazardous child labour is the work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. Guidance for governments on some hazardous work activities which should be prohibited is given by Article 3 of ILO Recommendation No. 190: (i) work which exposes children to physical, psychological or sexual abuse; (ii) work underground, under water, at dangerous heights or in confined spaces; (iii) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; (iv) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; (v) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

More often than not, when child migrants travel across borders, they do so without proper documentation and identification. This limits their ability to access basic social services such as education and healthcare and makes them vulnerable to child labour and other forms of exploitation, in particular when they migrate independently. Though some children who migrate voluntarily may become trafficked in the process of migration, there are many who are not.

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71 https://www.ilo.org/ipec/facts/lang--en/index.htm: International Programme on the Elimination of Child Labour (IPEC) -What is child labour?

8.3 Policy priorities on the road to freedom from abuse and exploitation

Ending migrant worker abuse and exploitation will require a multi-faceted response that addresses the array of forces – economic, social, cultural and legal – that contribute to people's vulnerability and enable abuses. Such overarching policy priorities could focus on the following:

▶ **Expanding access to free, quality public education.** Education helps break intergenerational cycles of poverty and provides a worthwhile alternative to child labour. There is an ongoing need for investment in what we know works in getting children out of work and into the classroom – and keeping them there.

▶ **Monitor and regulate.** Governments have the primary responsibility to prevent exploitation in line with their international human rights commitments. Policies should be designed to both reduce exploitative practices, and crucially, to identify families at risk of falling victim to exploitation, by monitoring work places, schools, health facilities and social protection systems. Ensuring safe recruitment processes involves regulating private recruitment agencies by informing them of domestic and international laws and monitoring them to reduce the potential for recruitment and exploitation of migrants in irregular situations.

▶ **Extending social protection systems, including floors.** Vulnerabilities associated with poverty, sudden job loss, natural disasters, economic crisis and other shocks can force households to resort to child labour as a coping mechanism. These shocks can also play a central role in pushing people into modern slavery. Social protection is critical to mitigating these vulnerabilities.

▶ **Address exploitative norms and traditional and cultural practices.** Raising awareness of potential migrants is discussed above as a means of empowering them against exploitation. Cultural attitudes that lead to exploitation highlight the fact that awareness must also be raised among potential exploiters. In some societies including migrant societies, social inequalities and prevailing attitudes about class, ethnicity, gender, race or caste can mean that discriminatory attitudes and exploitive practices are normalized.

▶ **Ensuring fair and effective migration governance.** The global estimates show that a high percentage of all African victims of modern slavery are exploited outside their country of residence underscoring the link between migration and modern slavery in the region. A significant share of children in child labour are also migrants.

▶ **Addressing debt bondage.** There is a very high prevalence of debt bondage as a means of coercion in Africa – more than half the victims of forced labour were in some form of debt bondage. These statistics also capture cases of child forced labour in which involve children working with or for their parents who are themselves in forced labour.

▶ **Strengthening legislation and enforcement.** The establishment of a legal architecture consistent with international legal standards relating to modern slavery and child labour remains a key priority in a number of African countries. It is important to ensure that relevant legislation apply to all workers, including those in the informal economy.

▶ **Ensure that anti-trafficking interventions are gender-responsive.** Ensure the participation of women and girls, especially victims of trafficking and communities affected by trafficking, at all levels of decision-making to prevent and combat trafficking.

Learning exercises for Module 8
Abuse and Exploitation

Activity: Promoting decent work for all

Aims: To identify ways of promoting decent work to migrant workers

Task:

1. How can a decent work agenda be harnessed for the benefit of migrants in irregular situations, without supporting irregular migration or employment of migrants in irregular situations?

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2. What is the role of workers' organizations in preventing exploitation, including by identifying and raising awareness among members of the risks of exploitation?

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Module 9.

Skills partnerships, migrant workers' skills development, portability and recognition, certifications of skills and qualifications

Overview

Module 9 looks at how skills:

▶ For migrant workers can be integrated into the labour market;

▶ Considerations can be included in labour migration governance and policy; and,

▶ Can be recognized, developed and utilized for the development not only of the migrant worker but for the country of origin and destination.

Principal questions which this module addresses

▶ What is deskilling and brain waste?

▶ What is skills portability?

▶ Why is skills portability important in achieving decent work for migrant workers?

▶ What are the mechanisms in place to ensure that migrant worker qualifications and skills are recognized?

Learning Outcomes

By the end of this module, you will be able to:

▶ Describe skills-related challenges in labour migration, such as deskilling and brain waste;

▶ Identify the importance of skills development and recognition in addressing decent work deficits and promoting economic and human development;

▶ Describe different types of international skills recognition; and,

▶ Identify the role of trade unions in migrant worker skill development and recognition, and in skills partnerships on migration.

Content

The module addresses the following themes:

9.1 Migrant workers' deskilling and brain waste: What is deskilling and brain waste and how can this be avoided, is detailed in this section.

9.2 Skills partnerships: The role and importance of skills partnerships in labour migration and development is highlighted in this section.

9.3 Migrant workers' skills development: The section details the policy options that ensure that there is skills development for migrant workers.

9.4 Portability and recognition of skills: The section looks at what is skills portability, the benefits and challenges of skills portability and skills portability in Africa.

9.5 Qualifications and competencies: The section describes what qualifications and competencies are, and why they are issues in labour migration.

9.6 Recognition of prior learning: The importance of recognition of prior learning is highlighted in this section.

9.7 Role of worker organization in migrant workers' skill development: The section looks at the role of trade union in migrant worker skill development.

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9.0 Introduction

The recognition of foreign qualifications and skills has been an ongoing problem for migrant workers across the globe. International portability of skills still tends to be limited and migrant workers are forced to take lower levels jobs than their skills would warrant with little or none occupational mobility. A major concern in most of Africa, and more specifically within its Regional Economic Communities (RECs), is the non-recognition, non-compatibility and non-comparability of skills, qualifications and experience across national borders. These elements are contributing factors to wasted potential, reduced productivity and the inability of employers to obtain needed competences. Accompanying the weak or non-implementation of free movement rights and mechanisms, the lack of skills portability is one of the main impediments to good governance of labour mobility (movement of workers between jobs, sectors or occupations; within or between States).

9.1 Migrant workers' deskilling and brain waste

The low capacity of national recognition bodies and processes in both sending and receiving countries has been one of the major barriers of skills portability and recognition. Migrant workers at all skills levels, particularly at medium and lower levels, are often vulnerable to labour exploitation and lack of protection. Women migrant workers are over-represented in jobs and tasks that require fewer and lower level skills, are lower paid and offer restricted career prospects. As mentioned in previous modules, migrant workers -especially women migrant workers- are subjected to "deskilling" and "brain waste", through the migration corridors.

Deskilling - Labour market-related term that describes the phenomenon experienced by skilled or highly-skilled workers who enter the labour market and obtain a job below their skills or qualification level (compared to their acquired qualifications) and are considered to be "overqualified" for the job they occupy. This means that workers end up working in lower-skilled jobs, and are often badly paid. If they stay (which is often the case) in that same job, they can never climb the occupational ladder. The longer they stay in that lower-skilled job, the harder it is for these foreign workers to obtain a job in accordance with his/her qualifications, since unused skills might be lost or use value after time – and workers suffer deskilling. The end result is an unfair loss of the time and money that the worker spent in obtaining (eventually unused) qualifications and the waste of funds that his/her family and country spent on human resources.

Brain waste - A term commonly used in migration terminology in relation to other terms such as brain drain and brain gain. It determines the lack or bad utilization of potential foreign human resources available in the labour market. It relates to migrant workers' skills, qualifications and job experience acquired in the country of origin that are not properly utilized in the labour market of the country of destination. The main causes include the lack of recognition of skills and qualifications and hence underutilization of people's skills, and/or difficulties to obtain work permits, also driving migrant workers to work in the informal economy and often in jobs below their skills level. This results in a loss-loss situation for workers, countries of origin and countries of destination.

Gender-specific factors of deskilling: Occupational segregation remains a predominant feature of labour markets, limiting women's choices and confining them to lower-paid and lower-status jobs than men. Because of gender stereotyping, even highly qualified women are not expected to enter into some high-pay sectors. Domestic work, which is dominated by women migrant workers, has historically been unpaid and considered as support to those engaged in productive labour. For this

There is need to take action on skills and competences held by migrant workers based on the acknowledgeable that:

▶ **The under-utilization of migrants' skills in countries of destination contributes to brain waste:** Migrant workers' skills and qualifications are often under-utilized as they work in jobs for which they are overqualified, thus, leading to a brain waste. This skills mismatch may have several causes, which include: lack crucial labour market information, skills may have been acquired informally, discrimination, and limited language skills may impede the full utilization of other skills

▶ **A lack of employment opportunities in countries of origin contribute to brain drain:** Many countries in Africa, are experiencing acute shortages of highly-skilled professionals due to a lack of attractive employment opportunities, leading to "brain drain." This puts a strain on social services such as health and education and reduces the pool of skilled workers across the board.

▶ **Weak skills development systems and policies constitute a push factor:** Moreover, skills development systems in countries of origin are often underdeveloped, underfunded, supply-driven and irresponsive to labour market needs, or access to training is restricted for certain disadvantaged groups. Therefore, migrant workers – especially highly-skilled migrants, may seek education, training and employment elsewhere.

▶ **A lack of systematic information on skills prevents mutual benefits from migration:** A critical obstacle to overcoming the above-mentioned challenges is the absence of a systematic approach to data collection and analyzes on migration, especially with regards to migrants' skills. In countries of origin, limited information is available on local labour market needs in different economic sectors and occupations, and on skills shortages, particularly in the private sector.

In January 2015, the 24th Ordinary Session of the African Union (AU) Assembly adopted the Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development in Africa and endorsed the Joint Labour Migration Programme (JLMP). Furthermore, in June 2015, the 25th Ordinary Session of the AU Assembly adopted the Declaration on Migration that calls, inter alia, for the establishment of *"a harmonized mechanism to ensure that tertiary education in Africa is compatible, comparable, with acceptability and enable recognition of credentials that will facilitate transferability of knowledge, skills and expertise."*

Beyond this focus on skills and competences acquired in the tertiary education system, the portability of all individual competences – including those acquired in the technical vocational education and training system typically – is highly relevant. The portability of skills and recognition of qualifications of vulnerable groups, who tend to face discrimination in the labour market, promotes economic and social inclusion, decent work and fair globalization. Skills can and are an asset for migrant workers' integration, and to reap the potential benefits and advantages, migrants' learnings and qualifications achieved before and after migration have to be recognized, valued and further developed in countries of destination and origin.

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Skills recognition and development is noted under areas warranting special attention in the 2017 ILC[72] Resolution concerning fair and effective labour migration governance. The Resolutions states that:

> Labour migration programmes, including temporary schemes, often lack effective skills and jobs matching systems. However, they should be based on accurate assessments of skills needs and gaps, including offering possibilities for upskilling and retraining both migrant and national workers. The private sector, as well as employers' and workers' organizations, have important complementary roles to play in providing up-to-date information to policy-makers on labour market needs. Migrant workers, in particular when they are low-skilled, are frequently confronted with limited access to vocational training and skills recognition, especially when it comes to recognition of prior learning. Public employment services, and private employment agencies when properly regulated, can play an important role in providing effective skills and jobs matching for migrant workers. The ILO should provide active and effective support for skills development and recognition to constituents.

It is of paramount importance for national economic and social development at a time of rapid change in technologies, global markets and work organization, high levels of youth unemployment and rising regional and international migration. Workers need to have relevant and verifiable competences in order to gain access to job opportunities and to adjust to changing labour markets. Employers' ability to select the workers they need depends on clear information on the type and level of workers' skills. This means skills need to be transferable between jobs and easily recognized by employers, and therefore portable. It also means skills and competences ought to be visible to all stakeholders, including to the competent people themselves.

9.2 Skills partnerships

9.2.1 Global Skills Partnerships

Global Skills Partnerships among countries, as defined in the UN Global Compact for Safe, Orderly and Regular Migration, strengthen training capacities of national authorities and relevant stakeholders, including the private sector and trade unions, and foster skills development of workers in countries of origin and migrants in countries of destination with a view to preparing trainees for employability in the labour markets of all participating countries (United Nations, 2018). Global skills partnerships, including the role of social partners and public-private partnerships therein, are an innovative mechanism for sharing the benefits of migration for both countries of origin and destination, as well as migrant workers and employers hiring foreign workforce.

Skills partnerships at local, regional, national or international level can range from informal knowledge exchange, mutually beneficial skills development arrangements to formal bi- or multilateral labour migration agreements, including for example:

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72 https://www.ilo.org/wcmsp5/groups/public/–ed_norm/–relconf/documents/meetingdocument/wcms_561871.pdf

▶ A structured channel for dialogue between governments, employers' and workers' organizations to share information on labour market demand, with a view for policymakers to reflect this information into labour migration policies;

▶ A formal recognition system of migrants' skills and qualifications, which enables them to put to use in countries of destination and upon return in countries of origin - these should also include ways for countries to anticipate future skills in demand;

▶ Investment in training programmes for migrant workers in countries of destination and/or investment in training systems in countries of origin from government or other stakeholders in destination countries. This might include developing digital skills for the benefit of migrant workers in origin communities, as part of labour migration agreements or mobility arrangements; and,

▶ Mutual recognition and harmonization of training systems among tripartite partners, which promotes peer-to-peer and work-based learning, apprenticeship, increased skills and promoting a culture and mindset of lifelong learning in the countries involved.

> **Skills Partnerships respond to SDGs 4, 8 and 10**
>
> **Goal 4.3** calls for "equal access for all women and men to affordable and quality technical, vocational and tertiary education, including university."
>
> **Goal 4.4** calls for increasing "the number of youth and adults who have relevant skills, including technical and vocational skills, for employment, decent jobs and entrepreneurship."
>
> **Goal 4.7** promotes education and training for "sustainable development, (...) a culture of peace and non-violence, global citizenship and appreciation of cultural diversity and of culture's contribution to sustainable development."
>
> **Goal 8.8** calls on member states to "Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment."
>
> **Goal 10.7** stresses that "orderly, safe, regular and responsible migration and mobility of people including through the implementation of planned and well-managed migration policies" should be facilitated to reduce inequality between countries.

Although they may vary in form, modality and level of stakeholder involvement, they all place skills development at the heart of their efforts. Skills partnerships can contribute to more effective tapping of the potential of migrants. Such partnerships can be an innovative mechanism for maximizing brain gain, or the knowledge and skills of migrants, both in origin and destination countries. Ultimately, these partnerships help skills development systems become more inclusive, migration more demand-led and migrant workers better prepared, protected and able to utilize their skills. The different dimensions of skills partnerships can include: (i) information guidance and counselling of migrant workers; (ii) identification, anticipation and sharing of skills demand and supply; (iii) skills development in country of origin and/or destination; (iv) mutual recognition and / or joint harmonization of qualifications; and, (v) recognition of prior learning.

There are, however, also risks associated with Global Skills Partnerships, with regards to, among other issues, how benefits and negative side-effects are distributed and governed in these new forms of skills mobility partnerships. Another risk is that they may be gender-blind and thus not benefit, or even disadvantage, women migrant workers. Development of any type of skills partnership needs to ensure decent work, labour rights and inclusive participation of trade unions and civil society. Thus, sustainable development, human rights and equity must be fully integrated in these discussions, particularly where critical skills such as health care and education are concerned.

9.2.2 Fostering skills partnerships

The urgency of a Global Skills Partnership on migration has been recognized in intergovernmental consultations that led to the development of the Global Compact for Safe, Orderly and Regular Migration. The Global Compact devotes *Objective 18*, to the issue of investing in skills development and facilitating recognition of skills, qualifications and competences, calling for the establishment of building bilateral and global skills partnerships.

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To address the challenges that come with the traditional approaches to skilled migration which tend to benefit labour markets and employers in destination countries, with migrants in low-skilled occupations at risk of deskilling, underpayment and working under exploitative conditions. The International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Employers Organization (IOE), and the International Trade Union Confederation (ITUC) joined forces to forge a Global Skills Partnership.[73] This sees them mobilizing their constituencies, pool their expertise, build platforms to assist national and migrant workers, including those who return, maximize synergies and leverage comparative advantages.

While most international cooperation regarding the free movement of people focuses on highly skilled individuals, the Global Skills Partnership pays particular attention to low- and medium-skilled migrants. In 2019, the organizations have agreed to play their role in fostering broader social dialogue on these issues. Skills partnerships should cover both national and international labour markets, and should be balanced and mutually beneficial for both origin and destination countries, and for the migrant workers themselves. Ensuring sustainability and equity in human resources for all countries, in all sectors involved, should be a priority for the Skills Partnerships.[74]

The initiative aims to mobilize technical expertise of the organizations towards supporting governments, employers, workers and their organizations, educational institutions and training providers, and other stakeholders to develop and recognize the skills of migrant workers with a particular focus on women and youth. It thus aims to contribute to:

▶ Successful as well as sustainable labour market outcomes and integration in countries of origin and destination and progressive career development and well-being of migrant workers;

▶ Regular labour migration, including in the framework of bilateral and multilateral labour arrangements, based on skills demand and relevant, quality training provisions for potential and return migrant workers; and,

▶ Improved productivity and retention of migrant workers leading to better economic outcomes and performance of enterprises.

It is imperative that international cooperation ought to consolidate national efforts in order for countries to formulate skill-needs oriented migration policies, increase migrant workers' access to education and training, and strengthen bilateral or multilateral recognition of skills. Thus on the:

▶ **Global level** - sharing and continuously updating lessons learned, success stories and policy advice through tripartite dialogue can contribute to the generation of knowledge, the replication of good practices, the harmonization of international efforts, and the more effective allocation of resources, including through a Global Skills Partnership on Migration;

▶ **Regional level** - skills partnerships can help to expand mutual recognition and increase opportunities for regular, skills-led and mutually beneficial migration. Therefore, such partnerships can assist countries in meeting critical skills shortages and fostering broader regional integration and intercultural exchange. Countries of destination can choose to invest in improved skills development in countries of origin to the benefit of people interested in migration and local economies alike; and,

▶ **Country level** - skills partnerships provide an important avenue for capacity-building initiatives in the areas of labour market information, skills development, certification and recognition. Moreover, they offer an opportunity to strengthen coherence between national skills, employment, migration, and development strategies. These may include industrial policy for growth and development, qualifying the roles of different actors in coordinating policy, and establishing objectives in terms of access to education and training for disadvantaged groups.[75]

73 https://www.ilo.org/wcmsp5/groups/public/~ed_emp/~ifp_skills/documents/publication/wcms_653993.pdf

74 https://www.ilo.org/wcmsp5/groups/public/~ed_protect/~protrav/~migrant/documents/meetingdocument/wcms_754106.pdf

75 https://www.ilo.org/wcmsp5/groups/public/~ed_emp/~emp_ent/documents/genericdocument/wcms_745974.pdf

9.3 Migrant workers' skills development

Migrant workers face challenges in accessing quality education, lifelong learning, training and decent jobs. These challenges emanate from the under-utilization of skills, lack of training and employment opportunities, lack of information and exploitation of low-skilled jobs workers. Migration can be a means to respond timely and effectively to labour supply and demand needs, to stimulate innovation and development in countries of origin and destination, as well as to transfer or up-date skills. The skills set of migrant workers can broaden the pool of available skills in the country of destination, and in the country of origin upon their return. Thus, there is need to ensure that labour migration is demand-oriented, that migrant workers' rights are protected, and that migrants are supported to integrate into the labour market and society through access to education and training, as well as to employment opportunities.

Forging Skills Partnerships on Migration

Governments/Employers share information on labour market demand and integrate this information into their migration policies

Migrant workers are trained in countries of destination and/or training systems in countries of origin are upgraded

Migrants' skills are recognized and put to use in countries of destination and upon return in countries of origin

Mutual recognition and harmonization of training systems promotes mutual learning and strengthening of skills and lifelong learning systems in all countries involved

The following policy options ensure that there is skills development for migrant workers:
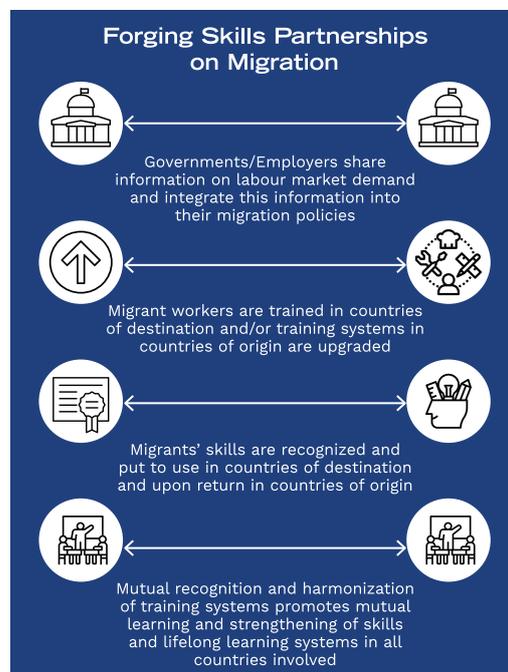
▶ **Strengthen skills anticipation systems to formulate migration policies that meet skills demand:** Labour market information systems (LMIS) provide governments, employers and workers with information about labour market trends, employment opportunities and skill shortages. Skills identification and anticipation systems embedded in LMIS can inform migration policies about skills demand in countries of destination and of origin so that migration is beneficial for both. LMIS also provide a link between the labour market and education and training institutions, which need to adapt programmes to meet the current and future skills needs of employers. At the local level, employment services may be the primary conduit for labour market intermediation between workers and employers, while the task of collecting more extensive LMI may fall to other institutions such as national statistical offices or sectoral bodies.

▶ **Increase migrants' access to education and training:** Strong education and training systems support societies in developing relevant and quality skills and improving access to employment and decent work. Strengthening education and training service delivery for migrant workers is an important avenue for their economic integration. In countries of destination – provided migrants have access to education and training – Technical Vocational Education and Training (TVET) programmes can help migrants establish ties with the private sector and acquire skills that enhance employability. Employers exposed to migrants through TVET programmes may also change their perceptions of migrants' abilities, which helps promote social inclusion. Employers also benefit from a diverse workforce with diverse skills. With the active involvement of social partners and local communities, TVET institutions can operate flexibly, cost-effectively, and respond quickly to the needs of arriving migrants, with language skills being offered as a top priority.[76] There is need to ensuring that policies are gender-responsive, women migrant workers have access to education and training (which can be a challenge in terms of time, language, location, etc.), encourage women to enter technology-intense sectors, among others.

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76 ILO. 2020. Guide on Making TVET and Skills Development Inclusive for all, Geneva, ILO. Accessible at: https://www.ilo.org/skills/areas/skills-for-youth-employment/WCMS_755869/lang--en/index.htm

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The 2017 ILC[77] Resolution concerning fair and effective labour migration governance noted that one of the priority areas for ILO action was skills. The ILO is to provide support for: (i) the development of skills and of mechanisms for recognition of skills, whether acquired formally or non-formally, including at the sectoral level; (ii) better assessment of skills needs at all levels; and (iii) the alignment of training to meet labour market demands, all with the active participation of the social partners.

9.4 Portability and recognition of skills

9.4.1 Portability of skills

Recommendation No. 195 concerning human resources development: education, training and lifelong learning, 2004, defines portability of skills along the following two dimensions: (a) employable skills which can be used productively in different jobs, occupations, industries; and (b) certification and recognition of skills within national and international labour markets. Thus, workers need to have relevant and verifiable skills in order to gain access to job opportunities and to adjust to changing labour markets. This means skills need to be transferable between jobs and easily recognized by employers – i.e. portable.

Benefits of enhanced portability - policies to develop portable skills have the potential to benefit individual workers, enterprises, the economy and society, as:

▶ With more widely relevant and recognized skills, individual workers improve their employability and adaptability, as well as their ability to receive wages commensurate to their level of competencies;

▶ Portable skills contribute to human development as they empower people, enlarge individual worker' choices and capabilities, and help workers to make full use of their talents and skills. In international migration women are more likely to be affected by "brain waste" and therefore have a high potential to gain from enhanced portability of their skills;

▶ Enterprises and organizations in the public and private sectors benefit from more effective matching of skills demand with supply and from easier adaptability of the workforce to changes in technologies;

▶ Labour market efficiency improves due to lower transaction costs in job search and recruitment;

▶ The economy benefits from decreased frictional unemployment, smoother adjustment to external or policy-induced shocks (macroeconomic shifts, technological changes, trade liberalization) and more sustainable economic growth and employment and,

▶ The recognition of skills of vulnerable groups and women who tend to face discrimination in the labour market, promotes economic and social inclusion, decent work and fair globalization.

Challenges of enhanced portability - policies to increase portability of skills, however, also bring challenges, as costs and benefits are unlikely to be evenly distributed between stakeholders.

▶ Individual enterprises may be reluctant to invest in transferable skills because they risk losing the worker and their investment. Policies need to address this issue as it will result in a sub-optimal level of investment in transferable skills;

▶ Societies investing in transferable skills risk losing at least part of their investment when workers use these skills to seek employment opportunities in other countries. This may discourage the public sector from investing in more training; and,

▶ When substantial numbers of skilled workers leave developing countries to find work in developed countries, the "brain drain" effect reduces their home countries' ability to improve human development and poverty reduction. Remittances sent home can partially offset this negative effect, yet it means that often public investment is converted into private returns.

9.4.2 Recognition of skills

The ILO Multilateral Framework on Labour Migration recognizes the contribution of labour migration to social and economic development in both origin and destination countries. It states that "an orderly and equitable process of labour migration" should be promoted in both origin and destination countries which include policies "promoting the recognition and accreditation of migrant workers' skills and qualifications and, where that is not possible, providing a means to have their skills and qualifications recognized." The issue of **international recognition of skills** and qualifications of migrant workers is gaining increasing attention in the policy debate as the number of skilled migrants has been increasing substantially and is expected to rise further

In order to gain access to employment migrants not only need to possess relevant skills, but also need to be able to signal and validate these skills to potential employers. This means skills need to be transferable and recognized, i.e. portable. **The portability of skills ultimately depends on a trusted source of information.** Therefore, recognition tends to be most successful when established through social dialogue involving governments, employers' and workers' organizations and education and training institutions. This is true for both formally certified qualifications and informally acquired skills. In addition to mutual or multilateral skills recognition established between countries, **most skills recognition happens unilaterally**, i.e. the country itself decides whether skills or qualifications are recognized on the national labour market. This is particularly important for regulated occupations where access is barred if people do not possess the required qualifications. Countries can:

▶ **Recognize formally certified foreign qualifications:** Countries have established a wide range of institutions and mechanisms for recognizing formal qualifications. While unilateral recognition by a single destination country is still the most common form, complex certification procedures and competency tests in countries of destination may impose financial and time-related costs on migrants and tend to create an uneven playing field for migrant workers or refugees. Moreover, information on skills shortages in countries of origin is rarely taken into account and hence risks contributing to brain drain.

▶ **Recognize informally gained skills:** A relatively new area of intervention for national training systems is the recognition of prior learning (RPL). RPL is a process by which regulatory bodies and training institutions assess acquired skills, often gained outside of the classroom, against a given set of standards, competencies or learning outcomes. In addition to supporting the portability of skills of migrant workers, RPL systems can promote social inclusion by recognizing work and other learning experiences. They allow for non-traditional pathways to formal employment, which is especially relevant if women or men, either migrants or nationals, acquired their skills through non-formal or informal learning, or if certificates were lost. Moreover, through the identification of potential skill gaps, RPL can offer a pathway into further training and/or apprenticeships.

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The recognition of qualifications and skills covers two main areas: academic and professional recognition. **Academic recognition** allows for the continuation of studies at the appropriate level.. **Professional recognition** provides the opportunity to access a particular job, and practice professional skills that might have been acquired abroad. Professional recognition covers both regulated and non-regulated professions. Skills recognition may be conducted in a number of ways, usually by measuring skills against agreed occupational standards. The following factors are key to implementing effective skills recognition:

▶ needs assessment;

▶ regulatory framework, hence the presence of qualifications against which the competences of both female and male migrant workers can be assessed and a skill certificate issued;

▶ financing, usually through shared responsibility;

▶ institutional arrangements, roles, responsibilities and capacities of institutions involved;

▶ quality assurance; and,

▶ social partner involvement at all stages of the process.

Skills recognition at country level and between countries can be promoted by instruments available at international level or negotiated at bilateral, regional, or multilateral levels.

▶ **At international level** the following instruments call for the recognition of migrant workers' skills and qualifications:

  ▶ ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). Article 14(b) specifically refers to the recognition of occupational qualifications acquired abroad, including certificates and diplomas;

  ▶ ILO Human Resources Development Convention, 1975 (No. 142), which promotes the adoption and development of "comprehensive and coordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services"; and,

  ▶ ILO Human Resources Development Recommendation, 2004 (No. 195). Part VI, paragraph 12 indicates that "Special provisions should be designed to ensure recognition and certification of skills and qualifications for migrant workers."

▶ **At the regional level**

  ▶ Social partners are also engaged in tripartite processes at the sub-regional level such as the SADC or ECOWAS and this can provide opportunities for engagement in dialogue around skills. Regional Economic Communities have also established legal frameworks that can facilitate skills portability among participating countries, either recognizing qualifications or/and aligning them with agreed international standards.

▶ **Mutual recognition agreements**

  ▶ A mutual recognition agreement (MRA) is an agreement between two or more countries to consider qualifications issued by one country as being valid in the other(s). In the Eastern African Community (EAC) countries, for example, MRAs exist for three professions (accountants, architects and engineers), and there are plans to extend the agreement to other professions such as veterinary services, land surveyors, pharmacists and advocates. As part of a skills partnership on migration between Ghana, Nigeria and Togo, the three countries have started comparing occupational and training standards in selected occupations relevant for labour migration, in order to arrive at joint minimum standards.[78]

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78 https://iloskillskspstorage.blob.core.windows.net/development/resources/4776/Outcome%20document%20G-N-T%20Mutual%20recognition%20English.pdf

▶ **Bilateral labour migration agreements**

    ▶ Bilateral labour migration agreements (BLMAs) are increasingly used to govern the labour migration process, to protect the rights of migrant workers and to ensure adequate skills and job matching. The UN Migration Network Global Guidance on BLMAs highlights that countries of origin and destination should, after consultation with representative employers' and workers' organizations, identify procedures for skills profiling and matching through adequate training and skills and qualifications recognition, as appropriate, including at sector levels. Skills development and recognition need to be part of BLMAs clauses. BLMAs should ideally include provision of access to: (i) recognition of foreign qualifications; (ii) recognition of prior learning and certification; (iii) services to facilitate skills matching; and (iv) skills development, career progression opportunities and life-long learning.[79]

▶ **Unilateral measures**

Recognition systems at country level still vary widely, despite a number of multilateral frameworks for the recognition of qualifications implemented in recent years:

    ▶ **Definition of regulated and non-regulated professions, and type of recognition procedures applying in each case:** In most countries, there are professions which require authorization from competent authorities in order to be practiced – these are defined as regulated professions. The definition of what constitutes regulated and non-regulated professions differ. Binding recognition procedures generally apply to regulated professions. With respect to non-regulated professions, the recognition of qualifications is not a general requirement. There is a plethora of methods that have been developed for both regulated and non-regulated professions. Systems include regulation by national and/or provincial professional bodies, employer-based recognition processes, coordination by one public authority in charge of regulated professions or automatic recognition. Further stakeholders are universities and colleges, credential assessment organizations and provincial, federal and municipal governments.

    ▶ **Methods for assessment and recognition of formal learning:** Different methods apply across countries. Some approaches are based on the length of education/training (quantitative), and others on content (qualitative**)**. Concerning the latter, learning outcomes are playing an increasingly important role in the development of national and overarching qualifications systems and frameworks. Where learning outcomes are taken into account for the evaluation of a foreign qualification, the recognition procedure may focus more on results reached and competences obtained, rather than only on input criteria such as the programme workload and content. However, documentation on the qualification does not always contain clear listings of learning outcomes and recognition bodies may have to deduce the output of a qualification from contextual information such as its place in the national education system or qualifications framework, its subject matter content and duration.

    ▶ **Partial recognition of formal learning and bridging courses:** When full recognition is not granted, forms for alternative, partial or conditional recognition may apply. Alternative recognition can include bridging courses offered by the competent authority to make up for differences with the required qualification. While partial recognition would grant the applicant the possibility to enroll in specific programmes in order to earn missing credits, conditional recognition may allow the applicant to commence the desired activity on the condition that certain goals are successfully met during a specific time period.

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79 UN Migration Network, 2021- Global Guidance on Bilateral Labour Migration Agreements (BLMAs) upcoming.

▶ Module 9. Skills partnerships, migrant workers' skills development, portability and recognition, certifications of skills and qualifications

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▶ **Development of practices for the recognition of informal and non-formal learning (RPL):** The recognition of learning that is either related to daily life activities such as work, family or leisure and of learning that has not been provided by an education or training institution is of particular significance for migrants. In many cases, it is via methods such as biographical interviews that the personal strengths and potentials of migrants can be identified. This is particularly important where possibilities to prove formal qualifications acquired abroad do not exist, or where major discrepancies occur between formal learning in countries of origin and destination. The benefits of validation are closely connected to the individual – a fact recognized by several initiatives.

Involvement of employers and workers' organisations

If employers and trade unions are involved in the design of assessment methods, or the assessment process itself, assessments are tailored to real needs. In some cases, sector/industrial branches, trade unions and the organizations of employers have bundled their efforts and established a training and development fund, to support educational initiatives for employees. These funds are also used for the evaluation of personal competences of workers.

Within a single country, different methods may apply for the validation and recognition of, respectively, academic education, vocational education and work experience. Different recognition paths may apply according to the country in which the migrant worker obtained his or her qualifications.

9.4.3 Financing

Skills development and the recognition of foreign qualifications, and validation of prior learning are key to migrant workers' integration in the labour market, yet their cost implications are often overlooked, or not considered at all. To address this, there could be different scenarios:

▶ **Pre-departure training** organized in the origin countries on occupational profiles in demand in the destination countries can facilitate the recognition process in the destination countries, with financial support from or cost-sharing with the destination country. It is important to note that fees for skills training or assessment should not be paid by migrant workers. Another possibility is to design curricula leading to certification valid in both origin and destination countries. This is line with the ILO General principles and operational guidelines for fair recruitment, General Principle 7.

▶ Job matching is one of the main functions of the public employment services (PES). In cases where skill supply and demand are not aligned, PES can offer support through **specific active labour market programmes.** In some countries, private employment services do play important roles for labour migration, which needs to be recognized. Although PES are not directly involved in skills recognition, they can play an active role in supporting migrant workers, for example with self-assessment of their competences, identification of gaps and suggesting the training courses necessary for filling these gaps, as well as with advice about procedures for the tests and the issue of certification.

▶ **Special funds** could be available to enterprises in the countries of destination for skills development and other services for migrant workers. In some cases, these funds are created through collective bargaining and the resources are jointly managed by workers and employers. Employers also often contribute to the financing of skills and lifelong learning in a country. This takes place through tax contributions and/or training funds usually based on payroll levies. Management of these funds is also often tripartite. Different types of public private partnerships also facilitate the sharing of investments in training at local level, for example through contributions to existing training providers, or the establishment of new training providers, and the provision of training at the workplace.[80]

9.4.4 Skills portability in Africa

The African Union has launched the "Agenda 2063" that, pays close attention to the continent's education issues**.** Urgent priority was given to the establishment of a continental free trade area. A first step was taken in this direction with the creation, in June 2015 at Sharm el-Sheikh, of the Tripartite Free Trade Area between COMESA, the SADC and the EAC. The Tripartite Free Trade Area, to be effective, implies free movement of goods, capital and people, **_including workers_**. It is therefore essential to create mechanisms for qualified mobility and appropriate skills matching. Skills portability is relevant not only for worker mobility within the Communities and free trade areas, but also for labour migration in both directions: outflow and inflow. Accordingly, the AU 2018 Revised Migration Policy Framework for Africa and its Action Plan (2018-2030) emphasizes the need for Member States to adopt all appropriate measures to _"maximize the contribution of skilled professionals in the Continent by facilitating mobility and deployment of professionals in a continental and regional framework."_

Experiences in Africa offer a legal basis on which to design mechanisms for AU Member States to develop systems for recognizing qualifications in both tertiary education and TVET. Three recognition conventions on higher education have been adopted in the past, either at regional level or at sub-regional level. Regional Economic Communities have also developed conventions or mutual recognition arrangements going beyond higher education.

▶ **The Arusha Convention/Addis Ababa Convention:** The AU Commission and UNESCO revised the Arusha Convention on the Recognition of Studies, Certificates, Diplomas, Degrees and Other Academic Qualifications in Higher Education in African States (now known as the Addis Ababa Convention, 12 December 2014). It provides the legal means for fostering mobility of learners and workers and strengthening intra-African cooperation in education, training and research for higher education.

▶ **Convention on the Recognition of Studies, Diplomas and Degrees in Tertiary education in the Arab States 1978 (Paris, 22 December 1978):** Under this Convention, recognition of a degree or diploma obtained in a Contracting State implies acceptance by the competent authorities of another Contracting State and the granting to its holder of rights enjoyed by those of the first Contracting State. These rights extend to either the pursuit of studies or the practice of a profession. Generally, equivalences are checked using specific criteria, such as the content and duration of the training. The Convention is implemented by means of national bodies and a regional committee composed of representatives of all the Contracting States.

▶ **African and Malagasy Council for Tertiary Education – CAMES:** The African and Malagasy Council for Tertiary Education (_Conseil africain et malgache pour l'enseignement supérieur, CAMES_2) was established by the Heads of States of the African Malagasy Union, meeting in Niamey on 22-23 January 1968, after the Conference of Ministers of Education held in Paris in 1966, decided to review in depth the structures and teachings of African and Malagasy universities. On 26 April 1972, the 16 French-speaking countries of Africa and the Indian Ocean signed an agreement for the recognition of qualifications in tertiary education in Lomé (Togo). In that agreement, they affirmed their determination to recognize all qualifications issued by their institutions as automatically valid or equivalent on the territory of each of them.

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80 https://www.ilo.org/wcmsp5/groups/public/~ed_emp/~emp_ent/documents/publication/wcms_753306.pdf

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The Continental Education Strategy for Africa (2016–25), critically explores the power of TVET to promote national development, social cohesion, political stability, poverty reduction and regional integration, and takes inspiration from recent regional and international initiatives to promote TVET and youth employment.

9.5 Qualifications and competencies

Qualification

In English, the term qualification usually means the formal outcome (certificate, diploma or title) of an assessment and validation process which is obtained when a competent body determines that an individual has achieved learning outcomes to given standards and/or possesses the necessary competences to do a job in a specific area of work. A qualification confers official recognition of the value of learning in the labour market and in education and training. In other languages (French, Spanish e.g.), the term qualification often refers to a set of competences including the knowledge, aptitudes and skills required to perform the specific tasks attached to a particular job or occupation.

Competence

refers to the ability to apply learning outcomes adequately in a defined context (education, work, personal or professional development). Competence is not limited to cognitive elements (involving the use of theory, concepts or tacit knowledge); it also encompasses functional aspects (involving technical skills) as well as interpersonal attributes (for example social or organizational skills) and ethical values.

Qualifications are therefore the formal statement of learning achievements within national qualification systems. One way of organizing national qualification is through National Qualifications Frameworks (NQFs). These frameworks define descriptors for certain levels of learning outcomes, and then classify all national qualifications (which should follow a learning outcome logic) according to these levels. NQFs in theory should allow for assessment and certification of skills independent of the education and training system, progression from one level to the next, and the recognition of skills and foreign qualifications at each and every level.

In contrast to the traditional approach where assessment is anchored in the training system, the NQFs try to avoid any systematic reference to education and training programmes. They have also been promoted as tools that facilitate the international comparison of qualifications. However, in practice, they have not yet demonstrated that these claims are actually true.[81] Qualifications required for the same occupation might be placed at different levels in different countries,[82] and QFs **only allow to compare the level of the qualification**, not its actual content and learning outcomes. So the added value of QFs is limited.

Changing a country's qualification system to the logic of outcome-based NQFs requires considerable investments, and thorough country analysis about the weaknesses and strengths of the existing system is required before deciding if the introduction of an NQF as a tool for reforming the skills system in the country is the best approach or not.

The African Union Commission is currently assessing the feasibility of an African Continental Qualification Framework (ACQF). The ACQF is a policy instrument that will contribute to enhance comparability and transparency of qualifications; facilitate mutual recognition of certificates; improve mobility of learners and

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81 https://www.ilo.org/wcmsp5/groups/public/–ed_emp/–ifp_skills/documents/publication/wcms_585696.pdf and https://www.ilo.org/wcmsp5/groups/public/–ed_emp/–ifp_skills/documents/publication/wcms_126589.pdf
82 See e.g. Chapter 7, this report https://refernet.eoppep.gr/wp-content/uploads/2018/06/Global-inventory-of-regional-and-national-qualifications-frameworks-2017-Vol-I_en.pdf

workers across the continent; and promote cooperation and alignment between different qualifications frameworks (national, sub-regional) in Africa, and eventually with other frameworks globally. This continental framework would be a reference to allow the linking of national qualifications to the respective levels of the regional framework. It is hoped to serve as a translation device between countries. NQFs, however, are not a necessary requirement to link qualifications to a regional or continental framework, nor are they a requirement to establish national recognition of prior learning systems.

In 2011, the SADC Ministers of Education established the SADCQF as a Regional Qualification Framework (RQF) to enable easier movement of learners and workers across the SADC region and internationally. It is underpinned by learning outcomes and quality assurance (QA) principles that provide a regional benchmark for qualifications and quality assurance mechanisms in 8 SADC Member States; namely, **Botswana, Lesotho, Mauritius, Namibia, Seychelles, South Africa, Swaziland and Zambia**. Those countries have started piloting the alignment of the national qualifications frameworks with the SADCQF and to date the relevant authorities in Mauritius and South Africa have reported that their National Qualifications Frameworks are fully aligned.

9.6   Recognition of prior learning

Recognition of prior learning (RPL) is a process of identifying, documenting, assessing and certifying formal, informal and non-formal learning outcomes against standards used in formal education and training. [83] Thus, RPL provides an opportunity for people to acquire qualification, or credits for a qualification, or exemptions (of all or part of the curriculum, or even exemption of academic pre-requisites to enter a formal study programme) without going through a formal education or training programme, in order to ease their employment pathways with their skills recognized. Through RPL, competencies and skills earned inside and outside of an applicant's country of origin are assessed and certified.

Most RPL systems have established a "recognition authority" that can certify qualifications, provide information or coordinate with other stakeholders involved; they are often a first point of contact for potential applicants. Because of the diverse and complex recognition systems and bodies that exist in one country, it may make it difficult for potential users to get a clear grasp of how the system works. The benefits of RPL are three-fold, depending on the different user groups - individuals (migrant workers in this case), training providers or employers. RPL has the potential for positive impact on migrant workers by:

▶ improving employment opportunities for immigrant workers and easing their full integration in the labour market of the receiving country;

▶ reducing costs and time taken for training and certification;

▶ easing the formal path to certification, through credit transfer processes;

▶ planning for an individual's development in a lifelong learning perspective;

▶ increasing migrant workers' self-esteem by recognizing their achievement in learning;

▶ helping drop-outs to re-enter formal education; and,

▶ improving the employment opportunities for returning migrants who can formalize competencies acquired abroad.

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Africa harbours a large number of competent individuals that have never participated in any formal learning activities, and therefore may only prove their competences through direct practical assessment. This is exactly what recognition of prior learning outcomes does, and why RPL systems could prove highly effective to support portability of skills in Africa.

9.7 Role of workers' organizations in migrant workers' skills development

Workers' organizations organize both migrant and national workers, and promote compliance with national labour laws and safe and dignified conditions of work. They can contribute, in origin countries, with provision of information on safe labour migration and pre-employment orientation, as well as organization of pre-departure training of migrant workers on technical competences, language and cultural aspects of countries of destination. Further, they can promote union-to-union cooperation between origin and destination countries to ensure enhanced protection of migrant workers' rights. In order to strengthen their international network, workers' organizations can sign agreements with sister organizations in destination countries.

In the destination countries, they can contribute to raising awareness on migrant workers' rights. According to the provisions of ILO Convention No. 143, the basic human rights of migrant workers should be respected, including the right to organize and freedom of association, regardless of their migration status. The right of freedom of association and the effective recognition of the right to collective bargaining are fundamental principles and rights at work. Workers and their organizations can benefit through productivity gains and better working conditions through increasing the bargaining power of worker representatives in companies and sectors, as well as in collective bargaining and wage negotiations at the national level.

Workers' organizations can also gain new members by providing relevant information, defending the rights of apprentices and workers and representing apprentices in negotiations. They also benefit and contribute to an improved learning culture and investment in skills by successfully demonstrating the effects of training. In a number of countries, workers' organizations support skills development by advising on skills anticipation as well as on training standards, curricula, training programmes and assessment procedures; negotiating pay rates, paid time off and entitlement for training; supporting links with local training providers, including trade union training centers; and supporting recruitment to training.[84]

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84 https://www.ilo.org/wcmsp5/groups/public/~ed_emp/documents/publication/wcms_714830.pdf and https://www.ilo.org/wcmsp5/groups/public/~ed_emp/~emp_ent/documents/publication/wcms_761035.pdf

Learning exercises for Module 9
Migrant Workers Qualifications and Competence

Activity: Promoting recognition of migrant workers' qualifications and competence

Aims: To identify ways of promoting recognition of migrant workers' qualifications and competence

Task:

1. What is the role of the workers' organizations in promoting recognition of migrant workers' qualifications and competence, as a tool to achieve decent work for migrant workers?

2. What are in measures and mechanisms in your country to recognize prior learning and competences?

3. Has your country experience brain waste, brain drain or exposed workers to deskilling?

4. What is the role of workers' organizations in preventing brain waste and deskilling among migrant workers?

Module 10.

Organizing migrant workers: Freedom of Association and Collective Bargaining, key obstacles and good practices

Overview

Freedom of Association and Collective Bargaining are some of the key principles on the path to achieving decent work for all.

▶ Provides an insight into some of the challenges faced in organizing migrant workers, affording them the right to freedom of association and to collective bargaining.

▶ Highlights the importance of organizing migrant workers and some of the strategies that can be used in organizing migrant workers.

▶ Highlights the initiative undertake by trade unions is organizing migrant workers and building alliances/networks across different countries in African.

Learning Outcomes

By the end of this module, you will be able to:

▶ Identify the importance of organizing migrant workers and their inclusion in collective bargaining;

▶ Describe the different types of trade union services and benefits for migrant workers; and,

▶ Identify the role of trade union agreements for the protection of migrant workers between workers' organizations.

Content

The module addresses the following themes:

10.1 Organizing migrant workers: The section covers why, how and challenges in organizing migrant workers.

10.2 Freedom of Association and Migrant Workers: What are the international instruments that protect the right to freedom of association for migrant workers.

10.3 Collective Bargaining: The importance of collective bargaining in addressing the concerns of migrant workers is described in the section.

10.4 Trade union best practice initiatives for migrant workers: Trade union best practices in the inclusion of migrant workers in the trade union are highlighted in this section.

10.5 Trade Union Services for Migrant Workers: The section describes the services and benefits required by migrant workers from the trade union.

10.6 Agreements for the protection of migrant workers between workers' organizations: The section highlights collaborative initiatives by unions in both countries of origin and destination to protect the rights of migrant workers.

Principal questions which this module addresses

▶ Should migrant workers be organized and why?

▶ What are the challenges in organizing migrant workers?

▶ Should migrant workers participate in collective bargaining?

▶ What are the initiatives that can be undertaken by trade unions to ensure that the rights of migrant workers are respect, thus, the right to freedom of association and the right to collectively bargain?

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10.0 Introduction

Migrant workers, regardless of their status, are first of all workers and as such, they have rights, including the principle of freedom of association, thus the right to form or join a trade union amongst others. The principles of freedom of association and the right to organize are recognized to apply to all workers and employers, including migrant workers, regardless of their migration status, either being regular or irregular. Migrant workers have the right to take part in meetings and activities of trade unions, with a view to protecting their economic, social, cultural, and other interests, subject only to the rules of the organization concerned.

10.1 Organizing migrant workers

The right to organize workers is of fundamental importance in the world of work and is of particular importance to migrant workers. Migrant workers are no different from other workers in their search for decent work, thus, fair pay, good terms and conditions, a safe and healthy working environment, and to be treated fairly, with dignity and respect. Like other workers, they also want a say in the workplace and a chance to influence policy decisions in the world of work. Representation and a voice at work are important means by which migrant workers can secure other labour rights and improve their working conditions, and may be a crucial avenue by which temporary and migrant workers in irregular status can assert their rights. ***Migrant workers are workers***, and need to be organized, have the right to join trade union and participate in collective bargaining.

10.1.1 Why organize migrant workers?

In order to maintain minimum standards of decent work, it is important to ensure that workers at the 'bottom of the rung', those who are mostly likely to be vulnerable or exploited, such as migrant workers, are protected. Failing to do so can result in a 'race to the bottom' of labour standards amongst employers. 'Solidarity' is one of the most important trade union principles. But it is not only a slogan, it is the only way in which unions can overcome the 'divide-and-rule' cheap labour policy of some employers in some places, and defend workers' common interests. Thus, one of the most effective ways of preventing the exploitation of migrant workers, especially women migrant workers, is to guarantee their right to organize, collectively bargain, and to join trade unions (freedom of association) in destination countries.

The participation of migrant workers in worker organizations, plays an important role in upholding migrant worker rights, ensuring decent work and defining policy priorities. By raising their voices together, migrant workers can negotiate to reduce gender pay gaps, increase pay and benefits, and improve working conditions. The benefits to unions of reaching out to migrant workers are immense: it means strength not division; migrant activists often bring new life and vigor into the trade union movement too, boosting morale for all.

One of the benefits of organizing migrant workers is the awareness that an individual situation of exploitation or abuse is often experienced by many other workers, thereby allowing the union to address the challenges and progress towards achieving decent work. By working together to address exploitation or abuse in the workplace, migrant workers can have more force in asserting their rights. Another positive aspect of organizing is migrant workers' increased confidence in recognizing that they have rights, and knowing what steps to take if they are in situations of exploitation or abuse. Through organizing, worker organizations seek to promote and protect migrant workers' rights, educate as well, migrant workers about their rights and assist them fight against the problems in their industries and the abuses they face. Thus, organizing is a means to build strength by working together to fight against abuse and exploitation.

Evidence has noted that there are lower levels of labour exploitation, child labour, trafficking, and forced labour found in industries with strong, independent and autonomous trade union representation. The trade union movement promotes decent work for migrant workers by actively organizing them within the union movement. This way, migrant workers receive the full attention of trade unions. The integration of migrant workers also provided a big boost to trade union membership and helps revitalise the movement.

10.1.2 Challenges in organizing migrant workers into trade unions

Trade unions face challenges in their efforts to organize migrant workers, such barriers and challenges to organizing, emanate from, among others, legal restrictions, long working hours, lack of days off, and isolated workplaces. It is not a simple thing to organize migrant workers. Migrants may not know much about the society to which they have come, what support organizations exist and how to find them. They may not know much of the local language.

▶ **Legal barriers to migrant workers' freedom of association:** The right of migrant workers to join and establish trade unions is not consistently or equally provided for in law in all countries of destination. Migrant workers are often specifically excluded from the right to join, and particularly, hold office in unions. Sectors which predominately employ women, such as domestic work, also face legal and practical challenges in organizing. Workers may not have recognition to be able to join unions and restrictions on freedom of movement, and isolated working conditions can further restrict the ability to join, form and influence trade unions, workers' organizations and women workers' collectives.

▶ **Intimidation and victimization:** migrant workers are afraid to defend their rights due to fear of victimization by the employer or fear of losing their jobs especially for those without any contracts. Migrant workers are threatened with termination of contract if seen talking to a trade union officer or attending union activities, therefore joining a trade union is a sure way of having one's contract of employment terminated.

▶ **Limited access:** migrant domestic workers may face physical barriers to accessing unions. Domestic workers are often not provided with one day off per week, have their movement outside the house/workplace restricted and may even have their phone confiscated. For those migrant domestic workers who have physical freedom to access unions, cost and distance can often present a barrier to access, as can long and irregular working hours. Employers may also enforce barriers to joining unions, afraid that a unionized woman migrant worker will be less compliant and create difficulties. This further restricts their ability to join, form and influence trade unions, workers' organizations and women workers' collectives.

▶ **Diverse Workplaces:** Workplaces may be very small, as with some garment workers, or may even be private households, as is the case for migrant domestic workers. Many informal economy workers are situated in scattered (e.g. home-based workers and domestic workers), mobile (e.g. street vendors and street waste pickers) or far flung (e.g. farm workers, forest gatherers) workplaces. A single worker may have multiple workplaces and multiple "employers." These factors all create further complexities for recruiting members, for negotiating better conditions, and for organizational structures and strategies.

▶ **Accessibility to the workplace:** Migrant workers are often to be found in partly informal sectors such as agriculture, construction and domestic and care work, where exploitation is rife. They can therefore be harder to reach, because they are not based in the workplaces and forms of employment where unions tend to be strongest.

▶ **Language, culture and community:** Language, culture and community are also factors that may create some difficulties. Some communities are very close-knit, and you need to gain their trust – it's a work of years.

▶ **Union capacities:** Unions at times, lack capacity to reach migrant workers especially those in domestic work and other hard to reach occupations. In other cases, trade union cannot fully and adequately articulate and represent the legitimate rights of the migrant workers. This means they will not necessarily have the capacity to address the needs of migrant workers or be gender-responsive. Hence, migrant workers' enduring dilemma raises pertinent questions about the 'realistic capability' of the

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trade unions in deepening their sphere of influence among the vast majority of migrant workers.

▶ **Lack of information:** Information on trade unions and how to connect with them is not readily available to migrant workers. It is not common to provide such information in pre-departure orientation, and information in the country of destination may be difficult to access due to language barriers – unions that do not have a history of working with migrant workers will not have any members with different language skills, and information may only be available in the national language.

▶ **An irregular status:** Large numbers of women migrating are not using regular channels. This is particularly the case for workers migrating into informal employment, in agriculture, construction, domestic work, entertainment and sex work. Migrant workers with an irregular status are not precluded from joining unions but may be nervous of joining for fear of identifying themselves to the authorities.

▶ **Insufficient resources:** Because many migrant workers are poor – this is particularly true for women working in the informal economy – they cannot afford dues, especially in times of economic or personal crisis. Where unions serve both formal and informal workers, they may have insufficient financial resources, and informal workers may be viewed as a drain on these.

▶ **Attitudes and perceptions:** Misguided attitudes on the part of the unions and migrants can create barriers to organizing. This is because the right to form unions is limited, where migrant workers join unions, they are national unions. They may also perceive migrant workers as difficult or troublemakers, being informed by more pervasive attitudes towards migrant workers at the national level. The trade union movement itself has not always been a good friend to migrant workers, often mistakenly viewing them as willing help-mates to employers seeking to cut wage rates and other terms and conditions. Equally, women migrant workers may carry perceptions of being a union member as having to attend rallies and engage in controversial advocacy; in addition, they may not perceive the unions as being for them, having little confidence that the union will understand the work, challenges or rights of a migrant worker.

▶ **Balancing interests:** There is the issue that, even once recruited, migrant members may have needs and concerns that warrant particular attention. Thus, one of the main dilemmas facing unions if they have chosen to recruit migrant workers (especially undocumented migrant workers), is whether these members should receive "equal" or "special" treatment. Should all members be considered in the same way, with common interests, or should unions develop "targeted policies" to help migrant workers?

The Triple Burden

Where women migrant workers have the desire and ability to join unions, they face a further barrier, being the triple burden. This is the burden of:

▶ Paid employment responsibilities: For women migrant workers this may include long working hours (sometimes paid by overtime, but often not).

▶ Care and household work: Many women migrate with their families and continue to carry the burden of care and household duties, including looking after the children, sourcing and preparing food, and cleaning. Where women do not migrate alone, these duties are discharged through remote care, provided over the phone or by sending care packages and remittances.

▶ Union responsibilities: Even as a member, responsibilities include attending meetings and engaging in pertinent issues, such as voting on initiatives and officers, and agreeing strategic interventions, etc.

10.1.3 How to organize migrant workers

In organizing migrant workers, there is a need to devise new strategies which respond to the specific needs of precarious workers; including migrants. Some of the initiatives below are key to strengthen organizing of women migrant workers, these include:

▶ **Building women's leadership from within membership** - Unions and migrant worker networks and associations should identify potential women leaders from within their memberships and provide resources necessary to support increased capacity, including addressing the triple burden and creating an enabling environment for leadership.

▶ **Using ICT to advocate the benefits of organizing** - With the support of development partners, unions, NGOs and migrant worker networks and associations should use information and communication technologies (ICT) such as social media networks and online communications to advocate for the benefits of organizing within the labour movement, including by directly addressing and dispelling the misconceptions about trade unions.

▶ **Working together strategically/ building partnerships** - Foster partnerships between unions across borders, including through the nomination of women migrant worker focal points in unions in countries of origin, who are tasked with developing relationships with the view to agree to shared commitments around women migrant workers.

▶ **Advocacy on the right to organize** - Improving the amount of information available to women migrant workers is one way to address this. Specifically, by including information about the available unions and associations in pre-departure orientation, migrant women are better able to know how to reach out to the organizations once in the country of destination. Changing perceptions about unions is even more critical. Improving the understanding of different stakeholders about the benefits of organizing is definitely needed.

▶ **Like organizes Like** - Many unions are finding that one of the most successful strategies is to recruit and train migrant workers to become the organizers of other migrant workers, peers recruiting peers. This means that the best person to approach and support a Malawian woman migrant worker working in South Africa, for example, is a Malawian woman migrant worker.

10.2 Freedom of Association and Migrant Workers

Migrant workers may seek the aid and assistance of any trade union. No restrictions may be placed on the exercise of these rights other than those prescribed by applicable law. It is also important to remember that, unless specified otherwise, all standards adopted by the ILO apply to migrant workers. The right of migrant workers to freedom of association is recognized in the ILO Constitution and it is embedded in multiple ILO and UN conventions. These include:[85]

ILO Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)

Article 2. Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

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85 The rate of ratification of these conventions is relatively low across the Africa.

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Article 5. Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

ILO Right to Organize and Collective Bargaining Convention, 1949 (No. 98)

Article 1.1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

ILO Migration for Employment Convention (Revised), 1949 (No. 97)

Article 6.1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favorable than that which it applies to its own nationals in respect of the following matters: (a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities; and (b) membership of trade unions and enjoyment of the benefits of collective bargaining.

ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Article 10. Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

ILO Domestic Workers Convention, 2011 (No. 189)

Article 3.2. Each Member shall, in relation to domestic workers, take the measures set out in this Convention to respect, promote and realize the fundamental principles and rights at work, namely: (a) freedom of association and the effective recognition of the right to collective bargaining.

Article 3. 3. In taking measures to ensure that domestic workers and employers of domestic workers enjoy freedom of association and the effective recognition of the right to collective bargaining, Members shall protect the right of domestic workers and employers of domestic workers to establish and, subject to the rules of the organization concerned, to join organizations, federations and confederations of their own choosing.

UN Convention on the Elimination of all forms of Discrimination Against Women, General Recommendation No. 26 on women migrant workers

23. (b) Active involvement of women migrant workers and relevant non-governmental organizations: Parties should seek the active involvement of women migrant workers and relevant non-governmental organizations in policy formulation, implementation, monitoring and evaluation (Article 7 (b)).

UN International Convention on the Protection of Rights of All Migrant Workers and Members of their Families

Article 26.1. Parties recognize the right of migrant workers and members of their families:

a.   To take part in meetings and activities of trade unions and of any other associations established in accordance with the law, with a view to protecting their economic, social, cultural and other interests, subject only to the rules of the organization concerned;

b.   To join freely any trade union and any such association as aforesaid, subject only to the rules of the organization concerned; and,

c.   To seek the aid and assistance of any trade union.

Article 40.1. Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests.

10.3 Collective Bargaining as a means for stronger protection or better inclusion

Collective bargaining offers the chance, not just to raise migrant workers' issues, but also to involve migrant workers directly in the process. Thus, it creates a platform not just about getting their voices heard, but to also empower and encourage migrant workers' participation in the union's activities. Migrant workers need unions to represent them in negotiations with employers and in legal cases. It is the union role to reach collective bargaining agreements (CBAs) with employers. Unions have far better knowledge of the local legislation in force and legal procedures such as industrial tribunals. Most migrants cannot be expected to have this kind of knowledge of their destination country. Many may not know the host language well enough to represent themselves in formal situations. The actual steps for unions to take will vary because the nature of collective bargaining varies from country to country. However, a basic principle is to include non-discrimination clauses in all agreements, ensure that migrant workers are included in the scope of the agreement, and of course take action if the agreement is violated.

Collective bargaining can be used to:

▶ **Break the language barrier** - Bargaining agreements can be used to take up language issues with the employer, as well as providing for the language needs of migrant workers

▶ **Combating racism** - Employers' employment and service delivery policies should explicitly include the need for migrant workers to be entitled to protection from racism and to have access to anti-racist training and events, etc.

▶ **Access to education and training courses** - Migrant workers should be provided with support to attend a range of courses. In addition, they should be offered education or training that allows them to develop their knowledge and skills in their chosen line of work. This also brings in issues of staff development and service provision.

▶ **Leave arrangements** - Migrant workers' home countries may be thousands of kilometers away and the conventional holidays or the typical one day's leave to attend a family funeral, for example, may be inappropriate to their situation.

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10.4 Trade union best practice initiatives for migrant workers

The current workforce has become more diversified as migration increases as a result of globalization, and political and socio-economic instability across the globe. Thus, migrant workers are a feature of labour markets across the world and need to be included in the mandate of trade unions. Below are some of the positive initiatives by trade unions for migrant workers:

▶ **Promoting decent work for migrant workers** - The trade union movement promotes decent work for migrants by actively organizing them into the union movement. This way, migrant workers receive the full attention of trade unions. The integration of migrant workers has also provided a big boost to trade union membership and helps revitalize the movement;

▶ **Having regard to labour market needs and demographic trends in the various countries, expanding avenues for regular labour migration** - The union movement is an essential part of national discussions on migration policy; even in new receiving countries;

▶ **Promoting managed migration to address the impact of an aging population on national economies** - The impact of an aging population in most of the traditional receiving countries has increased the demand for healthcare workers. Trade unions can campaign on the terms and recruitment of these migrant workers, to ensure that they cover issues including the rights and benefits they are entitled to and the ethical practices of recruitment agencies;

▶ **Licensing and supervision of recruitment and contracting agencies for migrant workers in accordance with ILO Convention 181**- Trade unions have an instrumental role to play in several areas in order to promote fair practices during the recruitment stage and foster a positive migration experience. Thus, trade unions have a key role by taking the lead in promoting a rights-based approached to labour migration;

▶ **Preventing abusive practices, migrant smuggling and trafficking in persons** - One way in which trade unions are fighting against the exploitation of especially undocumented migrants is by calling on the regulation of sub-contractors that hire this undocumented migrant labour;

▶ **Protecting and promoting the human rights of all migrant workers -** The union movement is one of the main actors in ensuring the protection of the human rights of all workers, and many unions consider that as long as a worker is employed he or she can be a member, regardless of his or her status, in line with the provisions of freedom of association contained in ILO Convention 87;

▶ **Promoting measures to ensure that all migrant workers benefit from all relevant international labour standards** - The organization of migrant workers to defend hard won labour rights is especially important because of globalization and economic integration. Unions are also engaged in upholding international labour standards through the ILO;

▶ **Promoting awareness of migrant workers' rights** - One of the main roles of trade unions is promoting outreach programmes to promote awareness of migrant workers' rights, and of the ways in which the union movement can help them. This often includes publishing information in the native languages of the migrant workers. An increasing number of unions have been establishing Information centers to inform migrant workers of their rights, and help them seek juridical redress. Trade unions are also promoting migrant workers' rights by working closely with migrant communities and cooperating with civil society. Unions have found that when defending and unionizing migrant workers, success sometimes depends on alliance with other civic groups which defend migrants;

▶ **Preventing and combating irregular labour migration** - Trade unions in sending countries are active in informing workers of the dangers of clandestine migration;

▶ **Improving labour inspection and creation of channels for migrant workers to lodge complaints and seek remedy without intimidation** - Unions such have emphasized that issues of equality of treatment and nondiscrimination should be part of the function of labour inspections;

▶ **Measures to reduce the cost of remittance transfers -** Unions have been very involved in finding ways to make it more affordable for migrants to remit money into their home countries. After various negotiations, the employers set up bank accounts for migrants which are less expensive;

▶ **Incentives to promote productive investment of remittances**;

▶ **Measures to ensure that all migrant workers are covered by national labour legislation and applicable social laws** - Trade unions ensure that all migrant workers are covered by national labour legislation and applicable social laws by organizing them and defending the rights of all workers in the country, regardless of nationality;

▶ **Policies to encourage return migration, reintegration into the country of origin and transfer of capital and technology by migrants** – Trade Unions have developed programmes to help returning migrant workers. This informs the returning migrant worker of the rights and benefits he or she could be entitled to, notably regarding social security, and to help with their labour insertion;

▶ **Promoting guidelines for ethical recruitment of migrant workers and exploring mutually beneficial approaches to ensure adequate supply of skill** – Trade unions and global federation unions have also called on destination countries to use 'ethical' procedures to recruit especially health care workers which can leave labour shortages in specific sectors in the countries of origin. They further caution that on arrival these workers are sometimes mislead over their working conditions and exploited by private recruitment agencies. They note that women are particularly vulnerable;

▶ **Addressing the specific risks for all migrant workers, in certain occupations and sectors (3D jobs and o domestic service and the informal economy)** - Unions in sectors where there is a high percentage of migrant labour are engaged in ensuring that migrant workers are not used to deteriorate safety and health regulations and standards of work. This is often done through organizing migrant workers and including their concerns in collective agreements;

▶ **Promoting social integration and inclusion and reducing discrimination and combating racism and xenophobia** - Trade unions have been involved in fighting against discrimination, racism and xenophobia at all levels, from the international level, the regional level, the local level and in the workplace. Thus, trade unions have adopted an action plan to combat racism and xenophobia, which urges governments to ratify and implement the 1965 UN convention on the elimination of all forms of Racial Discrimination, as well as promoting the ratification of the 1990 UN convention on the protection of all migrant workers and their families, as well as the relevant ILO instruments. They also called on governments to ensure quality of treatment for immigrants and minorities on matters regarding access to social services and provisions (health, housing, education etc.) and to promote the integration of migrant workers;

▶ **Facilitating the portability of social security entitlements and other relevant entitlements through, regional or multilateral agreements in relation to regular migrants** - Through joint efforts and pressure from trade unions and civil society can see the establishment of new labour legislation on overseas migration, which provides fundamental legal protection with entitlement of social security schemes; and,

▶ **Promoting the recognition and accreditation of migrant workers' skills and qualifications** – trade unions working with and employer organizations can develop agreements on training and recognition and accreditation of migrant workers' skills and qualifications.

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10.5 Trade Union Services for Migrant Workers

In many countries, TUs have been organizing migrant workers, have help lines, training programmes, info centers to help migrants, legal services to defend & help them with administrative procedures. Beyond the traditional services offered to workers, trade unions can include the following:

▶ migrant workers have to get extra training on labour laws of the country of host and how it relates to their employment;

▶ trade unions have to undertake workplace inspections, checking on signed contracts and working conditions;

▶ trade unions have to provide language and culture training;

▶ trade unions have to facilitate skill development recognition facilities and assist in the process;

▶ establish and register remittance facilities that are affordable;

▶ facilitate the portability of social security benefits; and,

▶ provide information on requirements by the state on their stay and on their return to home country.

10.6 Agreements for the protection of migrant workers between workers' organizations

The following are some of the trade union to trade union agreements for the protection of migrant workers:

▶ **Model Bilateral Agreement for Trade Unions in Countries of Origin and Destination to Protect Migrant Workers:**[86] While trade unions attempt to organize migrant workers, it can be difficult for migrants - especially those involved in temporary and circular migration programmes - to join unions. Cooperation between unions in countries of origin and destination can be useful in addressing these protection gaps. The ILO's Bureau for Workers' Activities (ACTRAV) has provided support in the establishment of such agreements, which are based on the text of a model agreement elaborated with the International Trade Union Confederation (ITUC) and adopted at an ILO-ACTRAV sponsored meeting involving representatives from countries of origin in Asia and countries of destination in the Middle East.

Reaffirming 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 to the ACTRAV model trade union agreement also commit themselves to promoting the ratification of and respect for ILO Conventions relating to migrant workers (such as the Migration for Employment Convention, 1949 (No. 97), Migrant Workers Convention, 1975 (No. 143), and the Domestic Workers Convention, 2011 (No. 189)). The agreement stresses that the situation of migrant workers should be addressed through the principles of international trade union solidarity, social justice, equal treatment, equal opportunity, and gender equality.

The model agreement commits signatories:

▶ To raise the specific concerns of migrant workers in their national tripartite labour committees and

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86 https://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=61

encourage affiliated unions to integrate them in collective bargaining with employers; and ensure that labour legislation and collective agreements fully protect all migrant workers, including those involved in temporary labour migration programmes.

▶ To develop initiatives aimed at securing the involvement of trade unions in the development of bilateral agreements between the governments of origin and destination countries, and the setting up of national tripartite consultation mechanisms and bilateral cooperation fora to discuss and formulate rights-based migration policies, taking into account labour market needs and the possible expansion and facilitation of legal channels as a means of eliminating the exploitation and abusive conditions of workers trapped in irregular situations.

▶ To promote cooperation between the governments of countries of origin and destination with a view to enhancing migration governance relating to: the establishment of legal avenues for labour migration; strengthening of labour inspection; legal cooperation in cases of trafficking and abuse; issues of maintenance of social security entitlements; the strict supervision and control of activities by recruitment and employment agencies (in conformity with the ILO Convention on Private Employment Agencies, 1997 (No. 181)) and subcontractors; as well as the elimination of abuse in sponsorship schemes.

In 2010, trade unions from Burkina Faso, Ivory Coast, Guinea, Niger, and Togo adopted the model agreement at an ILO-sponsored trade union training seminar in Nouakchott. At a September 2012 Global Unions Strategy Meeting on migration in Brussels, the ITUC and Global Union Federations stressed that 'cooperation agreements between trade unions in countries of origin and destination can also facilitate workers' organization in trade unions'.

▶ **Memorandum of Understanding (MoU) among ASEAN Trade Union Council (ATUC), South Asian Regional Trade Union Council (SARTUC), African Regional Organisation of the International Trade Union Confederation (ITUC-Africa), International Trade Union Confederation Asia Pacific (ITUC-AP); Arab Trade Union Confederation (Arab TUC) the Trade e Union Confederation of the Americas (TUCA)**

In May 2018, the International Trade Union Confederation - Asia Pacific (ITUC-AP), ASEAN Trade Union Council (ATUC), South Asian Regional Trade Union Council (SARTUC), Arab Trade Union Confederation (Arab TUC), African Regional Organisation of the International Trade Union Confederation (ITUC-Africa) and the Trade Union Confederation of Americas (TUCA), signed a Memorandum of Understanding (MOU) expressing their firm commitment to cooperate and carry joint trade union campaigns for the promotion and protection of the rights of migrant workers. The parties to the MOU ascertained that the situation of migrant workers should be addressed through the principles of international trade union solidarity, social justice, equal treatment, equal opportunity and gender equity.

Through the MOU, the parties agreed to create better and improved spaces, opportunities and environment for the better defense, protection and promotion of migrants, their families and their rights through:

▶ Joint and coordinated efforts to promote and facilitate organizing;

▶ Advocacy and campaign engagements;

▶ Training and education;

▶ Communication, reporting and documentation; and,

▶ Support services provision.

The parties also agreed to cooperate and carry out joint trade union campaigns to advance trade union solidarity and to strengthen cooperation among the parties for protection of both migrant and local workers, including harmonization of their working and living conditions.

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► **Mauritania-Senegal joint trade union project (between CGTM and CNTS):** As countries of departure and transit, the objective is to build capacity amongst the trade unions to help defend the rights of migrant workers. Since 2007 several things have been achieved including the organizing of information and awareness-raising sessions in both countries.

CGTM (Mauritania) and CNTS (Senegal) aimed at improving collaboration between trade unions in sending, transit and receiving countries. In this collaboration Senegal is seen as a sending country and Mauritania as a transit and receiving country. A call-center in Senegal was created and information on how to migrate safely provided, while the Mauritania counterpart assists stranded migrants from Senegal to return home and provide social support for those who want to live in Mauritania. The trade unions in the two countries have received several training aimed at improving their capacities to defend and protect the rights of migrants. This has seen the unions now being viewed as resource by their governments. CNTS as part of several national migration processes and the CGTM as part of the national anti-slavery campaign.

► **Mediterranean Sub-Saharan Migration Trade Union Network – RSMMS:** Created in 2014, the RSMMS brings together unions that have chosen to raise as a part of their agenda the protection of the fundamental rights of migrants and their families as well as the protection of the rights of those workers who transit or settle in their country. Together, the RSMMS member unions unite with the aim to develop joint and coordinated approaches between trade unions in the sending and receiving countries to articulate trade union solidarity and to harmonize the actions of the member unions in the field.

Since its fourth GA meeting in February 2018, the RSMMS counts 24 trade union members, covering 14 countries in three regions. Algeria, Benin, Burkina Faso, Ivory Coast, Spain, France, Italy, Mali, Morocco, Mauritania, Niger, Portugal, Senegal and Tunisia[87]. Strategic vision of the RSMMS: Promoting trade unions' action for decent work for migrants. Its three areas of intervention are prioritized by the RSMMS members: (i) The support of migrant workers; (ii) Social dialogue as a vehicle for rights-based migration policies; and, (iii) Trans-regional solidarity and a unified position of different trade union families in favour of equitable global governance.

► **Zimbabwe - Lesotho - South Africa Tri-national Declaration:**[88] The Declaration was signed by trade unions and domestic workers' organizations at a tri-national workshop that took place in Johannesburg, South Africa on 10-11 October 2014. The declaration commits signatories to support and strengthen the capacity of national unions for domestic and migrant domestic workers and lobby the three governments to continue to implement their decent work country programmes incorporating the rights of migrant workers.

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87 https://www.fes-mena.org/topics/promig-fes-2017-2020/
88 http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=163

Learning exercises for Module 10
Organizing Migrant Workers

Activity: Organizing migrant workers into the union.

Aims: To identify strategies to organize migrant workers into already existing unions.

Task:

1. Identify yourself as a union organizers.

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2. Undertake mapping, thus identifying 'hotspots' sectors which recruit large numbers of migrants.

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3. Develop a workplan/roadmap on how you will recruit and represent the rights & interest of migrant workers into the union.

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Module 11.

Promoting social protection of migrant workers

Overview

Module 11 provides an insight into some of the challenges faced by migrant workers in accessing social protection in both countries of destination and of origin. It also provides an overview of ILO Standards on social protection for migrant workers.

Principal questions which this module addresses

▶ What are the main challenges faced by migrant workers in accessing social protection?

▶ What are the gaps that exist between migrant workers' entitlements and access to social protection?

▶ Why is portability of social protection benefits difficult to establish?

▶ What is the interrelationships between social protection, migration and the 2030 Agenda?

Learning Outcomes

By the end of this module, you will be able to:

▶ Understand the importance of social protection for migrant workers and the challenges they face in accessing social protection.

▶ Identify key ILO international labour standards relevant to the social protection of migrant workers

▶ Describe the the interrelationships between social protection, migration and the 2030 Agenda.

Content

The module addresses the following themes:

11.1 The right to social protection: The section highlights that importance of social protection and how it is a human right.

11.2 ILO International Labour Standards on Social Security for Migrant Workers: The section highlights the ILO instruments on social security for migrant workers.

11.3 Access to social protection: Challenges faced by migrant workers is accessing social protection are highlighted in this section.

11.4 Portability of Social Protection: The section looks at the importance of portability of social protection and the challenges faced by migrant workers.

11.5 Interrelationships between social protection, migration and the 2030 Agenda: The section highlights the importance of access to social protection by migrant workers as one vehicle to the achievement of the 2030 Agenda.

11.6 Role of Trade Union in promoting access to social protection by migrant workers: The session identifies the approaches that can be taken by trade unions in promoting access to social protection for migrant workers.

11.0 Introduction

Social protection covers the range of policies and programmes needed to reduce the lifelong consequences of poverty and exclusion. Social protection is key to taking up the decent work challenge. The COVID-19 pandemic has reemphasized and amplified the importance of social protection, not shock absorbing mechanism but also critical for building back better, after the pandemic.

Migrant workers compared to nationals working their entire lives in one country, face major legal and practical obstacles in accessing social protection benefits. They may be denied access or have limited access to social security because of their status or nationality or due to the insufficient duration of their periods of employment and residence. In addition, the lack of bilateral or multilateral agreements may prevent migrant workers from maintaining their earned benefits and benefits in the course of acquisition. This is particularly important in the case of long-term benefits (invalidity, old-age and survivor's) where qualifying periods may be considerable.[89] Very few countries in Africa have concluded bilateral or multilateral social security agreements. Therefore, many migrant workers run the risk to lose the benefits they have acquired or those in course of acquisition when they decide to live the country in which they worked. This has resulted in many migrant workers being incentivized not to return home by the potential loss of these contributions.

In many countries, taking into account the non-portability of social security benefits, migrants cannot, even on a voluntary basis, contribute to long-term benefits like retirement benefits in the host country, and also in their countries of origin. Migrant workers who work in the informal economy have very limited access to social protection, if at all, and typically have no acquired and portable rights to long-term benefits, as they would not have had the opportunity to contribute to such social protection schemes.

11.1 The right to social security

Social security is a universal human right to which everyone in any society should have access to; including migrant workers. The right to social protection is recognized as a human right in several legal instruments of the UN including the Universal Declaration of Human Rights (1948) Articles 22, 25 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) Article 9, as well as in other international and regional legal instruments. The UN International Convention on the Elimination of All Forms of Racial Discrimination Article 5, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990) Articles 25, 27, 28, 43.

Protecting the fundamental human right of migrant workers to social security requires: securing equality of treatment, that is migrant workers are entitled to the same rights, obligations, and treatment as nationals in social security coverage. Non-discrimination and effective social security systems across borders; as encapsulated in the ILO International Labour Standards for the protection of migrant workers' social security rights.

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89 https://www.ilo.org/global/topics/labour-migration/policy-areas/social-protection/lang--en/index.htm

11.2 ILO International Labour Standards relevant to the Social protection of Migrant Workers

The International Labour Conference has adopted specific instruments on the social security rights of migrant workers and their family members, these include:

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Each Member of the International Labour Organization which ratifies this Convention undertakes to grant to the nationals of any other Member which shall have ratified the Convention, who suffer personal injury due to industrial accidents happening in its territory, or to their dependents, the same treatment in respect of workmen's compensation as it grants to its own nationals. This equality of treatment shall be guaranteed to foreign workers and their dependents without any condition as to residence. With regard to the payments which a Member or its nationals would have to make outside that Member's territory in the application of this principle, the measures to be adopted shall be regulated, if necessary, by special arrangements between the Members concerned.

Migration for Employment Convention (Revised), 1949 (No. 97)

Article 6 (1) Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favorable than that which it applies to its own nationals in respect of the following matters:

(b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

Social Security (Minimum Standards) Convention, 1952 (No. 102)

Convention No. 102, is the flagship of ILO social security conventions as it is the only international instrument that sets global minimum standards for all nine branches of social security. Hence, it serves as a benchmark and reference in the gradual development of comprehensive social security systems at the national level. Convention No. 102 has also had significant influence at the regional level as it was used as the blueprint for instruments. Convention No. 102 and other up-to-date Conventions in the field of social security contain explicit non-discrimination clauses. For example, Part XI of Convention No. 102 is devoted to equality of treatment of non-national residents. Article 68, which applies to all branches of social security covered by the Convention, sets forth the principle that all non-national residents must have the same rights as national residents.

However, this principle is combined with two flexible devices. First, the Convention authorizes an exception to this principle in respect of benefits payable wholly or mainly out of public funds and in respect of transitional schemes. The reason for allowing such an exception is to prevent possible abuses and safeguard the equilibrium of non-contributory schemes, particularly for old-age, invalidity and survivors' benefit by, for example, retaining the possibility of requiring non-national residents to complete a period of residence which would not be required for nationals. The second element of flexibility concerns contributory social security schemes which protect all employees. The Convention authorizes States to

limit equality of treatment in the application of a Part of the Convention to nationals of States which have also accepted the obligations under that Part. In this case, equality of treatment may be made subject to the existence of a bilateral or multilateral agreement providing for reciprocity.

Equality of Treatment (Social Security) Convention, 1962 (No. 118)

Each Member for which this Convention is in force shall grant within its territory to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention.

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Article 9 (1), Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularized, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

Article 10, Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.

Maintenance of Social Security Rights Convention, 1982 (No. 157)

Each Member shall guarantee the provision of invalidity, old-age and survivors' cash benefits, pensions in respect of employment injuries and death grants, to which a right is acquired under its legislation, to beneficiaries who are nationals of a Member or refugees or stateless persons, irrespective of their place of residence, subject to measures for this purpose to be taken, where necessary, by agreement between the Members or with the states concerned.

Domestic Workers Convention, 2011 (No. 189)

Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favorable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

Social Protection Floors Recommendation, 2012 (No. 202)

The Recommendation sets four basic social security guarantees to all residents and children: (i) access to a nationally defined set of goods and services constituting essential health care including maternity care; (ii) basic income security for children, at least at a nationally defined minimum level; (iii) basic income security, at least at a nationally defined minimum level, for persons in active age who are unable to earn sufficient income; (iv) basic income security, at least at a nationally defined minimum level, for older persons. Migrants and their families should have access to these basic social security guarantees in the State where they reside, as well as in their home country. The Recommendation provides guidance to Members to: (a) establish and maintain, as applicable, social protection floors as a fundamental element of their national social security systems; and (b) implement social protection floors within strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible, guided by ILO social security standards.

It is also important to take note of:

▶ Universal access to health care is guaranteed under the Medical Care and Sickness Benefits Convention, 1969 (No. 130), assuring to non-nationals who normally reside and work on the territory of the signing Member state equality of treatment.

▶ Maternity Protection Convention, 2000 (No. 183)/ Maternity Protection Convention (Revised), 1952 (No. 103) applies to all employed women, including those in atypical form of dependent work, to which migrant domestic workers often belong.

▶ Employment Promotion and Protection Against Unemployment Convention, 1988 (No. 168): The main aim of Convention No. 168 is twofold: the protection of unemployed persons through the provision of benefits in the form of periodical payments and through the promotion of employment.

▶ Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128): The Convention regroups these three branches (i.e. invalidity, old-age and survivors' benefits) into one instrument and extends coverage to all employees, including apprentices, or all residents whose means during them contingency do not exceed certain limits.

11.3 Access to social protection

11.3.1 Social security concerns for migrant workers

A range of legal and practical barriers faced by migrant workers are linked to the principles of nationality and territoriality. These are:

▶ **The legal restrictions**

A non-exhaustive list of barriers related to the institutional and legal framework includes:

▶ The exclusion from social protection schemes can be due to the non-fulfillment of certain conditions such as the minimum duration of employment or residence periods or a minimum number of contributory years;

▶ Certain categories of workers may also be legally excluded from social protection such as domestic workers, self-employed workers, or agricultural workers, affecting migrant workers as well as nationals;

▶ Migrants with an irregular status are usually excluded from social security laws and agreements;

▶ Migrants working in the informal economy are also often legally excluded from social protection schemes, such as contributory social insurance schemes;

▶ The absence of bilateral or multilateral social security agreements, prevent migrant workers from maintaining acquired social security rights or rights in the course of acquisition, when moving from one country to another;

▶ The lack of legal enforcement of national laws as well as social security agreements is also an important challenge; and,

▶ A lack of social protection schemes in the country of destination.

▶ **The practical restrictions**

A non-exhaustive list of practical barriers includes:

- ▶ A lack of information or knowledge on one's rights, and the administrative procedures to access them;

- ▶ Complex and lengthy administrative procedures and a lack of or limited IT systems;

- ▶ The lack of contributory capacity of migrant workers or other financial challenges;

- ▶ Language barriers, when the information with respect to the social protection scheme or programme is not provided in a language understood by the migrant or when legal or social services and assistance are not available in his or her language, then the migrant worker is intentionally or unintentionally excluded from access to social protection;

- ▶ A lack of effective implementation of social security laws and bilateral or multilateral social security agreements;

- ▶ Limited fiscal space or investments in social protection can also restrict access to social protection for migrant workers;

- ▶ Lack of representation, organization, and effective social dialogue, can have significant repercussions on migrant workers' social protection;

- ▶ Geographical barriers can make it particularly difficult and costly to register and obtain information; and,

- ▶ Access to justice (or judicial protection) can be difficult**.**

▶ **The principles of nationality and territoriality**[90]

Migrant workers often face disadvantages in social security coverage and entitlement to benefits, many of these problems have their roots in inherent features of national legislations. One of these features is the **principle of territoriality**, according to which the scope of application of social security legislation, as of any national legislation, is confined to the territory of the country in which it has been enacted. As a consequence of this principle, migrant workers may not only lose coverage under the national social security system in their country of origin, but run the risk of having limited or no coverage at all in their country of employment as well.

Migrant workers' social security rights may also be affected by the **principle of nationality**. Although a number of countries recognize the equality of treatment between national and non-national workers in their social security legislations, some countries discriminate against migrant workers through national legislation that excludes specific categories of migrants, or in more extreme cases, all non-nationals from coverage or entitlement to social security benefits, or applies less favorable treatment to such groups on the basis of this principle.

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90 ILO, 2011- Social security for migrant workers: a rights-based approach.

11.3.2 Access to social security benefits for migrant worker in countries of origin and destination

Countries of origin: Some countries of origin have adopted unilateral measures to extend social protection to migrant workers. These unilateral measures can include: applying the equality of treatment principle, allowing for the maintenance of the contribution in the home country for short-term migration; facilitating access to social protection floors upon return; removing the eligibility criteria to facilitate the access to some benefits, among other initiatives.

Several major countries of origin have established national migrant welfare funds drawing on the Philippines model and related emigration support services to expand the protection of their overseas workers in the absence of social security agreements with main destination countries. These funds mainly provide emergency and repatriation services, work-related benefits and legal assistance, and welfare provisions for families left behind.

A countries of origin faces difficulties due to a number of restrictions to extend the enforcement the national legislation beyond its territory. When countries of destination are neither in a position to provide them nor willing to negotiate a social security agreement, the country of origin usually assumes responsibility for providing at least some basic level of protection for its nationals working abroad. Such, unilateral measures appear to be particularly problematic, in the absence of a rights basis and appropriate and effective monitoring, enforcement and persuasion mechanisms. Moreover, often reliance has to be placed on the contributions by workers only, which could make participation in these arrangements costly or subject to reduced benefit entitlement.

Destination country: Short-term benefits such as work injury and basic healthcare are often legally provided in destination countries, although in practice they may face challenges in accessing such benefits. When migrant workers become seriously ill their contracts are usually terminated. Migrant workers rarely receive sickness benefits; subsequently also limiting their claim on healthcare benefits. Healthcare professionals may be required by law to report undocumented workers reducing their access to healthcare when available. Maternity benefits are not available to migrant workers in the GCC countries (such as Kuwait, Saudi Arabia and Qatar), if found to be pregnant, they are more likely to be charged with adultery or sex outside of marriage[91]. In other destination countries if found to be pregnant they are usually dismissed and repatriated, (sometimes according to law) violating their right to reproductive health.

Long-term benefits: A particular concern for migrant workers is their access to and portability of long-term benefits, in particular pension benefits such as old age, disability, survivors and healthcare benefits after retirement.

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91 Gikuru, C. Muthoni,2013-The Plight of Kenyan Domestic Workers in Gulf Countries, and ITUC, 2017- Facilitating Exploitation: A review of Labour Laws for Migrant Domestic Workers in Gulf Cooperation Council Countries.

◤◤ In South Africa immigration law is superimposed onto social law in this situation. By implication, this means that many migrants are excluded from social rights There is currently no real policy framework on the issue of migrant (i.e. non-citizen/non-permanent resident) access to social security whether in principal or by category. This lack of legislative action has resulted in a significant policy void into which only the occasional jurisprudence has had any impact at all. But by and large, non-nationals are excluded from public social security programmes. One exception is that people with refugee status are able to claim Foster Care Grant and Disability Pension if all other requirements for such benefits are met. However, the eligibility for these would cease if the beneficiary's legal refugee status lapsed. Also, non-nationals are excluded from some forms of emergency assistance such as Social Relief of Distress.

(ITUC-Africa: Social Protection Schemes in Africa, 2012).

◤◤ To minimize stresses and to facilitate social cohesion, social security systems are proactively developing appropriate responses. Effective public communication is a first step to inform migrant workers of their social security rights and obligations. For instance, the National Social Security Fund (NSSF) in Uganda informs migrant workers that they are entitled in accordance with the national legislation for the payment of the repatriation grant when they leave the country before retirement. It serves as an important incentive for the participation of migrant workers, since they know they can access their benefits when the need arises. In Cameroon, the establishment of a bilateral agreement with France favours the participation of French nationals working in Cameroon to contribute to the National Social Insurance Fund (Caisse nationale de prévoyance sociale – CNPS).

(International Social Security Association (ISSA)- Ten Global Challenges for Social Security – Africa, 2017).

11.4 Portability of Social Protection

◤◤ Social security agreements are treaties intended to coordinate the social security schemes of two or more countries in order to overcome the barriers that might otherwise prevent migrant workers from receiving benefits under the systems of any of the countries in which they have worked.[92]

Social security agreements are one of the most commonly used measures to ensure the portability of social security entitlements and benefits across countries. The lack of social security coordination due to the inexistence of bilateral or multilateral agreements may prevent migrant workers from maintaining rights acquired in another State. This is particularly important in the case of long-term benefits (invalidity, old age and survivor's) where qualifying periods may be considerable. Where bilateral and multilateral social security agreements (SSAs) exist, they mostly cover migrant workers in formal employment, leaving

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92 For more information, as well as country examples: see ILO Guide on Extending social protection to migrant workers, refugees and their families, Forthcoming 2021.

migrants working in the informal economy or in an irregular situation largely unprotected. SSAs can also have a positive effect on formalization depending on the reasons and factors for the informality.

Cross-border benefit portability is understood as the migrant workers' ability to preserve, maintain, and transfer both acquired social security rights and rights in the process of being acquired from one private, occupational, or public social security scheme to another, independent of nationality and country of residence. Migrants may contribute to social security schemes in their countries of origin and destination but, if social protection rights and benefits are not portable, they may be unable to preserve or transfer pensions, health insurance and other benefits if they return home or move to another country, even after long contributory periods. Adequate portability not only involves ensuring that benefits accrued in one country are payable in another. It also means that benefits should be determined on the basis of an individual's full contribution period in all the countries where he or she has paid contributions.

If contribution periods are not totalized, migrants may not be entitled to pensions or other benefits because they do not meet the minimum contributory period required in some or all countries, even though they may have worked or contributed as many years, in total, as their non-migrant peers. The absence of social security agreements may dissuade migrants from paying contributions in the host country and encourage them to work in the informal economy. It may also deter migrants from returning to their origin country.

As highlighted above, the benefits received from social protection systems can be portable, not portable, or lie somewhere in between. For instance, many migrant workers in countries of origin and destination have almost no arrangements in place for accrued social security benefits portability.

11.5 Interrelationships between social protection, migration and the 2030 Agenda

Access to social protection is key to maintaining adequate standards of living throughout the life cycle and to ending poverty, as set forth in the 2030 Agenda. Social protection, is critical to address persistent vulnerability and poverty and a key element for decent work. It is also a key element of sustainable poverty reduction strategies. Without social protection, people become more prone to economic insecurity and social exclusion and hence more vulnerable to remain in poverty.

Migrant workers, however, are poorly served by social protection systems. Without action to remove the obstacles that migrants face, the pledge to implement social protection systems and measures for all, including floors, will not be met. The 2030 Agenda advocates safe and orderly migration and the expansion of legal and effective social protection coverage, though it does not explicitly link the two. Table 11.1 illustrates the main interrelationships between social protection, migration and the 2030 Agenda.

▶ **Table 11.1 The main interrelationships between social protection, migration and the 2030 Agenda**

Relevant SDG Target	Migration challenge
Goal 1: No poverty	
1.3 Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable.	One of the most important challenges for migrant workers relates to the low level of social protection coverage in many countries. Extending social protection to migrant workers is also challenged by the fact that many migrant workers work in the informal economy and hence have limited access to contributory social protection systems. This also affects the portability of accrued benefits.
Goal 10: Reduced inequalities	
10.4 Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality	Social protection policies often do not guarantee equal access to social protection, particularly for 'non-natives', which means that labour migrants have lower eligibility for, and, where eligible, lower take-up of social protection. If vulnerable groups (such as labour migrants) are unable to participate in social protection, inequalities widen.
	The design of social protection policy can fail to account for mobility of beneficiaries, with portability being a key constraint for labour migrants in accessing benefits they have contributed towards.

11.6 Role of Trade Union in promoting access to social protection by migrant workers

Social protection is a critical issue for trade unions, it is one of the fundamental component of decent work. Social protection is a key tool for reducing poverty, inequality, supporting education, promoting gender equality, contributes to economic growth, promote social cohesion, and boosting and stabilizing the economy. Trade unions play a crucial role in the provision of social protection to migrant workers, through a three-pronged strategy that deals with research, education and training and engagement.

▶ **Research and analysis:**

  ▶ Trade unions should first be adequately informed about the situation on the continent with respect to access to social protection by migrant workers.

  ▶ Trade unions need to identify the gaps in the provisions of social protection to migrant workers and proffer alternatives.

  ▶ Trade unions need to closely follow reforms in the social security systems of many countries to ensure the extension of social protection to workers in the informal economy.

▶ **Education and training:**

▶ The idea is to allow trade unions to build/extend their technical capacities through training and education programme, access to educational materials, and tools for monitoring the implementation of of social protection programmes. By enhancing the capacities of trade unions this ensures that they make relevant contributions through? social dialogue on the extension of social protection to migrant workers.

▶ Lack of information and knowledge on social protection rights? is noted as one of the hindrance of migrant workers accessing social protection. Hence through education and training, trade unions can also empower and inform migrant workers on how to access social protection schemes in both countries of origin and countries of destination.

▶ Trade unions need to produce materials to explain the social protection schemes in country of origin and destination, material on social protection and share such materials with migrant workers.

▶ **Advocacy, lobbying and networking:**

▶ Lobby for the implementation of the provisions embedded in ILO Standards relevant to migrant workers' social protection.

▶ Advocate for and participate in social security laws or labour law reforms as well as in the design and monitoring of SSA or BLAs

▶ Advocate for the extension of social protection coverage to workers in the informal economy and to migrant workers.

▶ Advocate for enhanced accessibility of social protection institutions in remote areas

▶ Campaign for the adoption of national Social Protection Floors

▶ Build networks that will serve as an opportunity for unions across the globe to come together, share experiences, exchange and learn from each other on the protection of migrant workers' rights.

▶ Establish active collaboration and meaningful partnerships with civil society organizations.

► Box 11.1 ILO Development Cooperation Project on Extending social protection access and portability to migrant workers and their families through selected RECs in Africa

The overall objective of the action is to extend decent work and social protection to migrant workers and their families, by strengthening the RECs' capacities to provide, as well as drive the implementation of regional frameworks on the extension of social protection to migrant workers and their families. Below are some of the key result areas and main activities in the RECs.

► **ECOWAS:** Enhancing the implementation of ECOWAS General Convention on Social Security by ECOWAS Member States.

  ► Support the establishment and effective functioning of the Committee of Experts for the ECOWAS General Convention (CESS). The CESS is a critical organ for supporting and monitoring the implementation of the ECOWAS General Convention;

  ► Facilitation of annual technical and coordination meetings for representatives of social protection schemes and other relevant stakeholders on the implementation modalities of the ECOWAS General Convention;

  ► Assess the feasibility to extend social protection coverage to migrant workers in the informal economy and develop and test concrete policy proposals for such extension.

► **SADC:** Strengthening SADC's capacity and policy instruments on social security, including portability of social security rights.

  ► Assessment of existing social protection access and portability provisions for formal and informal migrant workers in SADC, inform the development of suitable coordination mechanisms, administrative arrangements and management systems to support the portability of social security benefits within the sub region;

  ► Facilitation of tripartite technical and consultation meetings on the implementation of SADC social security policy instruments;

  ► Support the implementation of the SADC policy framework in selected pilot occupational areas and countries.

► **EAC:** Enhancing EAC's capacity to advance the regional coordination and protection framework to improve access to social protection for migrant workers; and building on the achievements of previous ILO projects, in particular MISGEC:

  ► Support feasibility studies, including on actuarial and financial assessments, of the implications of an EAC multilateral social protection instrument. This will inform the revision and finalization on the draft EAC Council Directive on the Coordination of social Security benefits;

  ► Facilitate regional dialogue and consultations to revise and finalize the Draft EAC Council Directive on the Coordination of social Security benefits within the EAC Common Market;

  ► Provide legal and actuarial advisory services to EAC Partner States in support of coordinating the portability of social security benefits.

► **African Union Commission:** Improving capacity of the AUC, RECs and regional social partners to coordinate and contribute to social protection programmes for migrant workers in both the formal and informal economy:

  ► Support of the AUC to promote south-south and intra-RECs technical cooperation on social protection for migrant workers;

  ► Capacity building of AUC, selected RECs staff as well as regional and sub-regional social partners on social protection and labour migration issues;

  ► Support the systematic collection and analysis of statistical information to inform policy-making and the monitoring.

Learning exercises for Module 11
Accessing Social Protection

Activity: Access to social protection by migrant workers

Aims: To identify challenges in access to social protection by migrant workers

Task:

1. What are the legal provision on the access to social protection by migrant workers that exist in your country?

   _____

   _____

   _____

2. What are the practical barriers to accessing social protection benefits by migrant workers in your country?

   _____

   _____

   _____

3. What has your trade union done to ensure that migrant workers have access to social protection?

   _____

   _____

   _____

4. What are the existing social security agreements and bilateral labour agreements in your country? What are the protection gaps?

   _____

   _____

   _____

5. What are the social protection benefits that are accessible to migrant workers in your country?

   _____

   _____

   _____

6. Which ILO Standards on Social Security for Migrant Workers has your country ratified and domesticated?

   _____

   _____

   _____

Module 12.

Working and living conditions of migrant workers particularly working time, wages, occupational safety and health, violence and harassment, HIV/AIDS

Overview

This Module:

▶ Describes the working and living conditions of migrant workers particularly working time, wages, occupational safety and health, violence and harassment.

▶ Looks at the types of jobs they do, the discrimination they encounter – all of which add up to a bad experience for most migrant workers.

Learning Outcomes

By the end of this module, you will be able to:

▶ Understand the working and living conditions of migrant workers and what can be done to address the identified challenges;

▶ Highlight the importance of access to justice by migrant workers; and,

▶ Describe the role of trade unions in ensuring access to justice for migrant workers.

Content

The module addresses the following themes:

12.1 Working conditions of migrant workers: The section highlights the non-decent working conditions faced by migrant workers.

12.2 Living conditions of migrant workers: The section highlights the non-decent living conditions faced by migrant workers.

12.3 Access to justice for migrant workers: The importance and challenges to accessing justice by migrant workers is highlighted in this section.

12.4 The role of trade unions in providing support to migrant workers in accessing redress mechanisms: The role role of trade unions in ensuring access to justice for migrant workers is detailed in this section.

Principal questions which this module addresses

▶ What are working and living conditions of migrant workers?

▶ Do migrant workers have access to justice, either in countries of origin or destinations?

▶ What is the role of trade unions in ensuring that migrant workers have access to redress mechanisms?

▶ Module 12. Working and living conditions of migrant workers particularly working time, wages, occupational safety and health, violence and harassment, HIV/AIDS

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12.0 Introduction

Migrant work has for a long time been characterized as being low-paid and precarious, with workers reporting higher job insecurity and limited entitlements. This has seen migrant workers in precarious work tend to be tasked with more difficult jobs and jobs that national/local workers do not want. Migrant workers face discrimination and bullying compared to local workers, this has extended implications which include increased job dissatisfaction and frustration, making workers vulnerable to work-related stress.

The case of migrant workers starts as early in their migration journey, as the journey tends to be costly and dangerous journey. Many migrant workers have to go into debt just to pay for the transport from where they live to their new job in a distant country. Not only that, the journey can be very hazardous, some are abandoned en-route, some are placed inside containers and suffocated to death. Others have been put onto ships or boats that have sunk at sea.

In some countries legislative instruments to protect migrant workers are lacking or badly enforced. Governments struggle to maintain adequate work permit systems to regulate the flow of migrant labour – or in some cases perhaps deliberately

> **''Irregular' – but not 'Illegal'**
>
> When migrants are working without the right documents, such as a valid work permit, technically they may be working informally, many say 'illegally'. However, the work they are doing is legitimate, not criminal, and it is valuable to the host economy and society. So, many migrant workers, trade unionists, human rights activists and the ILO argue that these workers should be referred to, not as 'illegal', but as 'irregular'.

fail to, in order to help provide their economies with a cheap, vulnerable labour force. Poor work permit systems increase the numbers of 'irregular' workers. Many countries do not have proper labour inspection or, where it does exist, the inspectors do not carry out their responsibilities adequately. Workers often do not talk to inspectors for fear of losing their jobs or because they fear that inspectors would denounce the 'undocumented' workers to the immigration authorities.

12.1 Working conditions of migrant workers

The Three (3) D Jobs

Migrant workers often carry out the "3-D" jobs: difficult, dangerous and degrading. Migrant labour

has long been utilized in developed and underdeveloped economies as a low-cost means to sustain economic enterprises, and sometimes entire sectors, that are only marginally viable or competitive. Most migrant workers are employed in sectors that were renowned for high levels of fatal accidents, injuries and diseases. These sectors commonly include agriculture, mining, construction, cleaning and maintenance, hotel and restaurant services, labour intensive assembly and manufacturing, and the sex industry. This subjects them to:

▶ Coercion: Undocumented migrant workers may not be willing to report a workplace injury because they are afraid of being reported to migration authorities or losing their jobs and not being able to find another employer willing to take them on.

▶ Unclear contract of employment: Most of the unskilled employment, and casual employment are obtained through verbal contracts. Those with written contracts have signed a single copy which is kept by the employer.

Working time

Migrant workers more often report having long working hours, working in the evenings or at night, doing shift work or work during weekends, and these workers are more often involved in work accidents. They work works seven days a week, with no regular working hours. They are subjected to long working hours so as to meet targets, failure to meet set-targets results in termination of employment. As some migrant workers are exposed to multi-tasking, and are still expected to meet target. It therefore means migrant worker subsidizes the company by providing additional (unpaid) work hours in order to meet employer targets, thus making the worker worse off.

Since most of the migrant workers have no employment security and some are engaged on task-work basis, they are forced to work overtime, which is not paid for. Failure to perform overtime is seen as a sign that one is not committed to the job. For domestic workers, living with their employer tend to experience a blurring of work and free time.

Wages

The wages of migrant workers as a whole are lower, unstable and irregular than those for national workers, which may be partly explained by different levels of skills among migrants, but discriminatory practices do play a role. There are also wage disparities between groups of migrants and, in general, women migrants are worse off. Wage differences related to migrant status do not necessarily reflect direct wage discrimination against migrant workers. They may also depend on indirect forms of discrimination related to compositional effects revolving around sector, occupation, type of contract (for example, part-time), age and sex.

Another important factor that sheds light on wage differentials is the importance of social networks for migrant employment. Personal contacts with other migrants, particularly with those from the same country of origin, play a crucial role in the work strategies and occupational outcomes of migrant workers. These social ties can have positive effects, to the extent that they often provide valuable opportunities to find employment, but at the same time they tend to channel migrants towards unskilled and low-paid jobs, which are often the only ones for which their compatriots have useful information and contacts.

Migrant workers are subjected to wage theft - the denial of wages or employee benefits that are rightfully owed to an employee by the employer. Wage theft is conducted through various means which include: failure to pay overtime; minimum wage violation; employee misclassification; illegal deductions in pay; working off the clock; not being paid at all. Wage theft has been used by employers to keep migrant workers' dependent to them, as they have to continue working, as they wait to get they wages.

Occupational safety and health

Occupational safety and health is an important issue for migrant workers for several reasons, these include: (i) migrant workers tend to be employed in high-risk sectors; (ii) language and cultural barriers require specific OSH communication, instructions and training approaches; (iii) many of these workers overwork and/or suffer from poor general health and are therefore particularly prone to occupational injuries and work-related diseases; and, (iv) many migrant workers are obliged to live in makeshift accommodation, shantytowns and substandard accommodation. This can lead to poor general health, which makes migrant workers more vulnerable to occupational diseases. As migrant workers are considered to be temporary, employers may not invest in training for them.

Occupational sectors that employ migrant workers tend to include work that is physically demanding. These demands increase the risk of injuries and fatalities because working conditions

may be unsafe or unregulated. In addition, the precarious position of migrant workers prevents them from making changes to their working conditions when an unsafe or hazardous condition is

identified. This lack of a guaranteed wages and the risk of losing the job create uncertainty for the worker and results in the worker often accepting the dangers or risks of the job without complaint for fear of losing employment. A further source of inequality in the world of work, is that migrant workers take up the most hazardous and unhealthy of these unskilled jobs, hazardous jobs are often rejected by nationals. Many

▶ Module 12. Working and living conditions of migrant workers particularly working time, wages, occupational safety and health, violence and harassment, HIV/AIDS

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of the health risks for migrant workers are due to environmental hazards inherent in the occupational setting. Migrant workers tend to be employed in jobs that carry increased exposure to environmental toxins, including extreme temperatures, pesticides, and chemicals.

Migrant workers are particularly at risk, being in unstable working relationships with employers who are less likely to take responsibility for providing a safe and healthy workplace. Those employed through shady or criminal labour agents are at extreme risk. This has seen migrant workers being made to buy their own protective clothing, as they are less likely than national workers to be provided with proper protective clothing and so they suffer more from the chemicals to which they are exposed. Few are provided with the necessary handling equipment; or, if they are, are not trained in a language they can understand on how to operate it. So they suffer from muscle strain and chronic back pain. For pregnant women, there is the extra risk of miscarriage.

Violence and harassment

Abuses in the workplace take multiple forms, from outright physical abuse or harassment to what has been termed benign neglect when managers fail to implement or enforce safety measures. The actual or perceived lack of legal protection for migrant workers often results in their exposure to abuse in the workplace. The threat of physical violence and exposure to verbal abuse contributed to workers' acquiescence to working longer hours or working in unsafe conditions. The occurrence of physical, mental, and sexual abuse has been reported in many different fields employing migrant workers. Abuses suffered in the work environment lead to negative mental health outcomes, which include mood instability and depression.

Migrant workers are more likely to suffer from exposure to psychosocial risks at work due to a lack of social and family support in the country of relocation. Lack of support from co-workers and supervisors is also common, mainly because of cultural and language barriers. There is also some evidence that suggests that migrant workers constitute one of the most vulnerable social groups exposed to poor employment and working conditions, especially during times of economic recession. This is due to increased job insecurity, which has been found to be associated with poor employee well-being, including mainly mild-to-moderate depressive and anxiety disorders.

Migrant workers are also very vulnerable to violence and harassment, including sexual violence and harassment, this applies to both men and women, but women are more at risk. Migrant workers are vulnerable on the journey, where they work, and where they stay; they are dependent on the agent that finds them work, and at extreme risk if that agent turns out to be a predator or a trafficker linked to the sex trade; if they are 'undocumented', migrant women cannot appeal for protection from the authorities. Sexual harassment in the workplace is a union issue, not a women's issue, nor a 'personal' issue.

Flexible and casual jobs

Increasing competition in the global economy and promotion of neo-liberal policies lead to the deregulation of labour markets, to flexible and casual employment, and the growth of outsourcing and subcontracting. Employers like it because it gives them financial flexibility. Governments promote it so as to slow down unemployment and increase the number of available jobs. However, this policy lowers employment standards: more jobs are casual, on a temporary or part-time basis; more work is pushed out of the formal economy, where it is regulated and into the informal economy, where there is much less regulation. These policies are affecting all workers today.

However, migrant workers are the first to lose out. They are recruited instead of local workers precisely because they can be more easily employed without a proper employment contract with a clearly identified employer, for a permanent job on decent terms and conditions.

Limited access to social benefits

Migrant workers are typically recruited on short-term contracts and paid cash-in-hand. They barely exist on labour registers and have limited access to social protection. Employers side-step their duties to provide benefits such as holiday or sickness pay, social insurance contributions, maternity provision, and so on. This means employers get more value out of these workers at lower cost. It lowers working standards for everyone.

HIV and AIDS

In Sub-Saharan Africa the prevalence rates of HIV and AIDS are high and the disease has very seriously implications for migrant workers. Those discovered as infected are usually not accepted into host countries, as some countries still require a negative HIV test result as a condition for entry or to secure extensions of a visa. This is contrary to human rights and good practice identified by the ILO's Code of Practice on HIV and AIDS and the World of Work, and does not help to prevent the spread of the disease.

Migration heightens both risks and vulnerabilities of exposure to HIV and AIDS. This is due to the fact that most migrant workers are not usually allowed to travel with their partners; so they develop new, often casual relationships and risk infection; they may be so poorly paid that they do not have money to buy condoms. Thus, vulnerability to HIV infection is greatest when people live and work in conditions of poverty, social exclusion, loneliness, and anonymity. Many migrant workers do not have access to the public health systems of their destination countries. If they get sick, they may not be entitled to healthcare, or they may not be able to access it because they don't know how to or they have become undocumented. Being found out as infected with HIV/AIDS can mean they will be abandoned by their labour agent or expelled from the host country and so lose their job, even though this contravenes international labour standards. Many migrant workers return home with the infection, increasing the spread of the disease.

Gender plays an important role in vulnerability to HIV infection, and women migrant workers are among the most vulnerable to sexual harassment and forced sexual intercourse. An especially vulnerable group are the large numbers of women migrant domestic workers. They are frequently undocumented, or their papers are taken by the employer or agent; they have few rights and are not usually protected under local laws. They also have little power to refuse sex with their employers.

The ILO Code of Practice on HIV/AIDS and the World of Work

Screening does not stop HIV/AIDS

Screening should not be required of job applicants or persons in employment (Paragraph 4.6). Testing for HIV should not be carried out at the workplace. It is unnecessary and imperils the human rights and dignity of workers: test results may be revealed and misused, and the informed consent of workers may not always be fully free or based on an appreciation of all the facts and implications of testing. Even outside the workplace, confidential testing for HIV should be the consequence of voluntary informed consent and performed by suitably qualified medical personnel only, in conditions of the strictest confidentiality (Paragraph 8).

Prohibition in recruitment and employment

HIV testing should not be required at the time of recruitment or as a condition of continued employment. Any routine medical testing, such as testing for fitness carried out prior to the commencement of employment or on a regular basis for workers, should not include mandatory HIV testing (Paragraph 8.1).

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Discrimination

Migrant workers accumulate 'multiple layers of discrimination,' based not only on migration status, but also nationality, ethnicity, and gender, which contribute to their marginalization and exclusion from the formal economy. Migrant workers are often the ones hired because they can be discriminated against, compared to local workers. Many receive less pay than local workers for the same work, as well as far worse benefits, for example severance pay when dismissed. Migrant workers are frequently subjected to unequal treatment and opportunities, as well as discriminatory behavior, and these are the key reasons why migrant and ethnic minority workers face greater obstacles than the majority population. Migrant workers are regularly subjected to various forms of discrimination, including in access to employment and unequal treatment in the workplace, practices which are inconsistent with international instruments on migrant workers.

Discrimination in employment is still widespread in many countries and takes multiple forms. While it may be understandable why migrants suffer some forms of labour market disadvantages upon entry as a result of language and other handicaps, some disadvantages seem to be systemic, a consequence of policy (or the lack of one), or of discrimination. Another form of indirect discrimination is related to access to employment in the public sector: for instance, in some countries, nationality was almost always a necessary requirement for recruitment as a civil servant. Migrants are often the target of ethnic prejudices, and migrant jobseekers with different ethnic backgrounds were followed for a long time.

ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

ILO Convention No. 111 deals with discrimination in employment and occupation. The Convention, one of the eight which have been designated as "core" human rights'. Conventions, is a key text on the issue of discrimination at work. Article 1 defines discrimination as: ... any distinction, exclusion or preference made on the basis of race, color sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Note that nationality is not included in this list; States CAN deny a worker access to its labour market on the grounds of nationality. However, once in the labour market, all workers whether nationals or non-nationals are protected by Convention No. 111 if they are discriminated on any of the grounds listed in the Convention.

For the purpose of the Convention, the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and the terms and conditions of employment. Member States which ratify the Convention undertake: ... to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

Vulnerability in economic crises

The vulnerability of migrants' situation as informal economy workers becomes more deepened during times of crisis. Insecure working arrangements, combined with a lack of access to social safety nets, and concentration in sectors most sensitive to business cycle fluctuations, make migrant workers particularly susceptible. Crises tend to *"normalization of informality,"* as many migrant workers find themselves with little choice but to accept lower wages and poorer working conditions to avoid unemployment. The situation in made worse, as a number of destination countries tend to responded to the crisis by implementing tighter restrictions on the admission of migrant workers and on the renewal of temporary work permits, which can close the door to formal employment for migrant workers.

Also in times of crisis, the perception that migrants are competing with native workers increases, which can reinforce xenophobia and lead to a rise in discriminatory employment measures, mass deportations, and violence against migrants.

Racism and Xenophobia

There is increasing xenophobia and racism in many societies towards migrant workers. Local workers tend to say '*they have come to take our jobs*', even though the work done by migrants often adds to the economic well-being of the country, increasing the level of jobs available. When an 'us versus them' situation develops, local workers may turn a blind eye to discrimination in pay or working hours or other forms of exploitation of migrants. It is 'their' problem, they say. But it is not; it is a problem for all, because such discrimination drives down the terms and conditions for all workers. It is the duty of trade unions to step in and counteract it, for the benefit of their own members as well as other workers including migrants.

It should also be noted that those extreme chauvinist groups which raise the issue of migrant workers are never the friends of trade unionism. They seek to divide workers on the basis of race, religion or nationality. Trade unionists know that division is fatal to our cause. These same parties are always in favour of reducing trade union power. The trade union movement plays a leading role in fighting racism and xenophobia. The ILO's Migration for Employment Recommendation (Revised), (No. 86), adopted in 1949, asked countries to "take all practical steps ... against misleading propaganda relating to emigration and immigration" (Annex, Article 2).

Training and career advancement

Migrant workers are not only segregated into low-paid jobs, but they also have little likelihood of progressing out of them. Unfortunately, there are limited opportunities for migrant workers to have access to career development courses or training. In some countries upward occupational mobility is heavily dependent upon variables such as gender, ethnic origin and language competence. It is not clear, however, if and to what extent language requirements work as a useful excuse that hides prejudices against ethnic minorities. In some countries opportunities for training and further education for migrants are virtually non-existent, since educational programmes are offered only in the local language, without any translation.

Irregular migration

In addition to exposing workers to a vast array of human rights abuses, irregular migration and informality have negative economic implications for both countries of origin and destination. Migrant workers in the informal economy face barriers to receiving regular wages as well as to accessing formal channels to transfer their earnings home. Remittance transfer costs through informal channels are often high and less reliable than formal mechanisms, such as banks, which may not be accessible to migrants in irregular status.

12.2 Living conditions of migrant workers

Unscrupulous employment agents and Debt bondage

International recruitment of workers is increasingly becoming more and more in the hands of private fee-charging recruitment agencies which play a crucial role in facilitating migration for employment. Sadly, they are also responsible for a number of unethical practices which promote irregular migration and cause immense hardship to actual and potential migrant workers. As some recruitment agencies send workers for non-existent jobs, some provide false information about jobs, and many charge migrants excessive fees for services.

A serious problem facing many migrant workers is that they are hired through employment agents. Some are legitimate employment agencies, but many are not and are linked to criminal operations. Some charge migrant workers exorbitant fees to get a job. They over-charge for transport, housing and food; and they

▶ Module 12. Working and living conditions of migrant workers particularly working time, wages, occupational safety and health, violence and harassment, HIV/AIDS

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unilaterally change the terms and conditions of employment[93]. The result can be to put migrant workers deeply in debt so they have to continue working; they have no money to go home, *thus debt bondage*. Migrants often have to borrow the money for these upfront charges from moneylenders at a high interest rate, and it remains a debt that hangs over them and their family. If then they are poorly paid, it can push them into a type of debt bondage that lasts for years. Many migrant workers find themselves at the end of long subcontracting chains, passed from one agent to another, each one making a profit from them and leaving them with almost nothing. In the worst cases, migrant workers are purposely subjected to abuse and violence and harassment so that they remain scared and captive. Or they flee, and become undocumented, living in the shadows of their host country.

Housing

Where and how migrant workers are housed is a very important aspect of their welfare and well-being. Many migrant workers have to live in extremely poor conditions: in decrepit old buildings, shacks, broken down caravans, and so on. When in buildings, the rooms are often overcrowded and there is no privacy. Overcrowding also increases the vulnerability of women and children to sexual abuse, and reduces their safety and security. Substandard housing conditions are a common issue migrant workers face. Not only do many workers live in crowded, unsanitary conditions, but they often lack basic utilities, live in isolated areas far away from important services like health clinics, grocery stores, and public transportation, and in many cases must pay exorbitant rates for rent.

In the case where the employer owns the accommodation facilities - the landowner can have a monopoly on available housing, which allows them to overcharge. This is especially true in isolated rural areas, where oer housing options simply don't exist, and thus workers have no alternative but to pay these rates.

Vulnerable to abuse

Migrants can be more easily manipulated by employers because they tend not to know their rights or what to expect in their destination country before they sign up for the job. They often have very little confidence that they might have any collective bargaining power. Irregular migrant workers are extremely vulnerable to abuse and exploitation. As they are irregular, these workers cannot approach the authorities for help against an abusive employer. They have no status in the host country and so have little access to any of the welfare systems that might exist, such as medical care if they get sick or injured. They cannot call on the Police for help, if they are abused, unless they are willing to risk deportation. Some employers will even purposely expose 'undocumented' workers to the immigration authorities, so as to get them deported and avoid paying their wages.

Isolation, loneliness due to limited movement

Loneliness is an unpleasant, subjective experience that results from the lack of social relationship satisfying in either quantity or quality. Owing to migrant workers' socially isolated status, separation from distant families and friends, and reduced social network sizes, they might be at increased risk of feeling lonely and isolated. Feeling lonely poses not only a threat to mental health like depression and impaired cognition, but also to physical health as indicated by increased mortality risk.

Confiscation of passport

Although passport confiscation is considered an illegal practice in many countries. It still persists, and this underlies numerous forms of manipulation or exploitation that many migrant workers reportedly put up

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93 See Module 7 on Fair Recruitment, to identify the recruitment costs that are permissible.

with to keep their jobs.[94] Employers gave various explanations for this practice, including the suggestion that their workers preferred that employers hold the documents to keep them safe, but the purpose of holding passports was to ensure that workers did not leave. Some countries of destination have passed regressive laws that empower the employers to legally hold workers' passports. In some cases, because employers ordinarily pay to renew their employees' work permits and then recoup that cost through monthly deductions, they may demand money from workers before turning over passports, either in reimbursement for those costs or as a form of security that the workers will stay on the job.

12.3 Access to justice for migrant workers

▶▶ Access to Justice requires both adequate and timely redress for the migrant worker whose rights have been violated, and accountability for those persons responsible for the rights violation. It requires the law to be clear, procedures to be fair, institutions to be accessible, and outcomes to be just.

(Bassina Farbenblum).

The conditions that give rise to the exploitation, labour rights violations, and other problems that migrant workers encounter often begin at the point of recruitment and persist through their return home as they are frustrated in their attempts to secure access to justice, accountability, and a remedy for the harms they suffered. Throughout the migration process, migrants, particularly undocumented, face injustices of a legal nature. From recruitment to repatriation, they are faced with continued dilemmas of risking arrest. The conditions to the access to justice for workers are particularly affected by employment, gender, the capacity of the country of origin and their stage of the migration process. Many harms that occur abroad also breach the contracts that workers sign with recruitment agencies at home, and are also covered by private insurance policies that workers must purchase before departing abroad.

Countries of origin are often overlooked in public discussions on protecting migrant rights, with greater media and public interest on the treatment of migrant workers in the destination country. Several studies have shown that countries of origin tend to focus exclusively on the intersection between labour migration and development, and not on prevention and mitigation of harms, or migrant workers' access to justice when harms are perpetrated against them. Workers' access to affordable and efficient redress mechanisms within countries of origin and destination is therefore especially important, appropriate, and often required by international law.

In many destination countries, opportunities to seek redress and to systemically improve access to justice are limited. Migrant workers, especially migrant domestic workers can face insurmountable obstacles in obtaining justice from courts of the receiving country in case of violence, rape, non-payment of wages, arbitrary dismissal, false accusations of theft. The supply of migrant labor is greater than the demand, and many destination countries see little incentive to better regulate and enforce regulations protecting migrant workers, particularly those with limited social and political capital.

It is imperative to note that the challenges to the access to justice in the case of migrant workers are faced regardless of their status as documented/undocumented, low-skilled or high-skilled, and man or woman.

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94 This goes against the General Principles and Operational Guidelines and Recruitment fees and related costs definition on Fair Recruitment.

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The challenges cut across the various backgrounds migrants possess. Migrants, especially those that are low-skilled and/or undocumented, have a general lack of awareness of legal procedures and services, including ones of their own country that concern them. They have limited information on where to seek remedy and live in fear of the police/system due to lack of social support.

Challenges to the access of justice can be classified as challenges to enforcement, legislation, subsequent monitoring of services and ensuring accountability. These challenges are seen in the following areas :(i) administrative (ii) financial (iii) provision of services (iv) awareness and (v) legal. These areas have issues that are cross-cutting and consequent to each other. They may manifest in common practices in countries of destination like confiscation of documents essentially rendering migrants, undocumented in cases of visa and passport expiry, inaccessibility of legal aid and dues for the worker, inefficiency or unaccountability of the first Point of Contact at the Police Station or Labour Office, dismal communication mechanisms with embassies, and the unsatisfactory monitoring and registration of manpower agencies and recruiting agents by both countries of destination and origin.

The process of litigation is a harrowing experience for the common migrant worker. The costs involved and the lack of assured and enforced justice are what constitute the **financial and service provisory challenges** for migrants in the fight for access and opportunity for justice and rights. The costs associated with the legal process, including time spent, constitute a major challenge to most migrants, who prefer to avoid the entire process completely and repatriate without pursuing the case further. The need for the migrant worker to be at the country of destination and earn/save for his family and life at the country of origin is not prioritized enough to the extent of it being a reason for lowered fees/dues. Hence, migrant workers are asked to settle for a few months wages as a settlement instead of the compensation they deserve. The lack of financial resources to pay for legal representation in the country of destination is where the migrant worker loses his opportunity to ensure justice.

Recommendations for improving access to justice for migrant workers[95]

For countries of destination

▶ Administration: Administration issues to be address include: (a) Language barriers; (b) Prioritize, Shorten and simplify litigation process; and (c) Develop capacity of related departments and authorities.

▶ Legal concerns: a) Develop e-Locker for all migrants with an approved visa, regardless of professional or visit visa; (b) Qualify / sensitize interpreters in cases of sexual and physical harassment of domestic workers; and, (c) Worker must be allowed to register the case at related departments without the intervention of the embassy.

▶ Financial concerns- it is important to ensure that legal fees are affordable to migrant workers, thus; (a) Provide paralegal services and pro bono services for migrants; (b) Lower legal fees and dues of processing and registration for low-income and domestic workers; and (c) Regulate typesetting and documentation fees for low income workers.

For countries of origin and related missions

▶ Capacity Building: (a) Establishment of Legal Clinics (Separate for Domestic Workers/Skilled/Criminal) free of cost for migrant workers; (b) Establishment of Legal Assistance Fund where both countries of origin and destination provide financial support throughout the entire process; (c) Widening the scope of support provided by diplomatic missions to migrant domestic workers facing exploitation or abuse; (d) Ensure effective training and orientation for migrant domestic workers prior to departure; and (e) Provide space for CSOs and NGO to conduct capacity building exercises and legal awareness campaigns among the expat community instead of criminalizing them for aiding and protecting the migrants.

▶ Legal Concerns: (a) Developing a simplified procedure in accessing justice that is easy, quick and efficient with guaranteed interpreter and admission of bona fide defence advocates; (b) Ensure speedy execution of court judgements; (c) Provide shelters for embattled migrant workers awhile awaiting their cases; and, (d) Ease the formalities of repatriation of mortal remains.

Focus On Domestic Workers (For Both Countries)

▶ Gender sensitization of all key stakeholders

   ▶ Raise awareness of domestic workers on all legal and judicial services upon arrival and pre-employment;

   ▶ Increased presence of women in legal process;

   ▶ Allow the domestic worker to present their case with adequate interpretative facilities;

   ▶ Provide government budget to CSOs and relevant stakeholders for domestic workers' advocacy;

   ▶ Educate the domestic workers on the use of internet, cell phone, gadgets, hotline to document evidence and taking care of personal documents; and,

   ▶ Set up domestic workers' desk in all related government agencies and departments

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95 http://mfasia.org/migrantforumasia/wp-content/uploads/2018/05/Access-to-justice-is_MFA.pdf

▶ Protecting mechanisms
- ▶ Increased vigilance of sponsors and agencies on granting visit visas to women
- ▶ Improve labour inspection by recognizing the employers' home as a work place
- ▶ Increase provision of psycho-social support during case processing
- ▶ Provide easy and accessible educational materials
- ▶ Simplify the system for case financing and availability of mission staff

▶ Free legal aid and representation of domestic workers

▶ The access to lawful work until case finalizes and to follow up on the case, cross border, if they are sent back.

12.4 The role of trade unions in providing support to migrant workers in accessing redress mechanisms

The critical role of trade unions in providing an access point for migrant workers to access redress mechanisms cannot be understated. Trade unions should:

▶ provide the doorway that the majority of migrant workers walk through when they need assistance;

▶ organize migrant informal economy migrant workers, especially women, to reduce the gender gap in access to justice. *[Greater employment in informal economy among women is a key factor to be considered, as trade unions are typically less active in organizing these workers, and informal workers may also have reduced access to government benefits and services due to irregular legal status.]*;

▶ through documentation of case studies, build evidence on the challenges faced by migrant workers in accessing justice and develop mechanisms for migrant workers to obtain remedies for their grievances;

▶ deliver training for migrant paralegals to identify labour rights violations and provide advice and referrals for assistance;

▶ assist negotiations for amicable layoff settlement for the workers, with an option of either transferring to another employer or repatriating (in countries of destination);

▶ establish connections/collaborations between different migrant support services, including those provided by non-governmental organization and trade unions, in countries of origin and destination. *[It can be especially difficult for migrant workers who have returned to their country of origin to receive compensation for accidents or injuries that have occurred during their time abroad.]*;

▶ advocate and spearhead the improvement of cooperation between government, trade unions, and NGOs – this is necessary to provide an effective response to migrant worker complaints. This should include formalizing the referral process from front-line service providers to organizations and institutions with the capacity to resolve more difficult and severe cases, allowing for a multi-disciplinary approach in increasing access to justice; and,

▶ conduct more effective outreach to migrant workers- trade unions should be more active in informing migrant workers in destination countries of their labour rights and how to access complaint mechanisms, including providing information through post-arrival trainings and during regularization processes.

Learning exercises for Module 12
Working and Living Conditions of Migrant Workers

Activity: Identifying the working and living conditions of migrant workers

Aims: To identify strategies to organize migrant workers into already existing unions

Task:

1. Identify yourself as a migrant worker in your country.

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2. What are the working and living conditions that you are exposed to?

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3. What is the role of the trade union in protecting you and defending your rights, either as a regular or irregular migrant worker?

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4. Do you see the trade union as a supportive organization to you as a migrant worker? If not, what can be done to make it more supportive?

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Module 13.

Advocating for equality of treatment and opportunities, and contributing to labour market integration and combating discrimination in diverse multi-ethnic workplaces and multilingual contexts.

Overview

Module 13 looks at the ways of addressing the challenges faced by migrant workers through advocating for equality of treatment and opportunities. It details the policy positions that can be taken by countries of origin and destination.

Learning Outcomes

By the end of this module, you will be able to:

▶ Understand a rights-based approach to equality of treatment and opportunities;

▶ Highlight the importance of mechanisms, measures and policies against discrimination and for equality of opportunity; and,

▶ Understand The importance of promoting diversity at the workplace and a positive image of migrant workers.

Content

The module addresses the following themes:

13.1 A rights-based approach to equality of treatment and opportunities: The section explains what a rights-based approach to equality of treatment and opportunities is.

13.2 Mechanisms, measures and policies against discrimination and for equality of opportunity: The section highlights the mechanism and measures that promote equality.

13.3 Promoting diversity at the workplace: The importance and benefits of diversity are highlighted in this section.

13.4 Promoting a positive image of migrant workers: The sections looks at how to promote a positive image of migrant workers and the importance.

13.5 Emerging approaches and good practices in promoting equality and addressing discrimination: The emerging good practices are highlighted in this section.

Principal questions which this module addresses

▶ What is the importance of ensuring equality of treatment and opportunities to migrant workers?

▶ Why do we need to promote a positive image on migrant workers?

▶ What are the good practices in promoting equality and addressing discrimination?

13.0 Introduction

Underpinning any response to the discrimination, racism and xenophobia faced by migrants and refugees must be an understanding that, regardless of their legal status, refugees and migrants can never be denied their most fundamental human rights. These rights are contained in the Universal Declaration of Human Rights. The majority of the member States of the United Nations have ratified these two instruments and are therefore under a legal obligation to ensure their effective implementation. Most of the 'core rights' in these instruments are applicable to non-citizens, migrant workers.

The elimination of discrimination in employment and occupation and the promotion of equality is a fundamental principle and right at work, and is enshrined in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The obligation of all ILO Members to respect, promote and realize this principle was reaffirmed in the Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in 1998. The workplace is a key strategic entry point for addressing racial discrimination.

Through awareness-raising and training, social dialogue, and observing diversity, employers and workers are better able to understand the concepts, identify cases and develop the necessary skills and tools to address racial discrimination. It is important that effective workplace strategies and policies be designed, implemented and monitored, in order not only to eliminate racial discrimination but also to support more diverse workforces.

13.1 A rights-based approach to equality of treatment and opportunities

A rights-based approach is one that draws on international instruments to develop coherent and comprehensive migration policies which take into account the specific needs and vulnerabilities of certain groups of migrant workers. Such an approach is not only necessary with respect to human rights of all workers, but also makes economic sense, as it enables migrants to make a fuller contribution to their host societies, their countries of origin, and their own development.

The ILO Multilateral Framework on Labour Migration, is a comprehensive guide for a rights-based approach to labour migration. It contains principles and guidelines for developing and implementing migration policies and practices for improving the governance, promotion and protection of migrant rights and strengthening linkages between migration and development. Within the framework of a rights-based approach, there are a number of emerging strategies and good practices for enabling migrant workers to move out informality: (i) promoting effective governance of labour migration; (ii) establishing protection frameworks to address the specific vulnerabilities of migrants based on international instruments (iii) promoting social inclusion and extending social protection to migrants.

The key ILO instruments for the promoting equal treatment of migrant workers is the: (i) ILO Convention No. 97 (Article 6- Equal treatment without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory); and (ii) ILO Convention No. 143 (Article 1. Each Member for which this Convention is in force undertakes to respect the basic human rights of all (women and men) migrant workers, whether regular or irregular.)

13.2 Mechanisms, measures and policies against discrimination and for equality of opportunity

The following are some of the mechanisms, measures and policies against discrimination and for equality of opportunity:[96]

▶ **Organizational initiatives:** is a term to identify those policies and practices established and implemented by employers in order to reduce discrimination and promote equality of opportunity in the work-place. The term voluntary measure has usually been used for workplace measures, often focusing on those established by businesses. Work-place measures may not always be voluntary, for example where established as the result of a binding collective agreement. They also can apply to trade unions, community organizations and government offices as employers.

▶ **Collective Action:** This term is applied to the numerous and diverse measures worker organizations, and employers' organizations can implement, within their own institutions and networks, in the work-place and in society. Some of the measures outlined below focus on initiatives particularly relevant for trade unions and community groups.

▶ **Legislative and Legal Measures:** Legislation plays an essential role in discouraging discrimination and promoting equal treatment. By establishing general standards and rules, legislation can positively influence the societal behavior of individuals; persons can be persuaded to act in certain ways. For those who have already accepted such standards as just or self-evident, the legislation will reinforce their beliefs and actions. Comprehensive anti-discrimination provisions are contained in international norms. States desiring t further enact or complete national legislation must decide how these can be incorporated into the domestic legal system. In particular, states must decide whether to enact substantive provisions into constitutional, civil, criminal and/or labour law.

▶ **Administrative Measures, Regulations and Practices:** Measures, regulations and practices established under the administrative authority of national, state, and local government can be effective tools for demonstrating and carrying out the will of the State to discourage discrimination and promote equal opportunity.

▶ **Political/Educational Action:** The development, implementation and eventual success of anti-discrimination measures in the workplace depend to a significant degree on fostering a political and social climate that allows and reinforces workplace action. Political leaders, communications media and educational institutions each have key and highly influential roles in shaping or modifying public attitudes regarding discrimination.

▶ **International Standards and Programmes:** International standards, recommendations, mechanisms and services established by international inter-governmental institutions provide a comprehensive framework for and offer direct assistance with implementation of national and sectoral anti-discrimination measures.

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96 ILO, 2014. Challenging Discrimination in Employment: A Summary of Research and a Typology of Measures.

13.3 Promoting diversity at the workplace

As noted in previous modules, migrant workers are often subject to discrimination because of their color and race, or their actual or perceived religion, or a combination of these, and they may also be the target of unfavorable treatment simply because of their migrant status. The elimination of discrimination in employment and occupation and the promotion of equality has been at the core of the work of the ILO since 1919. The workplace is a key strategic entry point for addressing discrimination and promoting diversity in the society. Through awareness-raising and training, social dialogue, and observing diversity, employers and workers are better able to understand the concepts, identify cases and develop the necessary skills and tools to address discrimination.

In 2014, the ILO developed the, **Promoting equity - Ethnic diversity in the workplace: A step-by-step guide,**[97] it outlines a participatory process for drafting a workplace policy to combat racial discrimination and to embrace workplace ethnic diversity. It notes that success of the workplace diversity policy hinges on its effective planning. The guide gives step-by-step information on the development and implementation of an ethnic diversity policy: (1) Conducting an ethnic diversity audit; (2) Drafting a workplace ethnic diversity policy; (3) Implementing an ethnic diversity policy; and, (4) Monitoring and reviewing an ethnic diversity policy. It covers all types of workers from different ethnic backgrounds, including refugees, asylum seekers, indigenous and tribal peoples and migrant workers, irrespective of their type of contract such as seasonal workers and contract workers.

In order to promote diversity, these are some of the steps that can be undertaken at the workplace to demonstrate commitment to racial equality and promote ethnic diversity:

▶ **Articulate commitment to ethnic diversity:** Issue a communication to all staff from the top of the organization expressing commitment to ethnic diversity, equality and inclusion.

▶ **Values:** Incorporate equality, diversity and inclusion within the organization's core values, ensure they are reflected in policies, procedures and everyday practices and hold events, workshops and campaigns promoting them. Recognize, support and reward the actions of staff members promoting ethnic diversity both in and outside the workplace (for example, sponsoring employees taking part in fundraising activities).

▶ **Diversity and inclusion champion:** Appoint members of staff and senior management as diversity and inclusion champions. Ensure that they are provided with formal training to educate them on and enhance their understanding of equality, diversity and inclusion as well as proper tools and resources to support them in achieving those objectives.

▶ **Diversity audit:** Carry out a diversity audit in the organization, including a breakdown of all positions held by ethnicity, and evaluate the data.

▶ **Ethnicity pay gap audit:** As a vital first step in seeking to eliminate pay disparities between ethnic groups, consider carrying out an ethnicity pay gap audit. Although the results of such an audit may make for uncomfortable reading, a willingness to address the issues identified, together with a proper strategy in place for doing so, demonstrates commitment to diversity.

▶ **Training and enforcement:** Provide regular and compulsory training to all workers on equality and diversity and, in particular, on unconscious bias. Managers should be given specific training on such matters in the context of recruitment and promotion. Ensure that any complaints regarding racism are fully and swiftly addressed in line with the company's disciplinary and grievance procedure and anti-bullying and harassment procedure.

▶ **Recruitment and promotion practices:** Make sure that career progression in your organization is structured and transparent. Review your recruitment and promotion practices and consider how they can be improved to facilitate a more diverse workforce. Identify any particular barriers to progression faced by migrant workers and offer training and support to overcome them and facilitate progression.

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97 https://www.ilo.org/wcmsp5/groups/public/−ed_norm/−declaration/documents/publication/wcms_340481.pdf

▶ Celebrate and encourage diversity: Facilitate and encourage employees to have conversations about race and ethnicity and to share information about their experiences. Promote and encourage the sharing of culture and traditions, particularly on dates of significance (cultural festivals, for example). Race and ethnicity should be acknowledged, appreciated and respected, not seen as topics to avoid.

▶ **Communication and engagement:** Set up a platform within the organization which provides employees with an opportunity to come together to share their experiences and thoughts, raise concerns about inequality and provides a collective voice.

Workers' organizations

By lobbying for strong ethnic diversity policies, trade unions can ensure that all workers enjoy equal opportunities at all stages of the employment cycle, including access to employment, training, promotion, and retirement. Trade unions also have an important role in training and raising awareness on the right to a workplace free from racial discrimination and in supporting members in resolving complaints.

Trade unions can include the elimination of racial discrimination and the promotion of ethnic diversity in collective bargaining. Specific clauses on these issues in collective agreements can be an effective way of securing equal opportunities for ethnic groups. Similarly, collective bargaining can establish joint committees (consisting of representatives of employers and workers) to move the ethnic diversity agenda forward.

Box 13.1 Ten-point checklist for public action to get the most out of diverse societies

1. Ensure broader and more equitable access to diversity measures by considering socioeconomic disadvantage within groups and avoiding that policies predominantly benefit those in a relatively privileged position.

2. Develop diversity policies that do not only target high-skilled jobs and management positions, but also focus on medium- and low-skilled jobs.

3. Acknowledge that diversity policies are not a 'quick fix' to tackle inequalities and frame them as part of a broader approach of improving access to quality education and lifelong learning.

4. Find the right balance between general and group-specific policies and consider the possible stigmatising effects of the latter, as well as the negative repercussions that can result from inadequate choice of terminology in designating the group.

5. Anticipate possible negative reactions towards diversity and develop a proactive communication strategy that frames diversity policies within a wider context of equal opportunities for all members of society.

6. Strengthen the business case for diversity, including through appropriate incentives and by ensuring that hiring disadvantaged groups does not incur disproportionate costs for employers.

7. Support companies, notably SMEs, in their efforts to diversify their staff, for example by providing concrete "how-to" guides and "diversity consultants."

8. Raise awareness of non-discrimination legislation and recourse mechanisms and make sure that these are accessible and effectively protect potential victims from retaliation.

9. Make sure that the public sector is a role model in diversity management and that it adequately reflects the diversity of the society it represents.

10. Improve data collection on diverse groups in the labour market, including at firm level, to facilitate a better monitoring of the effectiveness of public policies and to identify areas where further policy action is needed.

Source: OECD (2020), Making Diversity Work for All

▶ Module 13. Advocating for equality of treatment and opportunities, and contributing to labour market integration and combating discrimination in diverse multi-ethnic workplaces and multilingual contexts

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13.4 Promoting a positive image of migrant workers

Today, the image of migrants is less balanced. With the growing incidence of irregular migration, migration is increasingly associated in the public mind with illegality – crossing borders illegally and working illegally. Misinformation and misperception can perpetuate a vicious cycle, influencing government policy, mass media and public opinion, each of which then directly or indirectly influences the others, and the resulting image of migrants in that society. Thus it is imperative to address this limited understanding, as misconceptions and negative attitudes towards migrant workers can lead to discrimination in society and in the workplace, and contribute to an environment in which social exclusion and rights abuses are tolerated.

Public attitudes play an important role in shaping policy towards migrant workers and have an impact on the status and well-being of migrants. Promoting a positive image of migrant workers in line with their contribution is a key strategy to ensuring the correct view of migrant workers by the public. The media is very influential in promoting, either wittingly or unwittingly, specific public images of migrants. The media can play a considerable role in promoting the values of the host society and reinforcing respect for human rights and dignity.

ILO global media competition on labour migration and fair recruitment

The ILO runs a global media competition to recognize exemplary media coverage on labour migration. The international competition aims at encouraging quality reporting on labour migration and recruitment of migrant workers.

Governments and international organizations often point to the mutual benefits of migration for countries of origin and destination, but this is not how the general public perceive migrants. The public generally hold negative perceptions of migration and migrant workers. The public's fears and apprehension are particularly intense in light of the global economic downturn and jobs crisis. Research finding by the ILO research have noted that the public has limited understanding about the need for migrants in certain sectors, the positive contribution that migrant workers make to the economy, and their rights to equal treatment.

Achieving widespread positive interactions relies upon the existence of a cohesive framework of integration policies, each with their specific focus, including policies which focus on legal rights to equality of opportunity and treatment, access to social and economic life, citizenship, combating racism and xenophobia.[98] This can be done through:

▶ **Promote recognition of migrants workers' positive contributions:** Recognizing, respecting and valuing the potential of migrants to contribute in a wide range of ways (socially, economically, etc.) to the receiving society is a crucial foundation on which positive interactions can be built;

▶ **Empower migrants' workers participation:** Empowering migrants involves giving them the opportunities to display their skills to their best effect and giving them opportunities to contribute actively as agents for integration, development and social cohesion. Effective communication is fundamental for interaction to work; therefore, properly-designed language learning policies tailored to individual needs are essential;

▶ **Consider how existing policies can promote or inhibit interaction whilst providing flexible, tailored services:** Promoting more, and more positive, interactions is a cross-cutting (transversal) concern which can be affected by a wide range of different agencies and policy areas. Policymakers can create opportunities that promote interaction which are applicable to a wide range of policy areas (such as education, health, housing, etc.). However, it is important to note that many policies can inhibit positive interactions, often in unintentional ways;

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98 Orton, 2012 – Building Migrants' Belonging Through Positive Interaction: A guide for policy-makers and practitioners .

▶ **Recognize and respect the complexity of diversity when seeking to enable migrants to be involved in wider society, especially when involving them in developing policies, services and interventions:** Policymakers seeking to build policies that develop mutual recognition and belonging between migrants and receiving societies need to recognize that a key challenge is developing ways of doing this that are sensitive to the needs of everyone involved in the process. This involves recognizing that there will be a wide range of individual, group and cultural differences even within migrant communities;

▶ **Develop policies which make the most of the potential arising from the multiple aspects/dimensions of everyone's identity, and which allow for these to change and adapt over time; and,**

▶ **Build stronger networks across diverse groups based on multiple connections and affiliations, both for the public and for practitioners:** By recognizing the complexity of people's differences, rather than over-simplifying them or pretending that they don't exist, new possibilities for developing integration practice become opened up that enable diverse groups to engage with each other with integrity. Identities and cultures are deep-rooted but not fixed, and evolve constantly through complex, interactive psychological, social, cultural and political processes.

13.5 Emerging approaches and good practices in promoting equality and addressing discrimination[99]

The role of countries of destination

▶ **Regularization programmes.** A 'regularization programme' is defined as "a specific regularization procedure which (i) does not form part of the regular migration policy framework, (ii) runs for a limited period of time and (iii) targets specific categories of non-nationals in an irregular situation." Regularization programmes aim to bring irregular migrants into mainstream society, typically for either economic or humanitarian reasons, and with a longterm goal of curbing irregular immigration. From an irregular migrant's point of view, regularization programmes can dramatically change their life, representing an opportunity to access their rights, state welfare and opportunities to progress in and contribute to society.

▶ **Bilateral and multilateral initiatives.** Bilateral or multilateral agreements between countries of origin and destination can also be an effective method for providing access to legal migration and formal employment opportunities. Though they can take a variety of forms, the most effective agreements are those that are based on ILO and other international standards. The UN Migration Network Global Guidance of BLMAs guarantees equality of treatment and non-discrimination[100]. The Guidance notes that equality of treatment and non-discrimination should be extended to all migrant workers and their families, and BLMAs should incorporate clauses prohibiting mandatory HIV and pregnancy testing in line with relevant ILO standards and human rights. BLMAs should also preserve cultural identity of migrant workers.

▶ **Regional integration schemes.** As the bulk of migratory movements occur within the same regions, regional integration schemes that allow for labour mobility or free movement have great potential for reducing irregular migration and opening a door to formal employment for migrant workers. These

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99 https://www.ilo.org/wcmsp5/groups/public/−ed_emp/−emp_policy/documents/publication/wcms_210462.pdf

100 UN Migration Network, 2021- Global Guidance on Bilateral Labour Migration Agreements (BLMAs) upcoming.

regional agreements typically focus on economic integration through the promotion of free trade, and include provisions to facilitate movement of people for work or residence, involving harmonization of labour legislation and adherence to the principle of equal treatment.

▶ **Effective legislation and enforcement.** One approach is to facilitate the establishment of written employment contracts by developing standard contracts or model contracts which are legally enforceable.

▶ **Labour inspection and enforcement.** In order to be effective, regulations aimed at protecting migrant workers must be accompanied by effective labour inspection and other enforcement measures. Government bodies responsible for labour inspection should seek to target sectors where migrant workers are concentrated and be sensitive to language and communication difficulties. Although it is important for labour inspectors to work closely with migration authorities to ensure the respect of migrant workers' rights, responsibilities for labour inspection should be kept separate from the enforcement of migration laws.

The role of countries of origin

▶ **Making migration a genuine choice.** Countries of origin also have a responsibility to protect their citizens abroad as well as to create decent working opportunities at home so that migration for employment is a choice and not a necessity. Thus, countries have to develop policies through a broad-based consultative process including social partners, that take into account gender considerations, recognizing the specific vulnerabilities of women. The policy document should commit the government to a range of interventions, including improving pre-departure trainings and reintegration programmes, fighting illegal recruitment and fraud, protecting the children of migrant workers, and promoting skilled migration.

▶ **The right to organize.** Allowing migrant workers to exercise their rights to join a trade union is an effective way to prevent exploitation, and opens the door to integration in the host society, a process which often starts in the workplace. Trade unions have increasingly begun to address migrant worker's issues, targeting them in organizing drives, campaigning for their rights, and providing them with direct support. In all of these countries, the confederations actively advocate for the protection of rights and decent working conditions of migrants.

▶ **Social inclusion and social protection.** Social partners can also provide information and support services to migrant workers to facilitate their integration. Bilateral or multilateral agreements on social security between countries of origin and destination are usually considered the best option for providing migrant workers with social protection. However, such agreements typically do not extend to workers in the informal economy. A number of countries of origin have opted to set up welfare funds to provide their workers abroad with insurance in the case of death, disability, or emergency repatriation, regardless of their employment or migration status.

Learning exercises for Module 13
Advocating for equality of treatment and opportunities for migrant workers

Activity: Advocating for equality of treatment and opportunities for migrant workers

Aims: To build strategies to promote for equality

Task:

1. What measures can be put in place to contributing to labour market integration and combating discrimination?

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_____

2. What is the role of trade unions in advocating for equality of treatment and opportunities for migrant workers?

_____

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3. What are the strategies and activities that can be adopted by the union to advocating for equality of treatment and opportunities for migrant workers?

Strategies and activities	Purpose	Intended outcome	Target

Module 14.

Impact of COVID-19 on labour migration

Overview

Module 14 provides an insight on the impact of COVID-19 on labour migration, including but not limited to impact on employment, social protection, protection of fundamental rights at work, social dialogue, women migrant workers, violence and harassment, remittance and the role of trade unions.

Principal questions which this module addresses

▶ What are the main challenges faced by migrant workers due to the COVID-19 pandemic?

▶ What has been the impact to women migrant workers?

▶ What has been the impact to decent work?

▶ What has been the impact of violence and harassment at the workplace?

▶ What is the role of trade unions?

Learning Outcomes

By the end of this module, you will be able to:

▶ Understand the impact of the COVID-19 pandemic on the migrant workers.

Content

The module addresses the following themes:

14.1 Impact on employment: The section looks at the impact of the pandemic on employment and employment opportunities for migrant workers.

14.2 Impact on migrant workers' rights: How has the pandemic affected the rights of migrant workers is discussed in this section.

14.3 Impact on women migrant workers: This section in the module focuses on women migrant workers and how the pandemic has affected their working lives.

14.4 Impact of violence and harassment: The pandemic saw an increase in the number of cases of violence and harassment in the workplace. Section 14.4 details the impact of the pandemic on violence and harassment.

14.5 Impact on Social protection: The impact of the pandemic on social protection is the focus of this section.

14.6 Impact on Social dialogue: The impact of the pandemic on social dialogue and its importance for social protection is the focus of this section.

14.7 Impact on Remittances: Given the role that remittances play in both social and economic development, this section looks at the impact of the COVID-19 pandemic on remittances.

14.8 The role of trade unions: The section looks at the role and responses by trade unions in addressing the impact of COVID-19.

14.0 Introduction

On the 11th of March 2020, the World Health Organization (WHO) declared COVID-19 a pandemic. The introduction and perpetuation of lockdown, quarantine, physical distancing and other isolation measures to suppress transmission of the virus, has seen the global economy sliding into a recession. This has seen supply chains disintegrating, sectors collapsing and enterprises closing down (some in the short term and some for a longer term), more and more workers face the prospect of unemployment and loss of their incomes and livelihoods, while many micro- and small enterprises are on the verge of bankruptcy.[101]

Migrant workers are some of the most vulnerable to the impacts of COVID-19, often facing layoffs, increased discrimination, worsened working and living conditions, and food insecurity in their host countries but with limited access to public services and social protection. They also lost their support networks and housing options as a result of COVID-19. With mass unemployment and job insecurity, COVID-19 has implications on migrant workers' status, the sending of remittances to their countries of origin, and access to health care, safety and social services. Migrant workers in the informal economy were especially vulnerable to the economic consequences and health risks of the pandemic, as they often lack financial reserves and may not be able to afford protective personal equipment (PPE) and other measures, such as staying at home and physical distancing, to protect themselves from contracting the virus. Some have returned to their countries of origin, with limited opportunities for employment, and sometimes facing stigmatization as being suspected carriers of the virus.

Some of the trending labour dynamics such as automation, digitization, e-commerce, and remote work, training and education were accelerated due to the pandemic. The influence of these changes will define and shape the world of labour migration and mobility for years to come.[102] New business practices will inform and shape migration trends and mobility corridors, cooperation modalities and skills priorities.

The UN Global Humanitarian Response Plan noted that the outbreak of COVID-19 fast became a mobility crisis. It changed patterns of and acceptance towards migration, services offered by airlines, attitudes towards migrant workers, as well as regimes for border and migration management. An unprecedented number of people are becoming stranded on their journeys. Many migrant workers faced disruption to travel plans, loss of income, or illness as a result of the crisis and may be pushed into vulnerable or exploitative situations. In many countries, migrant workers do not have access to national health, education or social security schemes, leaving them unable to rely on the response offered to nationals.[103]

Noting that the COVID-19 crisis has a human face and, as such, called for a human-centered response, the ILO developed a comprehensive and integrated recommendations (framework) on the key areas of policy action that should form part of that response. Through the International Labour Standards (ILS), the ILO provided a strong foundation for key policy responses (in crisis) that focus on the crucial role of decent work in achieving a sustained and equitable recovery. The ILS provide a human-centered approach to growth and development, and, activates policy levers that both stimulate demand, protect workers and enterprises.

The ILO notes that comprehensive and integrated measures *across all policy areas* are necessary to make strong and sustained impacts. Building confidence through trust and dialogue is crucial in making such policy measures effective. Thus, strengthened respect for, and reliance on mechanisms of social dialogue creates a strong basis for building the commitment of employers and workers to the joint action with governments. In responding to COVID-19, the ILO proposes a policy framework[104] (Table 14.1), which takes into account the four pillars of decent work agenda to fight COVID-19 based on ILS, as follows:

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101 https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_745337.pdf
102 https://www.iom.int/sites/default/files/documents/policy_brief_labour_mobility_and_skills_in_covid_time_final_final_0.pdf
103 UN, 2020. Global-Humanitarian-Response-Plan-COVID-19.
104 https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/briefingnote/wcms_745337.pdf

▶ **Table 14.1 ILO's Policy Framework based on the Four Pillars of Decent Work**

Policy Area	Purpose	Action
Protecting workers in the workplace	To minimize the direct effects of the coronavirus, in line with WHO recommendations and guidance.	▶ Strengthen OSH measures; ▶ Adapt work arrangements (e.g. teleworking); ▶ Prevent discrimination and exclusion; and, ▶ Provide health access for all Expand access to paid leave
Stimulating the economy and employment	To stabilize economic activity through economic and employment policies.	▶ Active fiscal policy; ▶ Accommodative monetary policy; and, ▶ Lending and financial support to specific sectors, including the health sector
Supporting enterprises, jobs and incomes	For enterprises and workers negatively impacted by the indirect effects (factory closures, disruption to supply chains, travel bans, cancellation of public events, etc.).	▶ Extend social protection for all; ▶ Implement employment retention measures; and, ▶ Provide financial/tax and other relief for enterprises
Relying on social dialogue for solutions	To fine-tune policy packages so that they best serve those most in need.	▶ Strengthen the capacity and resilience of employers' and workers' organizations; ▶ Strengthen the capacity of governments; and, ▶ Strengthen social dialogue, collective bargaining and labour relations institutions and processes.

Source: ILO 2020, A policy framework for tackling the economic and social impact of the COVID-19 crisis

Some policy actions, such as social protection, not only support jobs and incomes but also protect workers in the workplace and are therefore cross-cutting. As noted from the four pillars of decent work, the response to COVID-19 should be diverse and all-encompassing, transcending health issues together all the key stakeholders in the country.

14.1 Impact on employment

In the context of COVID-19, measures put in place within and between countries to contain the spread of COVID-19, including restrictions of movement such as lockdowns, travel bans, and physical distancing measures, are affecting international and internal African migrant workers in areas of origin, transit and destination, resulting in major impacts on economic activities and employment availability.

The ILO policy brief on Protecting migrant workers during the COVID-19 pandemic[105] noted that migrant workers are among the most vulnerable. There were rising levels of discrimination and xenophobia against migrant workers and in some cases food insecurity, layoffs, worsening working conditions including

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105 https://www.ilo.org/wcmsp5/groups/public/–ed_protect/–protrav/–migrant/documents/publication/wcms_743268.pdf

reduction or non-payment of wages, cramped or inadequate living conditions, and increased restrictions on movements or forced returns (where they may be stigmatized as carriers of the virus). Migrant workers are often first to be laid-off but last to gain access to testing or treatment in line with nationals. They are often excluded from national COVID-19 policy responses, such as wage subsidies, unemployment benefits or social security and social protection measures.

Migrant workers who work in the informal economy, are at a greater risk of losing their jobs and livelihood. The disruption to the informal economy has left many migrants in dire conditions, as they live in overcrowded, precarious housing and are unable to return home due to border closures and travel restrictions. Although there are some countries that have extended social protection to migrant workers, most workers in the informal economy do not have access to social security benefits, these migrants are left to face the impact of COVID-19 alone.[106] Furthermore, the loss of income has resulted in insecurity, rising debt, and increased risks of violence against this already vulnerable group, besides heavily impacting families who depend on remittances for survival.

Due to the COVID-19 pandemic, gender equality in the world of work has worsened. As women are over representation in the hardest-hit sectors, and many continue to work on the front line, they have suffered disproportionate job and income losses. Live-in migrant domestic workers are particularly vulnerable to poor working conditions. During the pandemic, many domestic workers have lost their jobs or seen a dramatic reduction in working hours and correspondingly lower wages. Migrant women form a disproportionate part of the informal economy, they are in a particularly vulnerable situation as they are often the first to be let go, with little to no social protections or unemployment benefits. In contrast with the previous global financial crisis, in which unemployed migrant workers were often able to change sectors, under the COVID-19 induced crisis changing sectors may not be as feasible, due to the skills and experience needed for essential sectors such as health care.

Due to the nature of work undertaken by most migrant workers and working in the informal economy, migrant workers have been more exposed to the risk of infection and in other countries were twice as exposed to infection as the native born. Migrant workers are concentrated in essential occupations that cannot be undertaken from home, making migrants less likely to be able to telework, thus work from home. Migrant workers were unable to socially distance at the workplace or left without sufficient personal protection equipment. Also, migrant workers have been put at increased risk of COVID-19 infection due to substandard and crowded accommodation.[107]

In most countries migrant workers have benefited from the easing of work permit extensions[108] and, in some cases, the regularization of their employment.[109] But, due to loss of employment and livelihoods, some countries have found themselves in the difficult position of having to deport or repatriate stranded migrant workers back to their home countries. Migrant workers who chose to stay are seeing access to the labour market rapidly shrinking. Thus, migrant workers who stay in destination countries during the crisis may be forced to accept poorer terms and conditions of employment, including wages, than those previously offered due to threat of deportation.

The pandemic has significantly dampened new migration flows worldwide due to widespread travel restrictions, fear of the virus, and weak job prospects. In many countries of destinations, employment levels for migrant workers have fallen, invariably more so than for nationals. A significant number of unemployed migrant workers are returning to their countries of origin, which are now facing the challenge of accommodating hundreds of thousands of returnees, including through the provision of health care, housing, jobs, and financial support.[110]

106 https://ethiopia.iom.int/sites/ethiopia/files/Preparing%20Africa%20for%20Post%20COVID-19%20Labour%20Migration.pdf
107 https://www.oecd.org/countries/srilanka/adbi-book-labor-migration-asia-impacts-covid-19-crisis-post-pandemic-future.pdf
108 Poland and Belgium also extended visas for migrants in limited duration.
109 https://www.unescap.org/sites/default/d8files/event-documents/ILO.pdf
110 https://www.brookings.edu/blog/africa-in-focus/2021/03/15/keep-remittances-flowing-to-africa/

Digital platforms that assist in migrant workers' preparation for return include those that facilitate peer-to-peer connection and information dissemination such as information on the current socioeconomic conditions and prospects in migrant workers' respective countries of origin— as well as ICT-based solutions that promote dialogue between returnees and prospective returnees. These may also include e-government services for the registration of returnees and other related support services as they prepare for the journey back home.

14.2 Impact on migrant workers' fundamental rights

For the millions of migrant workers already in vulnerable situations, the COVID-19 crisis had devastating consequences: their fundamental rights at work were under threat, pushing them and their families towards greater insecurity. The COVID-19 pandemic and the economic shockwaves accompanying it are placing unprecedented pressure on the world of work, and on the workers and employers whose livelihoods depend on it. Workers and enterprises eking out an existence in the informal economy are hardest hit. An estimated 1.6 billion informal economy workers, accounting for 76% of informal employment worldwide, are significantly impacted by lockdown measures and/or are working in the most affected sectors.

The COVID-19 pandemic poses new threats to fundamental principles and rights at work on a number of levels. Millions of workers, mostly migrant workers, have been left without an income as a result of the pandemic, and without any savings or social protection to fall back on. This has increased the pool of workers vulnerable to debt bondage and other forms of forced labour. A new wave of xenophobia and stigma has found expression in the world of work, and pre-existing discrimination in respect of employment and occupation has intensified. The pandemic is magnifying some of the main drivers of forced labour, fueling fears of a rise in the numbers of people involved in it. Without a source of income/access to other forms of credit, and in urgent need of funds for household survival, see migrant workers turning to predatory lenders for loans (loan shacks), resulting in debt bondage. The crisis is also resulting in a deterioration of working conditions that are already exploitative, moving workers further along the continuum of abuse that ends in forced labour and trafficking.

The COVID-19 pandemic is putting the world under enormous strain, affecting the lives of everyone. The unprecedented measures adopted to flatten the infection curve include enforced quarantine, curfews and lockdowns, travel restrictions, and limitations on economic activities and public life. While at first sight, these enforcement measures and increased police presence at the borders and on the streets seem to dissuade crime, they may also drive it further underground. In trafficking in persons, criminals are adjusting their business models to the 'new normal' created by the pandemic, especially through the abuse of modern communications technologies.[111]

At the same time, COVID-19 impacts the capacity of state authorities and non-governmental organizations to provide essential services to the victims of this crime. Most importantly, the pandemic has exacerbated and brought to the forefront the systemic and deeply entrenched economic and societal inequalities that are among the root causes of human trafficking. Labour inspectors that may already have limited capacity to monitor compliance with recruitment related regulations are now facing additional challenges. These include reduced operational capacity due to working arrangements and limited mobility, inspectors' fear of contracting the virus, and increased distrust from workers.

Safeguarding the four fundamental principles and rights at work, thus, the freedom to organize and bargain collectively; the freedom from forced labour; child labour; and, discrimination in employment and occupation, is more important than ever. These rights are not only at heightened risk from the crisis

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111 https://www.unodc.org/documents/Advocacy-Section/HTMSS_Thematic_Brief_on_COVID-19.pdf

but also constitute the foundation for building back a better, more just world of work in its aftermath. The COVID-19 pandemic has impacted the four fundamental principles and rights at work in the following manner:[112]

a. **the freedom to organize and bargain collectively** - the COVID-19 pandemic and it accompanying crisis has added to the challenge of ensuring rights to freedom of association and collective bargaining. In some contexts, the rights to freedom of association and collective bargaining, have come under pressure as part of broader government responses to the crisis. Governmental interference in trade union rights and restrictions on freedom of association has been on the increase, some countries have weaponized the pandemic to stifle workers' rights.

b. **the freedom from forced labour** - the crisis has also resulted in the continuous deterioration of working conditions that were already exploitative, moving workers further along the continuum of abuse that ends in forced labour and trafficking. Migrant workers, have been reportedly stuck in hazardous conditions at different transit points, border crossings and work camps across Africa as countries close their frontiers in response to the pandemic. Such migrant workers become susceptible to traffickers, as they are offered falsely alternative routes of transit.

c. **child labour** - the economic and social crisis is and has hit children and their families particularly hard, especially children from already vulnerable homes, pushing them into child labour. As their families suffer unprecedented job losses, lost income due to lockdowns, cut-off remittance flows, sudden catastrophic health costs and a host of other shocks stemming directly or indirectly from the pandemic. Children find themselves as the only potential source for income in their families. School closures as a result of COVID-19 lockdowns are adding to the risk of child labour. This further sees children being pushed into the worst forms of child labour, such as domestic servitude, commercial sexual exploitation, and hazardous work in mining and agriculture – as well as to a range of sweatshop activities.

d. **discrimination in employment and occupation** - public panic and fear has generated its own wave of stigma, xenophobia, racism and intolerance, which is finding expression in the world of work. In economies where mass layoffs have occurred, statistics indicate that women have been disproportionately affected, as female-dominated sectors have been among the hardest hit. Thus the COVID-19 crisis is threatening already slow progress in reducing gender gaps in labour force participation and wages, and in promoting gender equality more broadly.

14.3 Impact on women migrant workers

Due to the COVID-19 pandemic, gender equality in the world of work has worsened. As women are over representation in the hardest-hit sectors, and many continue to work on the front line, they have suffered disproportionate job and income losses. The pandemic saw women workers at greater risk of being laid off, seeing a significant contraction of their working hours and/or experiencing a further deterioration in their working conditions.[113] Migrant workers, also saw the quality of their jobs dampened. The COVID-19 pandemic has shed light and amplified the gender gaps in the quality of employment, especially for the many women working in feminized sectors and occupations, and in the informal economy.

112 https://www.ilo.org/wcmsp5/groups/public/–ed_norm/–ipec/documents/publication/wcms_757247.pdf
113 https://www.ilo.org/wcmsp5/groups/public/–dgreports/–gender/documents/publication/wcms_814499.pdf

Women migrant workers who are employed as front-line health and care workers face a significant exposure to the risk of contagion by COVID-19, while also having to carry the majority of the load of increased family responsibilities. In many countries, women migrant workers constitute the majority of care workers. During the pandemic, women migrant workers in health-care settings are at an increased risk of experiencing violence and harassment from patients, patients' family members and other employees. Due to the pandemic, many women migrant workers with children experienced a double burden. Those who are employed in health, social and domestic care settings are now often working longer hours, not only at work, but also at home, as widespread school closures and a lack of available childcare services place additional caring and educational responsibilities on these women.[114]

> **Building forward fairer**
>
> Building forward fairer means bringing gender equality to the core of the recovery effort in line with the ILO Resolution concerning a global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable and resilient.
>
> Urgent policy measures:
>
> ▶ Promoting gender-responsive employment policies for an inclusive and job-rich recovery;
>
> ▶ Investing in the care economy;
>
> ▶ Working towards universal access to comprehensive, adequate and sustainable social protection for all to reduce the current gender gap in social protection coverage;
>
> ▶ Promoting equal pay for work of equal value;
>
> ▶ Preventing, addressing and eliminating violence and harassment; and,
>
> ▶ Promoting more women in decision-making positions.
>
> https://www.ilo.org/wcmsp5/groups/public/–dgreports/–gender/documents/publication/wcms_814499.pdf

Before the current pandemic, the domestic work sector was already one of the most marginalized, least protected sectors, with the working conditions of many migrant domestic workers' characterized by insecurity and violence. Domestic workers, many of whom work informally, are exposed to significant decent work deficits in respect of working time, wages, social security, occupational safety and health, including violence and harassment. Due to the movement restrictions imposed by countries across the world to try and curb the spread of COVID-19, migrant domestic workers especially women, have been placed in even more precarious positions and some have lost their employment, as employers fear of possible transmission of COVID-19.[115] Live-in domestic workers and migrant domestic workers can be particularly vulnerable to poor working conditions. Migrant domestic workers, despite providing essential services for clients who are often vulnerable, domestic workers frequently do not have adequate access to personal protective equipment (PPE). Women migrant workers are more likely not to have access to social protection, including health assistance, further compounding their vulnerability if they get sick and if they lose their jobs.

These women are often unable to find new work or to return to their country of origin, as countries have closed their borders. For those women migrant workers who had live-in positions, losing this job also means losing their accommodation and often their work permit, as in some countries like Malaysia, Singapore, Qatar and Saudi Arabia, women migrant workers' work permits are tied to their specific employer.

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114 Foley, L. and N. Piper, 2020. COVID-19 and women migrant workers: Impacts and implications. International Organization for Migration (IOM). Geneva.

115 Ibid.

The African Union Policy Brief on Protecting Migrant Workers in the Informal Economy (2020), noted that the COVID-19 crisis in Africa also presents challenges for women, who constitute a significant segment of the informal economy. In Sub-Saharan Africa alone, women make up 74% per cent of workers in the informal economy. The prolonged restrictions on movement or isolation measures saw a surge in instances of gender-based violence (GBV), and many countries had reported a rise in cases of domestic and sexual violence, as well as violence against children.

14.4 Impact of violence and harassment

COVID-19 quarantine measures have caused a spike in domestic violence levels with women as the main victims. As more people stay at home, the risk of intimate partner violence is likely to increase. The upsurge in violence and harassment have also made it difficult for women to keep their jobs, compared to men Many countries have put in place policies and measures to address the upsurge in domestic violence, which can negatively affect women's participation in employment, labour productivity and occupational safety and health. Domestic violence and work-related gender-based violence and harassment have worsened with the pandemic, further undermining women's ability to engage in paid employment. UNWomen[116] has called the violence against women and girls and COVID-19: the shadow pandemic.

Furthermore, when distancing and confinement measures are put in place and people are asked to work from home, the risk of domestic violence is likely to increase. As women in abusive relationships spend more time in close contact with violent family members and families cope with additional stress and potential economic or job losses, the likelihood that they are exposed to domestic violence increases. For migrant women workers, the situation is worsened by the limited social networks and are isolation with violent partners, separating them from the people and resources that can best help them. In parallel, as health systems are stretching to breaking point, domestic violence shelters are also reaching capacity, a service deficit made worse when centers are repurposed for additional COVID-response.

Increases in violence can be due to reduced access to necessities, financial stress, the potential breakdown of societal infrastructures, quarantines and social isolation, family separation in conflict or fragile contexts, or the inability to escape abusive partners. Gender-based violence has serious negative consequences for people affected by violence, their families and communities, including immediate impacts on safety, mental, physical, and sexual health and well-being. The COVID-19 pandemic has created gender-based violence risks for workplaces including:[117]

▶ **Customer and client aggression:** Unacceptable or hostile behaviors targeted toward employees;

▶ **Workplace bullying:** Repeated and unreasonable behavior directed toward a worker or a group of workers that creates a risk to health and safety;

▶ **Workplace sexual harassment:** Unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated;

▶ **Sexual exploitation and abuse connected to the workplace:** Any actual or attempted abuse of a position of vulnerability, differential power, or trust for sexual purposes, including but not limited to, profiting monetarily, socially, or politically from the sexual exploitation of another; and,

▶ **Domestic violence:** including physical, sexual, psychological, or financial abuse perpetrated by intimate partners, family or household members.

116 https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006

117 https://www.ifc.org/wps/wcm/connect/42b50ce3-3867-48b2-9818-acfbc4080ea2/202007-IFC-GBV-COVID+D.pdf?MOD=AJPERES&CVID=ndOei13

14.5 Impact on access to social protection

Most migrant workers rarely benefit from equal treatment in employment and often struggle to access to social protection in the countries of destination. Migrant workers are mostly employed in informal, low-skilled, precarious employment in areas such as agriculture, construction and domestic work. Access to social protection before the outbreak of the COVID-19 pandemic, was a major challenge for migrant workers. The pandemic has further exposed the challenges faced by migrant workers, as they are often left out of relief and social protection measures. Due to lack of access to sickness benefits and paid sick leave, migrant workers may feel compelled to work while sick, thereby jeopardizing their own health and increasing the risk of further spreading COVID-19.

> A number of countries have taken measures to ensure migrant workers are included in national social protection schemes, and have free access to testing and screening irrespective of their status. Portugal, for example, has adopted provisions to treat migrants as permanent residents during the pandemic to ensure they have access to public services, including National Health Services. Among others, Qatar, Saudi Arabia and Malaysia provide free screening and testing for migrant workers.[118]

In most social security systems, equality of treatment is only guaranteed to migrants with regular status. Migrants with irregular status are therefore excluded from social protection, except for basic and emergency health care in a few countries (ILO, 2020). The pandemic has served as a broader wake-up call to strengthen social protection systems. Cash transfer schemes and other income support measures put in place in response to the crisis must serve this larger goal. Efforts to temporarily extend social protection to uncovered groups need to be transformed into sustainable social protection mechanisms for all.

14.6 Impact on access to social dialogue

The COVID-19 crisis is adding to the challenge of ensuring rights to freedom of association and collective bargaining. Where the rights to freedom of association and collective bargaining are denied, workers are unable to exert agency or collective voice, to defend their rights and interests, or to positively influence the conditions of their working lives. This leaves them more vulnerable to other fundamental labour rights violations. The rights to freedom of association and collective bargaining are also inherent to enabling social dialogue, and the effective participation of social partners in economic and social policy. With a significant number of migrant workers in the informal economy, they remain without a collective and representative voice.

The Global Deal Flagship Report 2020,[119] on managing and recovering from COVID-19, showed that social dialogue plays a key role in mitigating the impact of shocks such as the current pandemic on business and workers, making labour markets more resilient. By building trust and fairness, governments and social partners are using social dialogue to facilitate the implementation of short-time work arrangements designed to preserve jobs, and flexible working-time arrangements designed to balance social distancing at the workplace, while increasing productivity. Social dialogue has also been instrumental in managing the risks raised by COVID-19 for health and safety at the workplace.

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118 https://www.ilo.org/wcmsp5/groups/public/–ed_protect/–protrav/–migrant/documents/publication/wcms_743268.pdf
119 The Global Deal for Decent Work and Inclusive Growth Flagship 2020, Report: Social-dialogue-skills-and-COVID-19.

Effective social dialogue and cooperation between governments, employers' organizations and workers' organizations has proven indispensable to design and implement appropriate strategies and policies that address the COVID-19 crisis.[120] Since the initial phase of the COVID-19 outbreak, social dialogue has played an important role in shaping national policy responses during the pandemic, in a majority of ILO member states. Social dialogue has responded to a crisis that affects countries to varying degrees. By mid-June 2020, governments and peak-level national or sectoral organizations of workers and employers in most countries and territories (134 out of 188 reviewed, or 71%) had used peak-level social dialogue – bipartite alone, tripartite alone, or together – for formulating proposals or specifying the implementation of policy measures relating to the emergency and emergence from lockdown.[121]

Outcomes of social dialogue have been classified under three broad categories depending on the rationale of outcome measures, and these are:[122]

▶ **Emergency outcomes** are outcomes containing measures to address the impacts of the virus at the outbreak of the pandemic, notably during the first lockdowns. They are early social dialogue responses for promoting short-term relief and immediate economic and social resilience, and indeed ensuring the survival of businesses, jobs and incomes during the abrupt interruption of economic activity.

▶ **Adjustment outcomes** are outcomes mainly shaping measures taken towards the end of the first lockdowns and the stop-start economic activity that followed the successive waves of the virus's spread. These responses aim to devise mid-term solutions, for instance, for enabling workers and employers to return to work, and in general to coexist with the continuing spread of the virus and its socio-economic impacts.

▶ **Recovery outcomes** include post-emergency measures such as policy and regulatory action in areas that became more prominent because of the crisis. They adopt a longer-term perspective, of two or more years, with structural interventions aimed.

The importance of social dialogue

In order to build sustainable, socially responsive and widely accepted social protection schemes, social dialogue has been demonstrated to be essential. In times of crisis, social dialogue and workers' and business representation are even more relevant.

Workers 'organizations may be well informed and aware of the needs of migrant workers. They can play a role in the monitoring and implementation of response measures and engage in collective bargaining agreements or dispute resolution with employers.

Both short-term and medium-to-long-term responses that affect migrant workers would benefit from being developed in participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of persons concerned. Social protection policies, laws and schemes, when based on social dialogue, may contribute to reducing tensions between nationals and non-nationals and promoting social cohesion.

https://www.ilo.org/wcmsp5/groups/public/–ed_protect/–soc_sec/documents/publication/wcms_748979.pdf

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120 https://www.ilo.org/actrav/media-center/pr/WCMS_767969/lang--en/index.htmh

121 https://www.ilo.org/wcmsp5/groups/public/–ed_dialogue/–dialogue/documents/briefingnote/wcms_759072.pdf

122 https://www.ilo.org/wcmsp5/groups/public/–ed_dialogue/–dialogue/documents/publication/wcms_802527.pdf

There is a need to extend minimum wage provisions to all migrant workers and strengthen freedom of association and collective bargaining, benefiting both migrant workers and nationals. Besides administratively set minimum, collective bargaining among social partners is a vital means to set fair wages for workers. This highlights the importance of social dialogue, increased membership of migrant workers in trade unions, and robust worker and employer organizations.

14.7 Impact on remittances

Remittances to Sub-Saharan Africa declined by an estimated 12.5% in 2020 to $42 billion. The decline was almost entirely due to a 27.7% decline in remittance flows to Nigeria, which alone accounted for over 40% of remittance flows to the region. Excluding Nigeria, remittance flows to Sub-Saharan African increased by 2.3%. Remittance growth was reported in Zambia (37.0%), Mozambique (16.0%), Kenya (9.0%) and Ghana (5.0%).[123] Sub-Saharan migrant workers, especially those in high-income OECD countries, have lost jobs or seen their incomes plummet, reducing their ability to send money home. Weak oil prices have affected outward remittances to Africa from the Gulf Cooperation Council countries. Currency exchange rates also affect remittance flows, when source currencies (e.g., the euro) depreciate against the U.S. dollar, the value of remittances in U.S. dollar terms declines.

The crisis has also made sending remittances to SSA countries challenging since most payments

are still cash-based and some money transfer operators (MTOs) have closed or reduced their working hours during lockdowns. Not only are remittance figures noted to have declined, but those still able to send money also face increased obstacles. Limited access, reduced working hours, and limited staff brought on by the pandemic make it more difficult for migrants to use brick and mortar remittance service providers (World Bank, 2020). Though electronic transfers have increased, online and digital payment tools are not necessarily always accessible for low paid, irregular workers who are either unbanked or under-banked. The high cost of sending remittances is another hurdle to accessibility.

In 2021, remittance flows to the region are projected to rise by 2.6%, supported by improving prospects for growth in high-income countries. The shift from informal to formal channels due to the closure of borders explains in part the increase in the volume of remittances recorded by central banks. Sub-Saharan Africa remains the most expensive region to send money to, where sending $200 costs an average of 8.2% in the fourth quarter of 2020. Within the region, which experiences high intra-regional migration, it is expensive to send money from South Africa to Botswana (19.6 %), to Zimbabwe (14.0%), and to Malawi (16.0%).[124]

123 https://www.worldbank.org/en/news/press-release/2021/05/12/defying-predictions-remittance-flows-remain-strong-during-covid-19-crisis
124 https://www.worldbank.org/en/news/press-release/2020/10/29/covid-19-remittance-flows-to-shrink-14-by-2021

14.8 The role of trade unions

The COVID-19 pandemic has served as wake-up call for most trade unions whose activities were severely impacted due to lockdowns and restrictive measures, and required innovative ways to provide support to fellow workers and access entitlements through collective bargaining power. To achieve these objectives, they need to be recognized, participate in policy-making, and negotiate collective agreements promoting fundamental rights, adequate minimum wages as well as maximum working hours, health and social protection benefits for all, and safety and health at work.[125]

Trade unions' agenda for resilience and empowerment in the context of the COVID-19 crisis and recovery should aim to: build political will, contribute to strengthening social dialogue mechanisms, build knowledge and capacity, increase representative capacity, continue to promote workers' priorities, provide new services, expand partnerships, engage with the UN processes on sustainable development, share information and learn from previous crises.

It is important to note that trade unions have responded to the pandemic in the following:[126]

▶ Workers as active players in social dialogue: they have used social dialogue in response to the pandemic to achieve a consensus on targeted measures to protect workers and enterprises;

▶ Targeted actions of trade unions for their members / workers included setting up emergency funds, awareness-raising campaigns, training programmes and labour market matching services, legal advice, distribution of food parcels and PPE, and in some instances the recognition of COVID-19 as an employment injury;

▶ Advocate for gender-responsive policy and legislative frameworks to fight COVID-19 and the inclusion of women in decision making;

▶ Used the pandemic as an opportunity to raise awareness and reach out to informal economy workers, and launched successful membership campaigns. Some used the awareness of occupational health and safety as a tool and developed innovative ways to organize and reach out to members, or organized humanitarian actions in order to remain relevant; and,

▶ Reported violations of workers and trade unions' rights. Violations mainly concerned International Labour Standards, non-compliance with labour regulations with regard to layoffs, working hours and the payment of wages, and disregard of OSH regulations.

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125 https://www.ilo.org/wcmsp5/groups/public/–ed_dialogue/–actrav/documents/publication/wcms_767224.pdf
126 Ibid.

Learning exercises for Module 14
Impact of COVID-19

Activity: Impact of COVID-19 on migrant workers.

Aims: To identify challenges faced by migrant workers due to COVID-19.

Task:

1. What are the challenges faced by migrant workers due to COVID-19 in your country?

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2. What are the measures put in place by trade unions to address the challenges faced by migrant workers?

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3. What actions can be taken by the trade union to address the challenges faced by women migrant workers due to COVID-19?

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4. What are the measures put in place by government to address the challenges faced by migrant workers?

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5. What are the social protection benefits (COVID-19 response related) that are accessible to migrant workers in your country?

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▶ Glossary

Bilateral agreements

Bilateral agreements within the context of labour migration are legally-binding treaties between a country of origin and a country of destination outlining the agreed terms, principles, and procedures governing labour migration between the two states. For destination countries, bilateral agreements help achieve an orderly flow of migrant workers that meets the needs of employers and industry. For the countries of origin, bilateral agreements ensure continued access to overseas labour markets and opportunities to promote the protection and welfare of their workers.

Brain drain

Emigration of skilled individuals from their country of origin to another country, typically for higher wages or better working conditions.

Brain gain

Immigration of skilled individuals into the destination country. Also called 'reverse brain drain.'

Collective bargaining

Collective bargaining refers to all negotiations which take place between an employer (or a group of employers or an employers' organization) and a workers' organization for the purpose of determining working conditions and terms of employment, or regulating relations between employers and workers or their respective organizations. At the international level, the development of mechanisms for voluntary negotiations on employment conditions between employers and workers' organizations was first encouraged by an ILO convention adopted in 1949, referred to as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Country of destination

Country of destination or destination country are the most neutral and accurate terms to refer to the country in which a person intends to live or work.

Country of origin

Country of origin is a neutral and accurate term to refer to the country from where a migrant, asylum seeker or refugee originated.

Debt bondage

Debt bondage – or bonded labour – is a position whereby a worker becomes bound to work for an employer as a means of repayment for a loan. Labourers may be working in an attempt to pay off an incurred or sometimes even inherited debt. The debt can arise from wage advances or loans to cover recruitment or transport costs or from daily living or emergency expenses. Employers or recruiters make it difficult for workers to escape from a debt by undervaluing the work performed or inflating interest rates or charges for food and housing. It has the effect of binding the worker to the employer for an unspecified period of time, anything from a single season, to years, or even successive generations. The imbalance of power between worker-debtor and the employer-creditor could render any debt-based labour relations unfree, regardless of the duration of the loan.

Decent work

Decent work is a concept encompassing opportunities for work that are productive and deliver a fair income, security in the workplace and social protection for families; better prospects for personal development and social integration; freedom for people to express their concerns, organize and participate in the decisions that affect their lives; and equality of opportunity and treatment for all women and men. The achievement of decent work requires job creation, rights at work, social protection and social dialogue, with gender equality as a crosscutting objective.

Deportation

Deportation is the act of expelling or removing a foreign national from a country, either to the country of origin or to a third country.

Discrimination

Discrimination includes any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, or national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity and treatment in employment or occupation, as defined by the ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Discrimination in employment can be direct or indirect.

Domestic worker

A domestic worker is an individual who performs domestic duties such as cleaning, cooking and care work (children, elderly and disabled) in a household within an employment relationship (i.e. paid work). Domestic workers also include gardeners, security guards and drivers. Domestic workers may be men or women, and are commonly migrant workers. Often domestic workers reside within the household of the employer(s). [ILO Convention on Decent Work for Domestic Workers, 2011 (No. 189)]

Ethnicity and Race

Ethnicity refers to a social group that shares common language, ancestral, social, cultural, or national experiences. Race refers to a group of people who share similar and distinct physical characteristics. Race is often associated with biology, while ethnicity is associated with culture.

Freedom of association

Freedom of association is a fundamental human right and is also at the core of the ILO's values. In the area of employment, it is the right of workers and employers without distinction whatsoever, and subject only to the rules of the organizations concerned, to form and join organizations of their own choosing without previous authorization. These organizations that work to further and defend their interests are known as trade unions. At the international level, the right for workers and employers to establish and join organizations is enshrined in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). See collective bargaining and trade union.

Freedom of movement

Freedom of movement is a fundamental human right encompassing the right to leave any country; the right to enter and remain in your home country; and the right to freedom of movement within the territory of the state of residence or employment. The right therefore encompasses both international and internal movement.

Identity, travel and work documents

Identity, travel and work documents, such as a passport, national or 'foreign national' identity card, and work or residency permits are migrants' proof of identity, nationality, legal status and right to remain and work in the country of destination. These documents are crucial to the mobility and safety of migrant workers throughout all stages of the migration and employment process. Identity and travel documents should facilitate migrants' travel and access to health, legal, consular and education services; and are essential for practical processes such as opening a bank account.

Informal economy

The informal economy, as per the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204): (a) refers to all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements; and (b) does not cover illicit activities, in particular the provision of services or the production, sale, possession or use of goods forbidden by law, including the illicit production and trafficking of drugs, the illicit manufacturing of and trafficking in firearms, trafficking in persons, and money laundering, as defined in the relevant international treaties (Art. 2).

International migrants

International migrants include all those residents of a given country who have ever changed their country of usual residence. International migrants may be measured as "all persons who are usual residents of that country and who are citizens of another country (foreign population) or whose place of birth is located in another country (foreign- born population)." In particular:

(a) the foreign-born population of a country includes all persons who have that country as the country of their usual residence and whose place of birth is located in another country. They correspond to the stock of international migrants who have migrated at least once in their life and currently reside outside their country of birth. People born outside their country of current residence but who are citizens of that country at birth (e.g. born abroad of national parent(s) living abroad) are sometimes excluded from the count of foreign-born population. The recorded country of birth refers to the geographical entity at the time of data collection. Native born persons can be nationals or foreign citizens or both;

(b) the foreign population of a country includes all persons who do not have citizenship of the country of their usual residence. It includes resident stateless persons. It excludes international migrants who have acquired citizenship of their country of usual residence. The foreign population can be foreign-born or native-born.

International Migrant Workers

Meant to measure the current labour attachment of international migrants in a country, irrespective of the initial purpose of migration, and of others who are not usual residents of the country but have current labour attachment in the country of measurement. In this context, the terms "international migrant workers" and "international migrant and non-resident foreign workers" are equivalent. Workers moving abroad under Free Movement Protocols fall under this definition. They are defined, for statistical purposes, as all persons of working age present in the country of measurement who are in one of the following two categories:

(a) usual residents: international migrants who, during a specified reference period, were in the labour force of the country of their usual residence, either in employment or in unemployment;

(b) not usual residents, or non-resident foreign workers: persons who, during a specified reference period, were not usual residents of the country but were present in the country and had a labour attachment to the country, i.e., were either in employment supplying labour to resident producer units of that country or were seeking employment in that country.

International Labour Migration

The term international labour migration is used as a generic term to refer, in general, to concepts related to the process and outcome of international labour migration and, in particular, to the following three concepts: (a) international migrant workers; (b) for-work international migrants; and, (c) return international migrant workers.

Irregular or undocumented migrant

An irregular or undocumented migrant is someone who is not authorized to enter, to stay or to work in the country of destination. Migrants often have little control over the complex factors that determine their status as these frequently come down to administrative circumstances, not necessarily the actions of migrants. Migrants can slip easily from regular to irregular status, often through no fault of their own.

Labour migration

Labour migration is defined as the movement of persons from one geographical location to another in order to find gainful employment. Labour migration may be internal, for example rural to urban, or international, across borders.

Labour standards

International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) that set out basic principles and rights at work. The labour standards are adopted at the ILO's annual International Labour Conference. They are either conventions or recommendations. Conventions are legally binding international treaties that may be ratified by member states, while recommendations serve as non-binding guidelines. Ratifying countries commit themselves to applying the convention in national law and practice and reporting on its application at regular intervals.

Memorandum of Understanding (MOU)

Memorandum of Understanding (MOU) governing labour migration are non-binding agreements outlining terms and conditions governing labour migration between two states. See also *bilateral agreements.*

Migrant worker

A migrant worker is someone who is working in a state of which he or she is not a national. The term is used interchangeably with labour migrant, and refers to people who migrate specifically for the purpose of employment.

Private employment agency

The Private Employment Agencies Convention, 1997 (No. 181) defines a private employment agency as: any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services: (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom; (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks; (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment (Art. 1).

Remittances

Remittances are monies earned or acquired by migrant workers that are transferred back to their country of origin. Remittances may be sent through formal bank transfer systems, often at high expense, or through informal money transfer systems.

Return and reintegration

Return and reintegration of migrant workers refers to the process whereby migrants return to their country of origin and are reintegrated economically and socially. Return and reintegration policies may include measures to capitalize on the new skills and experience workers have developed abroad; to assist returning workers in setting up small enterprises; or to encourage productive investment of savings.

Violence and Harassment

The term "violence and harassment" in the world of work refers to a range of unacceptable behaviors and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment. The term "gender-based violence and harassment" means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment. (Violence and Harassment Convention, 2019 (No. 190**)).**

Wage discrimination

Inequalities in wages between men and women, between national and migrant workers, or between migrant workers of different nationalities performing the same work. At the international level, the problem of wage discrimination between men and women is specifically addressed by ILO Convention No. 100.

Xenophobia

Xenophobia is a fear or hatred of people from other countries/others that are foreign or originate from outside the community or nation.