



## Issue Brief #6

### **Irregular migration and regular pathways, including decent work, labour mobility, recognition of skills and qualifications and other relevant measures**

#### **Introduction**

States have the sovereign prerogative to determine the conditions of entry and stay of non-nationals in their territories, and they should do so with the knowledge and data required to make sound, evidence-based and principled decisions. Irregular migration poses many challenges for both States and migrants. It can result in migrants being put in danger and exposed to different forms of exploitation, forced labour and trafficking in persons. Those who enter with forged or counterfeit identity documents, who enter without authorization, or who rely on smuggling networks pose a variety of challenges for States, include potentially raising security concerns. Migrants who entered the country through regular channels but infringe the terms and conditions of their visas add to a pool of migrants in an irregular situation that also pose a series of challenges to the authority of the State. In working towards the global compact for safe, orderly and regular migration, it will be critical to discuss irregular migration, the conditions that give rise to it, and find ways to address it.

States can mitigate irregular migration while also helping to address labour skills gaps and demographic challenges by creating more regular migration pathways, especially by means of labour-related migration. Legal barriers to regular migration that do not respond to labour market realities can result in greater irregular migration, resulting in sub-optimal – and at times negative – outcomes for communities of origin and destination, as well as for migrants themselves. Furthermore, restrictive measures aimed solely at preventing irregular migration often fall short of reaching their objectives. While such measures may reduce irregular migration in the short term, they are often not effective in the long term.

When grounded in sound policies that are gender-responsive and rights-based, labour migration can deliver significant benefits and opportunities for migrant workers, their families, and origin and host communities. It can contribute to local, national, regional and global economic growth, create jobs, promote innovation and increase competitiveness. It can balance labour supply and demand amongst countries, help develop and transfer skills at all skill levels, contribute to social protection systems, improve the health of populations and enrich communities both culturally and socially. Ill-suited labour migration policies, on the other hand, bring a spectrum of risks and challenges, including high recruitment fees and costs, skills mismatch, brain waste, family separation, child labour, debt bondage, forced labour and other decent work deficits.<sup>1</sup> Such policies can also result in unfair competition with and harm to national workers, when wages and labour standards are not applied equally to nationals and migrant workers, creating effectively a second tier labour market for migrant workers that prejudices their rights and undercuts established wages and working conditions. At a minimum, linking migration policies to decent work approaches will be critical to successful governance, as will be engaging all stakeholders, including ministries of labour, business, employers' and workers' organizations, civil society organizations and migrants themselves.

#### **Understanding irregular migration**

Irregular migration is a complex phenomenon and varies greatly in scope according to the national and regional context. While global figures are difficult to obtain, one author estimated that approximately

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<sup>1</sup> ILO, *Conclusions concerning fair and effective labour migration governance*, International Labour Conference, 106<sup>th</sup> Session, Geneva, 16 June 2017, para. 3.

20 per cent (50 million) of all international migrants are in an irregular situation,<sup>2</sup> though this varies widely across regions.

Many descriptive labels have been proposed and discussed, often heatedly, over the years but there is general agreement in the international community in using the term “irregular migrants” or “migrants in an irregular situation/status”, or “undocumented” or “non-documented”,<sup>3</sup> to indicate those who undertake movements that are not in compliance with the law of the origin, transit, and/or destination countries, whereas the term “regular migrant” indicates those who undertake movements that are compliant. From the perspective of transit or destination countries, irregular migration refers to entry, stay or work in a country without the necessary authorization or documents required under immigration and labour regulations. From the perspective of origin countries, the irregularity is, for example, seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. The term is increasingly used in the international arena to replace other descriptors such as “illegal immigration” – though this terminology is still used in some national contexts and often linked to specific phenomena and offences.<sup>4</sup> While the movement itself may be “illegal”, migrants themselves cannot be described as “illegal” as the term is appropriate only to describe the action, not the human being. Moreover, migrants should not be called “illegal” as this often results in highly damaging discrimination and stereotyping that can fuel racism and xenophobia.

There is a critical distinction between “irregular entry” and “irregular stay.” A migrant can enter a country without documentation and thus be considered undocumented or in an irregular situation, but that individual can later acquire the right to stay and therefore become a migrant with regularised status. Likewise, migrants who enter a country lawfully but overstay their visas or take up employment in violation of their visa restrictions, become irregular. Another pathway into irregularity, which is often clearly defined in legal terms but is in practice much more contested, arises from the violation of restrictions attached to a legal residence or work permit. In some cases, it is unlawful for migrants to change employers without permission. This and other breaches of the conditions attached to the visa and original ‘purpose of stay’ can lead to irregular migration status and, therefore, removal or deportation. When immigration and employment laws put forth onerous and complex procedures for employers and migrant workers, they can generate confusion and blur the line between regular/irregular migration status.

There are clear overlaps between the drivers of regular and irregular migration such as political insecurity, economic motivations, or a specific trigger that creates a need to move. Social networks, including through diasporas, can provide information and contribute to the growth of interest in migrating. Yet despite these triggers and desires to migrate, limited options for regular migration lead people into irregular migration, including via smugglers, which often include longer journeys over several countries before reaching a destination. Migrants in an irregular situation may thus be more likely than regular migrants to have several transit country experiences on the way to their destinations.

Irregular migration is often a consequence of limited legal channels through which to migrate for work, family reunification, or inadequate information about other options. Like regular labour migration,

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<sup>2</sup> J. Chamie, “Understanding Unauthorized Migration”, Inter Press Service, New York, 15 November 2016.

<sup>3</sup> UNGA Resolution 3449 of 9 December 1975 on measures to ensure the human rights of all migrant workers, which requests the UN organs and specialized agencies to utilize in all official documents the term “non-documented” or “irregular migrant workers”.

<sup>4</sup> International Organization for Migration (IOM) *Key Migration Terms*. <https://www.iom.int/key-migration-terms#Irregular-migration>

irregular labour migration is driven by asymmetries between the demand for labour and the supply in countries of destination and origin, resulting from a tension between economics (including “push” and “pull” factors) and politics. In countries of destination, misguided public and political pressure often prevents businesses from hiring the workers they need. In some cases, labour migrants, except in some sought-after, mainly highly-skilled professions, are pushed towards irregular migration channels.

While there is a perception that irregular migrants employed in the informal economy<sup>5</sup> are a burden on public finances the reality is more complex. Eighty-five per cent of all migrant workers’ earnings remain in their countries of destination<sup>6</sup>, contributing to the local economy through their payments of sales taxes, rents, and through their consumption of goods and services. When they are employed in the informal economy, their wages may reduce prices of such goods and services, but risk promoting labour exploitation.

Because of its clandestine nature, it is hard to estimate the expanse of the informal economy and how many migrants in an irregular situation are compelled to access informal work due to the absence of legal pathways. For example, one study estimates the informal economy accounting for a wide range between 33-90 per cent of total employment across countries.<sup>7</sup> While advocacy of increased legal pathways for regular migration sometimes implies the regularization of the informal economy, there is little information available on the potential adverse effects of this transition which may vary amongst countries and sectors. In many countries, services account for an important part of the informal economy. Some governments may tacitly tolerate the presence of migrant workers in an irregular status to sustain large informal economies and low wage production, while officially appearing as “combating” or “fighting” irregular migration. Gathering the political will to curtail the informal economy may be difficult to generate. Yet there may be costs to retaining it: for governments in knowing who is entering and staying; for the labour market by creating two tiers – one formal and regulated and the other informal and unregulated with its attendant risks, including of putting downward pressure on wages and working conditions; and for migrants, who are at far greater risk of exploitation and abuse, and are excluded from labour laws and social protection systems. Measures sanctioning those who seek to circumvent the rules and exploit migrant workers in an irregular situation, including private sector employers and recruiters should be enforced. The general public should be made aware of the invisible workforce behind the products or services generated by the informal economy, and of its hidden costs.

### **Addressing irregular migration by creating and enhancing regular pathways**

More systematic and comprehensive migration policies are needed to prevent or stem irregular migration, recognizing the interplay between the movement of people and other policy spheres. One of the greatest challenges for governments is to establish transparency and credibility in their ability to

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<sup>5</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R204](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204)) contains a definition in paragraph 2: For the purposes of this Recommendation, the term “informal economy”: (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.

<sup>6</sup> IFAD, Sending Money Home: Contributing to the SDGs, one family at a time. Available at : <https://www.ifad.org/documents/36783902/4a5640d9-e944-4a8c-8007-a1bc461416e6>

<sup>7</sup> ILOSTAT, [http://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page3.jspx?MBI\\_ID=3&\\_afzLoop=269487583238010&\\_afzWindowMode=0&\\_afzWindowId=ohx8ae2hv\\_1#!%40%40%3F\\_afzWindowId%3Dohx8ae2hv\\_1%26\\_afzLoop%3D269487583238010%26MBI\\_ID%3D3%26\\_afzWindowMode%3D0%26\\_adf.ctrl-state%3Dohx8ae2hv\\_33](http://www.ilo.org/ilostat/faces/oracle/webcenter/portalapp/pagehierarchy/Page3.jspx?MBI_ID=3&_afzLoop=269487583238010&_afzWindowMode=0&_afzWindowId=ohx8ae2hv_1#!%40%40%3F_afzWindowId%3Dohx8ae2hv_1%26_afzLoop%3D269487583238010%26MBI_ID%3D3%26_afzWindowMode%3D0%26_adf.ctrl-state%3Dohx8ae2hv_33)

manage irregular flows and stocks of migrants, by providing authorized channels of entry and stay, as well as clear and accessible information about these channels, while at the same time employing measures to discourage irregular movement.<sup>8</sup>

As the Sutherland report observed,<sup>9</sup> addressing irregular migration and widening pathways for regular migration are closely linked and require a range of measures in destination, transit and origin countries. These include control of external borders to reduce irregular entries and targeted capacity-building efforts to this end. But it also includes measures to create or enhance regular pathways, including through providing well-regulated and supervised social partner-driven programmes, the regularization of migrants in an irregular situation (for example when they have been living and working in the destination country for long periods, abiding by local laws, and/or have established family and community ties), expanding visa schemes, facilitating visas for multiple-entries and/or for students (including study/work programs), fostering family reunification, permitting dual citizenships, and offering temporary protection status for victims of natural disasters, among others. The means to increase regular pathways should cut across the spectrum, ranging from those that are temporary and address genuine labour market shortages (e.g. seasonal agricultural workers), to those that provide a path to citizenship.

Faced with the growth in human mobility, States have increasingly outsourced many migration-related tasks including visa processing, to transnational, for-profit companies. In many instances, outsourcing has improved the efficiency of visa processing as well as increased the number of application locations for migrants. However, the scale and market structure of this trend raises concerns about the delegation of the responsibilities of States to the private sector and potential conflicts of interest with outsourced service providers. From the perspective of migrants, these concerns include the security of private data, few or no guarantees that they will receive neutral, unbiased services, and conditions that may restrict access to visa application centres that can negatively impact vulnerable groups. To address these practices and strengthen regular pathways, States are encouraged to enhance monitoring and evaluation when outsourcing visa processing tasks, while ensuring that all qualified entities, including non-profits, are also eligible for the outsourcing of visa processing and other migration-related tasks.

It is improbable that all irregular migration can be prevented. Where it is not possible to regularize migrant workers in an irregular situation, and notwithstanding the sovereign prerogative of governments to return such migrants to their countries of origin, subject to, of course, international law, it is important that migrants be provided with the possibility to return voluntarily and avoid stigmatisation that is often associated with forced return.

Furthermore, the provision of reintegration assistance to migrants should be assessed over the long-term to see if such a comprehensive approach to return migration is actually efficient and sustainable. Such programmes should promote the protection of the human rights of returnees and the communities to which they return. To be successful in the longer term, these measures should deter efforts by the returnee to re-migrate in an irregular manner and not serve as incitement for others to initiate an irregular journey.

### **Labour mobility as a regular pathway**

In many societies, migrants in low-skilled jobs are widely perceived to have an adverse impact on wages and living standards of national workers. Empirical studies, however, demonstrate that this fear is largely misplaced; migrant workers at all skill levels do not harm the long-term employment prospects

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<sup>8</sup> <http://publications.iom.int/system/files/pdf/iamm.pdf>

<sup>9</sup> *Report of the Special Representative of the Secretary-General on Migration*, A/71/728 (3 Feb. 2017), paras 57-59.

or wages of national workers. The positive effects on the broad economy are typically significantly underestimated. There can, however, be short-term negative effects if there is an economic slump, if migrants' skills are similar to those of national workers, or if there is a large inflow of migrants into a small geographic region. In that case, local economies may need a period of adjustment to absorb large inflows and in some cases, should receive economic stimulus packages to stimulate short-term job creation.<sup>10</sup>

Decent work opportunities for migrant workers could be increased by improving their labour protection and increasing their access to safe and regular migration channels. Decent work is a multifaceted concept that goes beyond merely having a job. It is about jobs of acceptable quality, involving opportunities for work that is productive and delivers a fair income, provides security in the workplace and social protection for workers and their families, offers prospects for personal development and encourages social integration, gives people the freedom to express their concerns, to organize and to participate in decisions that affect their lives, and guarantees equal opportunity and treatment for all.<sup>11</sup>

When people move, regardless of their motivations for doing so, the majority will eventually enter the labour market to support themselves. In fact, most people who migrate find jobs: 150 million, or over 65 per cent of all international migrants work – this is 73 per cent of all working age migrants, and over 44 per cent are women.<sup>12</sup> Therefore, regular labour mobility pathways are a promising avenue both for migrants themselves and their destination countries.

While migrants comprise 3.9 per cent of the total global population (aged 15 or over), migrant workers constitute 4.4 per cent of all workers, and migrants have a higher labour force participation rate (72.7 per cent) compared to non-migrants (63.9 per cent). This is particularly striking when comparing migrant women (67 per cent) to non-migrant women (50.8 per cent).<sup>13</sup>

Migrants work in many sectors but we see a concentration and disproportionate representation in specific sectors such as agriculture, domestic work and construction. Over 71.1 per cent of migrant workers are employed in services, and 7.7 per cent of all migrant workers are in domestic work. The remaining migrant workers (28.9 per cent) are employed in industry (17.8 per cent), which includes construction and manufacturing, and agriculture (11.1 per cent). While the distribution of men and women migrant workers in these sectors is broadly similar, 73.4 per cent of all migrant domestic workers are women.<sup>14</sup> In many countries, these sectors are occupied by temporary<sup>15</sup> low-skilled and low-wage migrant workers, including those in an irregular situation, in increasingly segmented and gendered labour markets. A significant number of these migrant workers experience abusive and fraudulent recruitment practices, absence of a written contract prior to departure, low wages, wage arrears and unforeseen wage deductions, poor working conditions, violations of their rights at work, skills mismatches, lack of social protection, discrimination and xenophobia, and social exclusion. Deficiencies in working conditions and rights deprivations at the workplace result in high

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<sup>10</sup> McKinsey Global Institute, *People on the Move: Global Migration's Impact and Opportunity*, Nov. 2016

<sup>11</sup> International Labour Conference, 106<sup>th</sup> Session, Conclusions concerning fair and effective labour migration governance. Geneva June 2017

<sup>12</sup> *ILO Global estimates on migrant workers: Results and methodology*, Geneva, 2015, p. 6-7

<sup>13</sup> *Ibid*, pp. 5-7, 13-14.

<sup>14</sup> *Ibid*, op cit., pp. 8-9. There is a need to explore further the linkages between migration and the increased mobility derived from the facilitation of trade in services, including services provided through the temporary movement of people under the General Agreement on Trade in Services (GATS), Mode 4.

<sup>15</sup> This may cover a variety of arrangements, such as seasonal migrant workers, migrant workers who are tied to specific projects (and are not free to undertake other work), contract migrant workers, and other temporary migrant workers admitted for a limited period.

costs and can negatively affect the amount of remittances migrant workers send and the amount they can save in the country of destination.<sup>16</sup>

The health and care economy comprises a large and growing segment of the labour force in both developed and developing countries. Many countries already increasingly rely on migration to address shortages in these sectors to employ health worker professionals (including doctors and nurses), teachers, early childhood educators, caregivers for the elderly and disabled, therapists, child-minders, household cooks, and many others. Women often represent a large component of the care work force due to the pervasive nature of gendered labour market segregation. The migrant women who fill this gap often rely on female relatives to care for their own families in their countries of origin, creating a chain effect referred to as “global care chains.”<sup>17</sup> Women migrant workers often find themselves in low-skilled, low-paid domestic work and care giving, which are often insecure jobs in the informal economy, excluded from protection, rights and entitlements. This makes them much more vulnerable to discrimination, exploitation and abuse. This includes retaliatory punishment from employers, trafficking in persons, slavery-like practices such as forced labour and debt bondage, inadequate accommodation, food, water and sanitation, and lack of access to health care. Many women also face restrictions on their autonomous movements, including in some cases when employers hold their passports and identity documents,<sup>18</sup> or a requirement to gain permission from a spouse or male family member to travel.

## **Policy options to foster safe and regular labour migration channels**

### ***Temporary and circular labour migration***

Temporary and circular labour migration schemes are often viewed as positive options for migrant workers and their families, and countries of destination and origin. While temporary labour migration can be positive for filling genuine short-term labour and skills gaps in certain sectors, temporary schemes can also sometimes undermine the rights of migrant workers including because, in that they often do not enjoy legal remedies for workplace violations, and they may not be eligible for social security, pensions or other benefits.<sup>19</sup> Depending on the length of temporary work, family separation can also become a serious issue.

Policies should be based on long-term needs assessments which address permanent labour market shortages and should be responsive to labour market testing involving workers’ and employers’ organizations in policy design, implementation and monitoring.<sup>20</sup> These policies should address decent work deficits in low-wage employment sectors (e.g. agriculture, domestic and care work, hospitality, manufacturing, fishing) that engage large numbers of migrant workers, enable greater internal labour

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<sup>16</sup> M. Aleksynska, S. Kazi Aoul and V. Petrencu, *Deficiencies in conditions of work as a cost to labour migration: Concepts, extent and implications*, ILO/KNOMAD working paper, forthcoming, 2017.

<sup>17</sup> T. O’Neill, A. Fleury and M. Foresti, *Women on the move: migration, gender equality and the 2030 Agenda for Sustainable Development*, Overseas Development Institute (ODI) Briefing Note, July 2016.

<sup>18</sup> OHCHR, *Behind closed doors: Protecting and promoting the human rights of migrant domestic workers in an irregular situation*, New York and Geneva, 2015. Further, slavery like practices are incorporated into the ILO’s definition of forced labour: “traditional practices of forced labour, such as vestiges of slavery or slave-like practices, and various forms of debt bondage, as well as new forms of forced labour that have emerged in recent decades, such as human trafficking,” also called “modern-slavery” to shed light on working and living conditions contrary to human dignity. See ILO *General Survey on fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization* (2012).

<sup>19</sup> *Conclusions concerning fair and effective labour migration governance*, op cit., para. 14.

<sup>20</sup> International Labour Conference. Report of the Committee for Labour Migration: Resolution and conclusions. 106<sup>th</sup> Session, Geneva, June 2017.

market mobility for temporary migrant workers;<sup>21</sup> and allow workers to switch from temporary to permanent migration status.<sup>22</sup> These nationally designed policies should also be responsive to international cooperation imperatives as part of fostering the Sustainable Development Goals (SDGs), particularly SDGs 8 and 10 on decent work and reducing inequality within and among countries respectively.

### ***Skills recognition and skills matching with labour needs***

Migration can be an essential strategy to mitigate labour and skills shortages, particularly when governments work closely with the private sector, trade unions and employers' organisations to identify existing and likely future shortages. Due to ageing populations and falling birth rates, domestic labour pools in many developed countries are shrinking, which means that countries must look abroad, amongst other strategies, to fill worker shortages that will develop at all skill levels.

The absence of effective skills and job matching systems across borders constitutes a particular challenge. In a system where recruitment agencies receive their payments from prospective workers rather than employers, labour recruiters have an incentive to place workers who pay the largest fee rather than those with the best skills for the job.<sup>23</sup> Effective skills recognition and development systems can restructure incentives to promote investment in skills. Accurately assessing skill needs and gaps, facilitating recognition of migrant qualifications, skills and prior learning to ensure optimal matching to available jobs, providing upskilling and retraining opportunities, including through skills partnerships involving the private sector across borders, and guaranteeing that workers with skills are properly remunerated, are important means of reducing the economic, social and health costs of labour migration. Complementary initiatives in this area include skills profiling of returning migrants, and developing regional skills and competency frameworks, including for female-dominated sectors such as domestic work.<sup>24</sup>

These efforts should be combined with broader efforts to enhance coherence among employment, skills and migration policies, coordination with training and education systems, occupational health and safety, and gender equality in the labour market.<sup>25</sup> A recent report points out that immigrants are typically more vulnerable to skills mismatch, which depresses the potential contribution they can make to both business and the economy of host countries.<sup>26</sup> Another report confirmed that skilled women migrant workers are particularly prone to deskilling<sup>27</sup> and brain waste, being less likely than national workers and men migrant workers to obtain employment in countries of destination commensurate with their skills.<sup>28</sup> One particular way of addressing this challenge is through the proposal for a Global Skills Partnership which promotes partnership between countries of origin and destination – as well as with

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<sup>21</sup> *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*, A/HRC/35/25, op cit., para. 48, target 1.5; ILO, *Employer–Migrant Worker Relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration*, Beirut, May 2017.

<sup>22</sup> *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*, A/HRC/35/25, op cit., para. 48, target 1.10.

<sup>23</sup> The ILO Private Employment Agencies Convention 181 states that “private employment agencies, shall not charge directly or indirectly, in whole or in part, any fees or costs to workers.”

<sup>24</sup> M-J. Tayah, *Decent Work for Migrant Domestic Workers: Moving the Agenda Forward*, ILO, Geneva, 2016, ch. 4.

<sup>25</sup> New tools are being devised, such as an ILO user’s guide on “Facilitating transitions to decent work: The importance of recognizing prior learning of migrant workers” (forthcoming, 2017).

<sup>26</sup> T. Sparreboom and A. Tarvid, *Skills mismatch of natives and immigrants in Europe*, ILO, Geneva, 2017.

<sup>27</sup> Deskilling can broadly be defined as a situation in which migrant workers occupy jobs not commensurate with their qualifications and experience. IOM, *Crushed Hopes: Underemployment and deskilling among skilled migrant women*, IOM, Geneva, 2012

<sup>28</sup> Ibid.

their employment sectors – to link skill creation and skill mobility in a mutually beneficial and equitable way. Countries of migrant origin and destination agree *ex ante* who will bear the costs of training skilled migrants, and allow an equitable portion of the large economic gains from skill mobility to foster skill creation in origin countries. Well-designed partnerships would eliminate and even reverse fiscal drain from origin countries due to new migration, while preserving workers’ mobility and providing needed skills at the destination.<sup>29</sup>

### ***International Cooperation***

Enhancing international cooperation across labour migration corridors is key, and can be more beneficial if it engages the active participation of employer and worker representatives,<sup>30</sup> and other relevant stakeholders, including if possible migrant workers’ organisations.

While bilateral agreements – increasingly used across migration corridors – can be useful migration governance tools to facilitate safe, regular and orderly labour migration between countries, they can contain numerous shortcomings, including non-compliance with international human rights law and labour standards and non-incorporation of a gender perspective.<sup>31</sup> They can be more beneficial when they are based on social dialogue.<sup>32</sup>

Regular migration pathways can be enhanced through capacity-building for institutions in countries of origin to provide information to their nationals on pre-employment/pre-departure orientation, awareness-raising, and skills development and training programmes. These not only create alternatives to irregular migration through informing migrants about the risks of unsafe migration and enabling them to make informed decisions about whether to migrate but can also strengthen outcomes for migrant workers and their employers. Countries of origin can deliver additional support through networks of consular officials and labour attachés at destination, while Migrant Resource Centres<sup>33</sup> can play an important role in providing quality services and reliable information to migrants in origin, transit and destination countries, empowering them and enabling them to access their rights.

Pathways can also be facilitated through trusted employer programmes for business organizations with a record of compliance, enabling migrant workers to change employers, and affording family members the right to work.<sup>34</sup> While many schemes increase admission of skilled migrants, there remains an urgent need to address the disconnect between existing labour market needs in low-wage sectors and the consideration to widen regular migration channels to meet these needs.<sup>35</sup>

At the regional level, principles such as those relating to free movement of workers are applied to varying degrees of implementation in regional economic communities, including through trade agreements.<sup>36</sup> Further work is needed to address implementation barriers, including by enhancing the

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<sup>29</sup> Michael Clemens, *Global Skill Partnerships: a proposal for technical training in a mobile world*, Journal of Labor Policy, December 2015, 4:2: <https://link.springer.com/article/10.1186%2Fs40173-014-0028-z>

<sup>30</sup> ILO, *Conclusions concerning fair and effective labour migration governance*, op cit., paras 15 and 16

<sup>31</sup> P. Wickramsekara, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, ILO, Geneva, July 2015.

<sup>32</sup> 106<sup>th</sup> Session of the International Labour Conference. General Discussion on Labour Migration. Adopted Recommendations and Conclusions.

<sup>33</sup> <https://www.iom.int/files/live/sites/iom/files/What-We-Do/docs/IOM-DMM-Factsheet-LHD-MRCs.pdf>; ILO (2014) Migrant Worker Resource Centre operations manual, [http://www.ilo.org/asia/projects/WCMS\\_312456/lang--en/index.htm](http://www.ilo.org/asia/projects/WCMS_312456/lang--en/index.htm)

<sup>34</sup> *Toward a Global Compact on Migration: Perspectives on Labour Migration from the GFMD Business Mechanism*, June 2017, pp. 6, 7.

<sup>35</sup> This explains why some States have conducted regularization processes.

<sup>36</sup> E.g. EU, MERCOSUR, ASEAN, ECOWAS, SADC, EAC.

capacities of relevant governments in the areas of birth registration and identity management to facilitate mobility.

The regional consultative processes (RCPs) that focus specifically on addressing labour migration, such as the Colombo Process and the Abu Dhabi Dialogue, are generating important practical and policy tools. The Colombo Process brings together thirteen countries of origin in South and South-East Asia, to enhance labour migration governance and the adoption of good practices, and it has been active in prioritising key thematic areas that include fair and ethical recruitment, skills recognition, and the provision of adequate information to migrant workers through pre-departure orientation.<sup>37</sup> Through the Abu Dhabi Dialogue, countries of destination primarily in the Gulf Cooperation Council, have been working together with the Colombo Process to implement pilot models at both origin and destination for fair and ethical recruitment, cross-border skills certification, and both pre-departure and post-arrival information provision.<sup>38</sup> However, such RCPs should also consider deepening their attention to the implementation of human rights and labour standards and engage with a broader range of stakeholders.

Bilateral and multilateral trade agreements can also address labour mobility issues although, if not backed by other flanking policies, enabling regulatory environments and adjustment mechanisms, they also have the potential to exacerbate the vulnerabilities of low-wage migrant workers as they could erode existing social and mobility protections granted through commitments in other agreements.<sup>39</sup>

At the global level, Mode 4 of the General Agreement on Trade in Services (GATS Mode 4)<sup>40</sup> is the principal binding global framework for breaking down barriers to the freer movement of labour through the temporary movement of people across borders to provide services. Mode 4 is in principle meant to facilitate cross-border movement of all types of professions, regardless of the required skill level. However, in practice commitments of States have generally been limited to the highly-skilled, executives and intra-corporate transferees, and to a great extent refrained from making commitments orientated to benefitting low-skilled workers.

## **Labour Protection**

### *Applicable principles and international standards*

To maximize the contribution of labour migration to economic growth and development for both origin and destination countries and to ensure the rights of migrant workers and their families are adequately protected, it is crucial to root its governance in international standards and social justice principles.<sup>41</sup> International human rights instruments apply to all persons regardless of their migration status, and the treaty bodies supervising these instruments have paid particular attention to migrant workers, including women migrant workers and migrants in an irregular situation.<sup>42</sup> International labour standards, agreed globally among ILO's tripartite constituents of 187 governments, and employers' and workers'

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<sup>37</sup> <https://www.iom.int/colombo-process>

<sup>38</sup> <https://www.iom.int/abu-dhabi-dialogue>

<sup>39</sup> *Report of the Special Rapporteur on the human rights of migrants on the impact of bilateral and multilateral trade agreements and the human rights of migrants*, A/HRC/32/40 (4 May 2016).

<sup>40</sup> [https://www.wto.org/english/tratop\\_e/serv\\_e/mouvement\\_persons\\_e/mouvement\\_persons\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/mouvement_persons_e/mouvement_persons_e.htm)

<sup>41</sup> “Universal and lasting peace can be established only if it is based upon social justice” and “labour is not a commodity”. See respectively ILO Constitution, 1919, Preamble and Annex, and Declaration of Philadelphia, para. I(a).

<sup>42</sup> E.g. Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families); the Committee on Economic, Social and Cultural Rights on the vulnerable situation of migrant workers (CESCR, General Comment No. 23 (2016) on the right to just and favourable conditions of work); Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) General Recommendation No. 26 (2008) on women migrant workers, CEDAW/C/2009/WP.1/R. (5 Dec. 2008). See also issue brief #1.

organizations,<sup>43</sup> serve to protect all workers without discrimination and establish a level playing field for businesses, thus helping to prevent unfair competition. National laws should be fully aligned with these standards.

There is a well-developed international normative framework providing labour migration standards comprising the 1990 UN Migrant Workers Convention,<sup>44</sup> and two ILO Conventions specifically relating to migrant workers,<sup>45</sup> both accompanied by non-binding Recommendations.<sup>46</sup> Around 90 countries are bound by one or more of these instruments, demonstrating their support for minimum standards rooted in a rule of law framework.<sup>47</sup>

A large set of relevant legal frameworks are available on the subject but, in practice, many migrant workers, especially those working in low-skilled jobs, enjoy few of the rights stipulated in international conventions. This wide gap between the rights of migrant workers in theory and practice is partly due to the relatively low rate of ratification of the international migrant workers' conventions, together with their poor implementation and enforcement.

### ***Fair and ethical recruitment***

Recruitment is the first step in establishing an employment relationship. There are several initiatives to institute fair and ethical recruitment processes for migrant workers. Of significant global concern are the high fees (and related costs) often paid by workers to labour recruiters which, evidence shows, can amount to a year's salary, leaving workers highly indebted and at risk of debt bondage and forced labour.<sup>48</sup>

The 2030 Agenda and the Addis Ababa Action Agenda devote particular attention to the need to reduce migration costs, including the costs of recruitment. SDG indicator 10.7.1 strives to measure the cost of recruitment borne by employees as a proportion of yearly income. The ILO and World Bank, as custodians for this indicator, are working to develop a methodology for this purpose. Moreover, specific initiatives in migration corridors and economic sectors with known high recruitment costs can make a difference.<sup>49</sup>

Tools and guidance are available to address these issues. The ILO General Principles and Operational Guidelines for Fair Recruitment,<sup>50</sup> being piloted in a number of migration corridors, apply both nationally and across borders, and target all recruitment actors – governments, public employment services and enterprises, including labour recruiters and employers.<sup>51</sup> IOM's International Recruitment

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<sup>43</sup> This standards framework comprises 183 legally binding conventions and 191 non-binding recommendations. All international labour standards apply to migrant workers unless otherwise stated. In addition to the eight fundamental ILO Conventions covering the abolition of forced labour, elimination of child labour, trade union rights and non-discrimination in employment, there are other labour standards of particular relevance to migrant workers, including the Private Employment Agencies Convention, 1997 (No. 181), the Domestic Workers Convention, 2011 (No. 189), and Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 2015), which includes migrant workers in crisis situations.

<sup>44</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990.

<sup>45</sup> Migration for Employment Convention (Revised), 1949 (No. 97) and Migrant Workers (Supplementary Provisions Convention) No. 143.

<sup>46</sup> Migration for Employment Recommendation (Revised), 1949 (No. 86) and Migrant Workers Recommendation, 1975 (No. 151).

<sup>47</sup> The UN Convention and ILO Conventions Nos. 97 and 143 have been ratified by 51, 49 and 23 countries respectively.

<sup>48</sup> "Reducing migration costs", GFMD RT 1.1 Background Paper, Dhaka Summit, 10-12 Dec. 2016, p. 17 (Table 2). ILO Convention No. 181, op cit., prohibits worker-paid recruitment fees and costs subject to some exceptions.

<sup>49</sup> [http://www.ilo.org/global/topics/labour-migration/events-training/WCMS\\_464656/lang--en/index.htm](http://www.ilo.org/global/topics/labour-migration/events-training/WCMS_464656/lang--en/index.htm).

<sup>50</sup> International Labour Organisation (2016) General Principles and Operational Guidelines for Fair Recruitment. See: [http://www.ilo.org/global/topics/fair-recruitment/WCMS\\_536755/lang--en/index.htm](http://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm)

<sup>51</sup> [http://www.ilo.org/global/topics/fair-recruitment/WCMS\\_536755/lang--en/index.htm](http://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm). See also UNODC, *The role of*

Integrity System (IRIS), a voluntary multi-stakeholder accreditation system for labour recruiters, (referring to ILO standards), certification scheme and a compliance and monitoring mechanism. It can serve as a due diligence tool for businesses and migrant workers for the assessment of labour recruiters, and is being pilot tested by several major multinational corporations and in several migration corridors.<sup>52</sup>

Governments, employers and recruitment agencies have a responsibility to improve recruitment practices. Governments should adopt and enforce appropriate legal and regulatory frameworks which address legal gaps to ensure that regulation is effective, transparent and well-enforced. Governments of countries of origin and destination should cooperate to address risks of exploitation. Migrant workers should have access to free, comprehensive and accurate information and complaint mechanisms regarding their rights and the conditions of their recruitment and employment.

Employers must comply with recruitment regulations. To facilitate ethical recruitment practices, a publicly available database such as IRIS, with certified agencies and ethical recruiters based on a transparent certification system, would help employers and migrant workers in the recruitment process.

### ***Social protection, including health protection***

Migrant workers and their families experience significant difficulties in accessing social protection, including health protection, and other social security benefits, due to eligibility requirements relating to their nationality, status or insufficient periods of employment and residence.<sup>53</sup> Migrants in an irregular situation face particular challenges and, as Issue Brief #1<sup>54</sup> recommends, ‘firewalls’ should be set-up between public and private service providers and immigration enforcement authorities to ensure that everyone can access their rights to health and social security regardless of their migratory status. To address these obstacles, countries of origin, transit and destination should consider establishing or improving non-discriminatory national legal frameworks and social protection systems, including floors for all<sup>55</sup>. Equally important is the adoption and effective implementation of gender-responsive bilateral and multilateral social security agreements between countries, including portability of social security entitlements and benefits (acquired and in course of acquisition).

### ***Fair wages***

Wage gaps between national and migrant workers remain significant across all regions and most sectors and warrant specific attention. These gaps can only partly be explained by objective differences in experience, education, occupation and other labour market characteristics. Effective anti-discrimination policies, therefore, need to be crafted, implemented and enforced in accordance with international human rights law and labour standards, alongside other policies that address the underlying causes of these wage gaps<sup>56</sup> such as those promoting greater social justice, gender equality and women’s empowerment.

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*recruitment fees and abusive and fraudulent recruitment practices of recruitment agencies in trafficking in persons*, 2015, research and guidance on the linkages between recruitment fees and abusive and fraudulent practices of recruitment agencies and trafficking in persons.

<sup>52</sup> <http://iris.iom.int/>.

<sup>53</sup> ILO, *Addressing governance challenges in a changing labour migration landscape*, International Labour Conference, 106<sup>th</sup> Session, 2017, Geneva, paras. 51-52. These difficulties are exacerbated in the case of migrant women, which not only infringes their rights but further constrains progress towards gender equality and women’s empowerment.

<sup>54</sup> [https://refugeemigrants.un.org/sites/default/files/issue\\_brief\\_for\\_first\\_thematic\\_session.pdf](https://refugeemigrants.un.org/sites/default/files/issue_brief_for_first_thematic_session.pdf)

<sup>55</sup> SDGs 1.3

<sup>56</sup> ILO, *Global Wage Report 2014/2015: Wages and income inequality*, Geneva, 2015.

### ***Safe Working conditions***

Migrant workers are disproportionately exposed to hazardous working conditions which are key determinants of health and wellbeing; they have disproportionately less access to primary health services, including sexual and reproductive health services. The lack of occupational safety and health services,<sup>57</sup> can consequently increase migrants' exposure to occupational-related accidents and disease, often resulting in serious and permanent injury or death.<sup>58</sup> These risks are exacerbated when migrants are in an irregular situation and working in the informal economy.

### ***Freedom of association and collective bargaining***

Freedom of association and collective bargaining enable migrant workers, regardless of migration status, to effectively exercise and defend other rights. They are important means for obtaining improved working conditions and wages. However, migrant workers—particularly women and those in an irregular situation—are often not permitted to form or join trade unions, to hold trade union office, or to enjoy protection against discrimination on the ground of their trade union activities.<sup>59</sup>

### ***Social dialogue***

The active participation of representative employers' and workers' organizations, and multi-stakeholder approaches, at all levels of labour migration governance, can strengthen the effectiveness and sustainability of policies.<sup>60</sup> Positive examples include working with social partners in the identification of skills shortages at local, sub-national and national levels.

### **Recommendations<sup>61</sup>**

The global compact for safe, orderly and regular migration provides an opportunity to address some of the key issues hindering the development contribution of migrants. More concretely, States could consider incorporating the following commitments into the global compact with the inclusion of specific benchmarks, timelines and review mechanisms for implementation:

#### ***Addressing Irregular migration***

- Foster cooperation between origin and destination countries on providing alternatives to irregular migration, including through pre-departure information sharing on regular pathways, promoting access for women and men to decent work opportunities in countries of origin, investigating and prosecuting criminal activities such as migrant smuggling and trafficking in persons while avoiding criminalization of smuggled migrants and trafficked persons, and ensuring human rights-based, gender-responsive and sustainable return and reintegration programmes.
- Design pathways out of irregularity, including through adoption of principles and guidelines for national regularization programmes that offer opportunities for regularizing the status of migrants in an irregular situation within a reasonable period of time and pursuant to transparent, non-

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<sup>57</sup> S. Fitzgerald, et al., "Occupational injury among migrant workers in China: a systematic review", *Inj Prev*, 2013; 19(5), 348-354: <https://www.ncbi.nlm.nih.gov/pubmed/23710065>.

<sup>58</sup> One of the proposed global indicators to measure SDG target 8.8 concerns occupational safety and health: Indicator 8.8.1 - Frequency rates of fatal and non-fatal occupational injuries, by sex and migrant status.

<sup>59</sup> *Labour exploitation of migrants*, Report of the Special Rapporteur on the human rights of migrants, A/HRC/26/35 (3 April 2014), para. 45. One of the proposed global indicators to measure SDG target 8.8 is 8.8.2 - Increase in national compliance of labour rights (freedom of association and collective bargaining) based on ILO textual sources and national legislation, by sex and migrant status.

<sup>60</sup> *Conclusions concerning fair and effective labour migration governance*, op cit., para. 6.

<sup>61</sup> Some of these proposals draw on UN Women, *Recommendations for addressing women's human rights in the global compact for safe, orderly and regular migration*, Nov. 2016 and IOM, *Expanding Labour Mobility Channels*, Global Compact Thematic Paper, 2017.

discriminatory, defined criteria and legislative reforms which allow workers to change employers without losing their regular status.

- Open new channels for regular migration, particularly for low-skilled workers, such as through closer alignment of labour migration policies to labour market needs (considering the longer-term education and skills needs of national workers and avoiding structural labour shortages), youth and women apprenticeships, vocational training, entrepreneurship, study abroad, and family reunification.
- Institute a confidential whistleblower protection policy to inform on those businesses that operate in the informal economy and formal businesses that use informal employment to exploit migrant workers.
- Establish awareness campaigns for consumers to raise their consciousness of the supply chains from which their products and services come, and the possibility of worker (including migrant worker) exploitation within these supply chains.

### ***Promoting labour mobility***

- Adopt new (or reorient existing) national, bilateral and multilateral agreements on labour migration and mobility including through the use of relevant tools such as the ILO Multilateral Framework on Labour Migration;<sup>62</sup> the IOM Migration Governance Framework;<sup>63</sup> and the OSCE Guide on Gender-Sensitive Labour Migration Policies.<sup>64</sup>
- Link migration policies to decent work approaches and engage all stakeholders, including labour, education, social development and health ministries, employers' and workers' organizations, and migrant associations through social dialogue. These policies should be grounded in accurate sex-disaggregated labour migration data and statistics, aligned with international standards,<sup>65</sup> (and, where needed, complementary capacity-building support), and aligned with the 2030 Agenda for Sustainable Development and the New York Declaration for Refugees and Migrants.<sup>66</sup>
- Labour market institutions (e.g. public employment services, vocational training institutions, wage-setting mechanisms, labour inspection services, labour market observatories, etc.) should be tailored to the needs of migrant workers to promote labour market integration of migrants and sharing pertinent information between countries of origin and destination while respecting privacy rights and meeting data protection requirements.
- Foster internal labour market mobility that can be exercised by migrant workers, especially migrant workers in low-skilled, temporary positions and women migrant workers, to prevent dependency on a single employer and to reduce exploitation and abuse, and help migrants switch statuses lawfully between study, work and self-employment.

### ***Promoting skills recognition and development***

- Skills recognition and development programmes, and vocational training need to be made available and adapted to the needs of migrant workers, including those in temporary programmes, and be responsive to labour market needs.

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<sup>62</sup> *ILO Multilateral Framework on Labour Migration*, Geneva, 2006.

<sup>63</sup> IOM, *Migration Governance Framework*, Geneva, 2015, para. 16.

<sup>64</sup> *OSCE Guide on Gender-Sensitive Labour Migration Policies*, Vienna, 2009.

<sup>65</sup> ILO has set up a working group to develop a standard on labour migration statistics in implementation of the resolution of the 19<sup>th</sup> International Conference of Labour Statisticians (Oct. 2013).

<sup>66</sup> *New York Declaration for Refugees and Migrants*, op cit., para. 41.

- Endorse Global Skills Partnerships to make skilled migration more beneficial to migrant-destination countries, origin countries and migrants. Such an agreement allows mutual gains by taking advantage of large international differences in both professional earnings and training costs while adhering to human rights and international labour standards.

#### ***Improve skills matching with labour market needs***

- Improve labour market information systems in cooperation with the private sector, to identify labour market needs for migrants at all skill levels.
- Develop regional and global platforms for sharing data on labour market needs to improve skills and jobs matching and more regular pathways for migration.
- Develop and promote bilateral and multilateral frameworks for migrants' skills assessment and recognition.

#### ***Promoting fair recruitment and employment***

- Align national laws, regulations and policies on recruitment with international human rights and labour standards, and implement good practice guidance such as ILO general principles and operational guidelines for fair and ethical recruitment,<sup>67</sup> and take action to measure, with a view to abolishing, worker-paid recruitment fees and related costs in favour of an employer-pays model in line with SDG indicator 10.7.1.
- Ensure the roles and responsibilities of employers both within employment and the recruitment process are clearly outlined to promote employer due diligence within the recruitment process as well as when working with sub-contractors and suppliers within their supply chain.
- Strengthen labour inspection services to ensure they supervise the working conditions in all sectors, and establish and effectively implement binding firewalls between complaint mechanisms and labour inspection services and immigration enforcement authorities, and between public and private service providers and immigration enforcement authorities to ensure migrants can access justice, health, education, housing and other services on a non-discriminatory basis and regardless of nationality, migration or residence status;<sup>68</sup> such as confidential and comprehensive sexual and gender-based violence prevention and treatment programmes. States should enable labour market institutions to perform their proper functions.
- Ensure that all migrant workers engaged in remunerated labour enjoy fair and equitable provisions of social security. Adopt national and international measures to address eligibility requirements; lack of social security provisions in bilateral labour migration agreements; limitations in portability of benefits (acquired and in course of acquisition), including pensions, health insurance, employment injury and other benefits, due to a lack of social security agreements; as well as information and language barriers.
- Ensure national laws, including constitutional, administrative and civil and labour codes, are coherently linked with employment policies and provide migrant workers with the same rights and protections extended to all workers, including minimum wage protection systems, equitable compensation, benefits and access to health and social services.

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<sup>67</sup> *Sutherland Report*, op cit., para. 57.

<sup>68</sup> *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*, A/HRC/35/25, op cit., paras 63-65, Goal 5: Provide effective access to justice for all migrants.

- Work together with business, trade unions, civil society and media to work to reduce and prevent xenophobia and discrimination carried out against migrant workers, particularly to ensure that:
  - Discriminatory practices, such as bans on the labour migration of women and older workers, and mandatory HIV, pregnancy and other disability or health testing not founded on acceptable public health grounds, are eliminated. Women migrant workers are not discriminated against in law and practice on the grounds of their gender, family status, marital status, legal partnership status, or pregnancy, including the prohibition of dismissal on such grounds.
  - Migrant workers are protected by anti-discrimination and equality legislation in employment and can effectively obtain redress in cases of discrimination.
  - Misleading information or propaganda on migrant workers, including prejudice and stereotypes, are addressed in an effective manner.