

**PROTECTING THE RIGHTS  
OF MIGRANT WORKERS:  
A SHARED RESPONSIBILITY**

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## PREFACE

The Preamble to the 1919 Constitution of the International Labour Organization sets among its objectives the “protection of the interests of workers when employed in countries other than their own.” This has been reinforced by the 1944 Philadelphia Declaration and the 1998 Declaration on Fundamental Principles and Rights at Work. Furthermore, the Resolution on a fair deal for migrant workers adopted by the 92nd Session of the International Labour Conference in 2004 stated that “a fair deal for all migrant workers requires a rights-based approach, in accordance with existing international labour standards and ILO principles.”

Since the 1930s, the ILO has pioneered international instruments for the protection of migrant workers. The two ILO Conventions – Migration for Employment Convention (Revised), 1949 (C.97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (C.143), and the two related Recommendations are milestones in the international protection framework for migrant workers. The ILO Multilateral Framework on Labour Migration endorsed by the ILO Governing Body in March 2006 spells out in detail the principles and guidelines for a rights-based approach to labour migration to be used by constituents in formulating policies and measures to protect migrant workers. All ILO labour standards apply to all migrant workers in the workplace irrespective of their status unless specifically stated otherwise in the instruments. At the same time, all migrant workers are covered by ILO core Conventions relating to freedom of association, forced labour, child labour, and discrimination as enshrined in the 1998 ILO Declaration.

In recent years, there has been considerable interest in the linkages between international migration and growth and development in both countries of destination and origin. Principle 15 of the ILO’s Multilateral Framework on Labour Migration states: “The contribution of labour migration to employment, economic growth, development and the alleviation of poverty should be recognized and maximized for the benefit of both origin and destination countries.” The ILO has been incorporating migration and development concerns into its advisory services and technical cooperation programmes in different regions. At the same time, the ILO position is that the development benefits of migration and protection of the rights of migrant workers are inseparable.

This paper was originally prepared to inform the discussions in Roundtable 1.1 on “Protecting the rights of migrants – A shared responsibility”, of the second Global Forum on Migration and Development which took place in Manila from 27 to 30 October 2008. It deals with migrant rights using a life cycle approach in the context of temporary migration programmes, and stresses that protection of migrant workers is a shared responsibility between source and destination countries. Indeed, actions taken from one side only of the migration process will not prove adequate to ensure protection of migrant workers, and to promote mutual benefits of migration to development. In addition to reviewing the provisions in existing ILO instruments, the present paper highlights examples of good practices where protected migrant workers contribute better to development, and concrete measures which both source and destination countries can adopt for protecting migrant workers.

The ILO hopes that the paper will serve as a useful tool to governments, employers’ and workers’ organizations, and all other stakeholders who are keen to improve protection of their workers abroad as well as migrant workers within their countries.

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# 1. INTRODUCTION AND CONTEXT

This paper specifically focuses on countries' shared responsibility to protect migrant workers' rights. Virtually all countries are countries of origin, transit, *and* destination. Labour migration takes place between developed and developing countries and among developing countries as well, with different challenges. The term "development" as used here is much broader than economic development. It encompasses economic, social, cultural, political, and human development. In regard to migration, it refers to development in both countries of origin and destination, as well as the welfare and full development of the capabilities of migrant workers and their families.

Migration is today, as it has always been, a function of the search for greater opportunity. "Throughout human history, migration has been a courageous expression of the individual's will to overcome adversity and to live a better life."<sup>1</sup> As always, and in many forms, migration involves work to support oneself and one's family. It is has been estimated that in 2005, some 94 million of the world's approximately 191 million migrants were economically active. These migrant workers, with their families, accounted for almost 90 per cent of total international migrants.<sup>2</sup> More recent estimates suggest that the number of international migrants has reached 200 million. Almost half of those migrants are women, who are increasingly migrating on their own for purposes of work.<sup>3</sup>

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<sup>1</sup> United Nations (2006). International migration and development: Report of the Secretary-General. New York, A/60/871, United Nations, June 2006. [http://www.un.org/esa/population/migration/hld/Text/Report%20of%20the%20SG%28June%2006%29\\_English.pdf](http://www.un.org/esa/population/migration/hld/Text/Report%20of%20the%20SG%28June%2006%29_English.pdf).

<sup>2</sup> United Nations Population Division (2006), Trends in Total Migrant Stock: The 2005 Revision, New York, 2006; International Labour Migration and Development: The ILO Perspective, International Migration Brief, 2007.

<sup>3</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, p. 19.

The countries from which these workers come and those in which they work have a shared responsibility to lessen the burdens on them by protecting and promoting their rights. This can be done by increasing the supervision and regulation of international labour migration and engaging in international cooperation in the interest of promoting their rights and preventing abusive conditions.



## **2. THE LINKAGE BETWEEN THE RIGHTS OF MIGRANT WORKERS AND DEVELOPMENT**

Development gains from migration for the countries involved and the protection of the rights of migrant workers are inseparable. Such development gains are significant not only to origin countries, but also to destination countries where migrant workers provide their labour. Migrant workers contribute to development in origin countries by, among other things, alleviating pressures on labour markets, sending remittances home, acquiring increased skills, and making investments, all of which help to alleviate poverty. In destination countries, they contribute to development by meeting the demand for workers, increasing the demand for goods and services, particularly where they receive decent wages, and contributing their entrepreneurial skills. In some of the most critical service areas for development and growth in origin and destination countries, women migrant workers predominate, for example, in nursing, domestic work, and care-giving. Protecting the rights of migrant workers has a positive effect on productivity, in that it results in fewer lost hours of work, reduces health care costs, and increases output.<sup>4</sup>

Protecting the rights of migrant workers additionally benefits destination countries by preventing the development of an unprotected working underclass of migrants which harms national workers by undercutting their pay and working conditions. It is in the best interests of destination countries to prevent the emergence of migrant dependent economic sectors. It is in the interests of all involved to prevent irregular migration, which is an obstacle to the development benefits of migration, as those migrant workers in irregular status are most often excluded from labour and social rights. Of course, for the migrant workers themselves, protection of human

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<sup>4</sup> Migration and Development, a Human Rights Approach, Office of the UN High Commissioner for Human Rights, pp. 3-5, 8-10, [www.ohchr.org/english/bodies/cmw/docs/](http://www.ohchr.org/english/bodies/cmw/docs/).

and labour rights furthers their earning capacity and personal development and that of their families in many ways.

Migrants of all skill levels are crossing international borders to work, from the professional and highly skilled to those with lesser skills and even those with little or no previous work experience or formal training. The migration of highly skilled workers can increase returns to education and contribute to the knowledge base of origin countries. For those of lesser skills, migration can provide jobs they might not be able to find in their own countries and thereby increase income for the poor and their families. Migration can be an empowering experience for the less skilled and for women from traditional societies, enabling them to contribute more to development in both countries in which they have contacts. Even though both the highly skilled and lesser skilled can benefit greatly from labour migration, the lesser skilled are not as likely to be in a position to assert their rights, including the rights to fair pay and living and working conditions. Protecting the human and labour rights of the less skilled is significant, because it has a higher potential for poverty reduction in countries of development. In parallel, migration of low-skilled workers also has a larger impact on the social and economic development of host countries. Not only low-skilled migrant workers contribute directly to the national production, but also are found in the dirty, dangerous and difficult jobs often left aside by Nationals for higher skilled occupations. For these reasons, this following discussion on the rights of migrant workers will focus more heavily on the needs of the less skilled and the shared responsibility of those countries involved in their migration to protect their rights.

### 3. THE SHARED RESPONSIBILITY

The three basic stages in the labour migration process are before workers leave their home countries, after they leave and while they work in destination countries, and after they return to their home countries. Migrant workers benefit when international cooperation takes place during all of these stages. Countries can cooperate by, among other things, exchanging information with each other, engaging in regular dialogue and cooperation on labour migration policy for the protection of workers' rights, and entering into bilateral, multilateral, and regional agreements. They can cooperate in locating and sanctioning those who violate the rights of migrant workers. Where possible, countries should include a role for civil society and employee and employer organizations in their cooperative efforts to manage labour migration and protect workers' rights. International cooperation in furthering development and increasing opportunities for decent work is also of great benefit to migrant workers.<sup>5</sup>

While origin and destination countries share the responsibility to protect the rights of migrant workers, their respective responsibilities differ for two reasons. First, different events take place during workers' migration experiences in their own countries before they leave, than take place after their departure and during their work in destination countries. Second, origin and destination countries have the ability to exercise more supervision in their own countries and much less ability to control what takes place in another. Therefore, during the first stage before migrants leave home, greater responsibility to protect their rights rests on their countries of origin. During the second stage, that is, after their arrival and while they work, greater responsibility rests on countries of destination. During the third stage when they return home, greater responsibility shifts back again to their countries of origin. Although different events are taking place in

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<sup>5</sup> The ILO Multilateral Framework on Labour Migration, Non-binding principles and guidelines for a rights-based approach to labour migration, 2005, provides guidance in the area of international cooperation, [http://www.ilo.org/public/english/protection/migrant/download/multilat\\_fw\\_k\\_en.pdf](http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf)

origin and destination countries that require different approaches to protection during these times, they can and should cooperate with each other in the search for the best approaches to protect migrant workers and further their rights.

Another way of considering the issue of respective responsibilities is as follows:

- The role of origin countries in protecting individuals involved in the labour migration process during the pre-departure and return stages when they are physically present, and during the post-departure and work stage when they are not physically present;
- The role of destination countries in protecting individuals involved in the labour migration process during the post-departure and work stage when they are physically present, and during the pre-departure and return stages when they are not physically present.

## 4. RESPONSIBILITIES OF ORIGIN COUNTRIES

### Pre-departure

The time period before individuals decide to migrate for work – when they are potential migrant workers – is crucial. There are many possible pitfalls if their decision is based on insufficient or false information. Thus, the best line of defense and protection before the decision is made is to provide realistic and accurate information. It should be provided when it is most helpful, including before substantial action toward implementing the decision has been taken, such as paying recruitment fees.

Potential migrant workers should be given organized assistance in finding employment, if possible, and information about things such as costs they must pay to obtain jobs, the migration process, and actual terms and conditions of work in the destination country. There are many good practices that provide concrete examples of action being taken in these and other areas of labour migration.<sup>6</sup> A good example provided by the Egyptian Ministry of Manpower and Emigration is its operation of a website with a job match-making system, databases of job opportunities abroad and potential candidates, and practical information about destination countries.<sup>7</sup> Tunisia has a

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<sup>6</sup> Collections of good practices from all regions of the world to protect and promote the rights of migrant workers and further development in origin and destination countries can be found in various sources. For example, the ILO Multilateral Framework on Labour Migration contains an annex with a selection of 132 such practices. Good practices can also be found in OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006; OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies, Mediterranean Edition, 2007; Guide to Private Employment Agencies, ILO, 2007, [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/instructionalmaterial/wcms\\_083275.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_083275.pdf).; An Information Guide, Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, ILO, 2003, <http://www.ilo.org/public/english/employment/gems/advocacy/protect.htm>.

<sup>7</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies, Mediterranean Edition, 2007, p. 72.

specialized government agency that assists skilled citizens in finding work in other countries.<sup>8</sup> In Tajikistan, an Information Resource Centre for Labour Migrants provides information to migrants on travel, documentation, admission, and employment in other countries, including the risks involved.<sup>9</sup>

Citizens should be thoroughly educated about unscrupulous private recruiters, traffickers and trafficking in human beings, and the dangers and risks of migrating under irregular conditions. Attention must be paid to educating and warning women about the special problems and conditions they could face because they are women, such as trafficking, and the conditions of certain forms of work held predominantly by women migrant workers, such as domestic work. A good practice in this area is information provided to women in the Philippines by a non-government organization on how to avoid illegal recruitment and what to do if victimized.<sup>10</sup> Citizens should be educated as well on how to migrate under regular conditions and under conditions which protect their human rights. Both government and civil society can perform this function. They should provide information wherever private recruiters, traffickers, and smugglers search for persons to transport across borders for work, be it in cities, small towns, or the countryside. In Thailand, Cambodia, and Lao People's Democratic Republic, radio programs warning about trafficking and other migration dangers have been broadcast.<sup>11</sup> In Nigeria, public-awareness campaigns regarding trafficking are conducted, and anti-trafficking clubs in secondary schools warn students about precautions to take before accepting job offers in other countries.<sup>12</sup> The Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime is a regional consultative process involving the governments of about 40 countries, which share information on trafficking and smuggling and address root causes, including the need for development in origin countries.<sup>13</sup>

Those who have decided to migrate must next be protected during the recruitment process itself. Victimization by unscrupulous private recruitment agents frequently leads to further abuse after individuals migrate and during their work experience. Abuses include giving them little, no, or false

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<sup>8</sup> *Idem*, p. 70.

<sup>9</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, p. 54.

<sup>10</sup> An Information Guide, Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, ILO, 2003, Booklet 3, p. 49.

<sup>11</sup> ILO Multilateral Framework on Labour Migration, best practice No. 81.

<sup>12</sup> *Idem*, best practice No. 78.

<sup>13</sup> *Idem*, best practice No. 84.

information about the terms and conditions of their jobs, failing to provide information about other conditions of work and life in the destination country, charging high recruitment fees to migrant workers, sending them to unsafe or dangerous jobs, jobs where they are not paid or not given their full pay, and even taking large fees from them without providing any job at all. Other abusive practices include giving migrant workers contracts which are not valid, are in a language they do not understand, or are substituted for different, less favourable contracts after they have departed. Beyond educating migrant workers about these unethical and exploitive practices, origin countries should enact legislation and regulations and enforce them to prevent such abuses from taking place and sanction those who have engaged in them. Where the rights of migrant workers have been violated, all persons involved in the chain of their recruitment and employment should be legally accountable, to prevent workers from being left without any remedy. When such persons cross national borders themselves in committing violations against migrant workers, origin countries must cooperate with transit and destination countries to put a stop to their conduct. Thus, for example, a migrant worker may be cheated by a local recruiter who represents another recruiter higher on the chain. All those working together in the chain should be held accountable, whether they operate within national borders or across them.

Origin countries should license and supervise private recruiters and sanction those who do not comply with minimum standards that protect the rights of migrant workers, including by prohibiting them from conducting business. They should require written employment contracts containing minimum standards of terms and conditions of employment for their citizens in the areas of wages, working hours and time off, safety and health, medical care, the right to retain their identity documents, and other important terms and conditions. Where employers provide housing and food, the written contracts should cover that as well and should contain minimum standards. If employers charge their workers for housing and food, the rates charged should be fair. A good example of licensing and regulation of private recruiters is provided by the Philippines Overseas Employment Administration, a specialized agency which performs this and other functions. The agency has a website with information on licensed recruiters, consulates in other countries, and warnings about unethical practices.<sup>14</sup>

Other ways in which countries can assist migrant workers before they depart is to simplify and reduce the costs of administrative processes. This

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<sup>14</sup> *Idem*, best practice Nos. 37 and 95.

not only lessens the burden on migrants, but can also keep them from turning to irregular channels because of an inability to pay the fees. It is of great help to migrant workers to receive information about the culture and conditions of life that exist in the destination country before they leave. Other forms of helpful information, such as financial literacy training and low-cost ways to transmit remittances, in order to maximize their value, can also be given. Contact information for assistance in the destination country, including sources of emergency assistance there, is helpful. Origin countries should even be ready to provide assistance in halting the process at any time there is an indication that their citizens could be departing into a situation which would violate their human and labour rights.

## Post-departure and work

By continuing to monitor the treatment of their citizens when they are no longer within their borders, transit and destination countries will have a greater incentive to protect their rights as well. Thus, origin countries should work with transit and destination countries to assist their citizens who have been victimized by traffickers and smugglers and to locate and sanction those who commit such acts. Unfortunately, prosecution of traffickers by countries in which they operate is probably the weakest part of the anti-trafficking system at this time.<sup>15</sup>

Bilateral agreements with destination countries spelling out how responsibilities are to be shared can be a significant means of providing minimum standards and rights for a country's citizens. Origin countries can negotiate for greater rights, particularly for less-skilled workers, which conform to international standards, with compliance guaranteed by the agreements. Exploitation can also be reduced by providing access to regular migration and the formal labour market. Agreements can contain provisions on such things as how origin and destination countries will cooperatively manage pre-departure and return processes, transfer social security earnings or allow portability of pensions. They can also contain dispute settlement procedures and remedies for violation of rights. These agreements are most effective when they contain specific mechanisms and procedures for resolv-

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<sup>15</sup> An Information Guide, Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, ILO, 2003, Booklet 6, p. 83; Migration and Development, a Human Rights Approach, Office of the UN High Commissioner for Human Rights, pp. 18-19. <http://www2.ohchr.org/english/bodies/cmw/docs/HLMigration/MigrationDevelopmentHC's paper. pdf>

The section below on International Standards Protecting the Rights of Migrant Workers discusses international standards which can guide legislation in this area.



ing problems and grievances, such as monitoring missions or joint committees with representatives from the countries involved. A good example of a bilateral agreement is that between Spain and Ecuador, which includes procedures and requirements on educational campaigns for potential migrants, offers of employment, evaluation of qualifications, travel, selection of workers, employment contracts, visas, information to be given to migrant workers before they depart, residence and work permits, equality of pay and working conditions with nationals, social security, and return, including development assistance.<sup>16</sup>

Another effective means of intervention and protection by origin countries is to establish consular services with labour attaches and both male and female staff to whom migrant workers may come for assistance. This is particularly important in countries where a large number of their citizens work. Consular services can also perform outreach to certain groups of migrant workers who are particularly vulnerable to abuse, such as women, or those who are isolated, especially domestic workers, who are mostly women and thereby doubly vulnerable. They may be called upon to provide emergency assistance, especially when their citizens have nowhere else to turn. They can facilitate the systematic transmission of information regarding abusive employers and industries to officials at home to take measures to prevent their citizens from migrating to work for them. Sri Lanka and the Philippines are examples of two countries which have labour attaches in their consulates in countries where large numbers of their citizens work to assist migrant workers. The Sri Lankan consulate services pay particular attention to the assistance of women migrant workers.<sup>17</sup>

Origin countries can further assist and protect their citizens by helping to establish welfare funds for migrants and their families, which can be either publicly or privately operated. Sri Lanka, Pakistan and the Philippines have welfare fund programs to assist migrant workers, which provide death and disability insurance, and other services for them and their families, such as loans for housing and small businesses upon return.<sup>18</sup>

## Return

Origin countries should try to assist those migrant workers who need it with reintegration back into society upon their return. One way in which

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<sup>16</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, pp. 225-230

<sup>17</sup> ILO Multilateral Framework on Labour Migration, best practice Nos. 95, 96.

<sup>18</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, pp. 56-58.

they can do this and further development at the same time is to assist workers in investing their remittances in a productive way, including by setting up enterprises or micro-enterprises. Sustainable socio-economic reintegration should be encouraged in order to further long-term benefits for development. A good practice is shown by Senegal, which has an office within the Ministry of Foreign Affairs to facilitate migrant workers' return and reintegration.<sup>19</sup> Mexico has a fund-matching remittance investment program in which approved proposals by migrant workers to use their remittances for infrastructure development, public services, or job creation receive matching funds from the government.<sup>20</sup>

For origin countries which have large numbers of citizens leaving for work in other countries, the underlying issue is a development issue. That is, it is developing countries' fundamental responsibility to increase employment opportunities at home so that their citizens have the option of *not* having to migrate to other countries to find work—so that they migrate out of choice and not necessity or despair. Essential roots of extensive out-migration lie in deficits in decent work in countries of origin, reflected by unemployment, underemployment, and poverty. The creation of more productive, freely chosen employment and decent work will allow citizens the right to remain in their own countries for work if they wish.

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<sup>19</sup> ILO Multilateral Framework on Labour Migration, best practice No. 125.

<sup>20</sup> *Idem*, best practice No. 121.

## 5. RESPONSIBILITIES OF DESTINATION COUNTRIES

### Pre-departure

While destination countries have a much lesser capacity to protect migrants before they are within their borders, they can nevertheless engage in bilateral dialogue and cooperation to help protect them during that stage. For example, they can provide information to origin countries about known, unethical recruiters and abusive employers, so that immediate preventive action can be taken. They can work with origin countries to establish computerized recruitment services that are easier to supervise, can more rapidly adapt to changing labour needs, and can protect against use by unethical recruiters and lessen their role in labour migration. Destination countries can also provide training and orientation in migrant's home countries before they leave. A good practice in this regard is a pre-departure training program for persons migrating to Italy for work, which consists of 40 hours of orientation and 80 hours of language training. Legal, labour market, cultural and social, and psycho-social orientation is covered in the orientation portion of the training.<sup>21</sup>

Destination countries can engage in bilateral and multilateral dialogue and cooperation to combat irregular migration, trafficking, and smuggling, including by coordinating their police efforts to ensure that those who engage in this unlawful conduct do not evade detection due to a lack of international coordination. When in need of foreign workers, they can further their protection by entering into bilateral agreements with origin countries which conform to international human rights and labour standards, as described earlier. Provisions on social security portability can be included within bilateral and multilateral agreements, such as those contained in the European Union legal framework, which grants portability to

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<sup>21</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, p. 224.

nationals of both the EU and third countries.<sup>22</sup> Ten countries have entered into the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, which sets forth obligations of destination and origin countries.<sup>23</sup>

Destination countries should guarantee labour and social rights for migrants entering and working under temporary or circular migration schemes as well. These schemes, which are being used for workers of all skill levels, vary greatly and may or may not be the subject of bilateral agreements. They can be based on a country's system of granting temporary work permits or upon an arrangement providing for workers return home after a specified period of employment. The principle of equal treatment between migrant and national workers should be respected to guard against the development of substandard conditions. A good practice in this area is a memoranda of understanding which Canada has with Mexico and Caribbean countries for temporary migrant agricultural workers to assist them with entry and which requires minimum employment and welfare standards.<sup>24</sup>

## Post-departure and work

After migrant workers enter their borders is when destination countries' primary responsibility for protecting their rights begins. Written information in a language migrant workers can understand on labour and employment rights, social and welfare rights, and where to seek assistance should be provided to them. If migrants have been transported to the country and abandoned without work, they should be assisted with accommodation and help in returning home. Trafficking victims should similarly receive the help they need to escape their traffickers. For example, the Italian government has set up a toll-free telephone hotline to enable immediate reporting of cases of trafficking.<sup>25</sup>

Destination countries should ensure that migrant workers are covered by their labour and employment laws. In most countries, employment and labour laws cover all workers, including migrant workers, on the same

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<sup>22</sup> ILO Multilateral Framework on Labour Migration, best practice No. 71.

<sup>23</sup> <http://www.aseansec.org/19264.htm>.

<sup>24</sup> ILO Multilateral Framework on Labour Migration, best practice No. 41; OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, p. 118.

<sup>25</sup> An Information Guide, Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers, ILO, 2003, Booklet 6, p. 83.

basis, and in some countries discrimination against them in employment is prohibited.<sup>26</sup> However, there may be other, inconsistent laws within the same country, resulting in migrant workers having fewer rights than nationals, even when they perform the same work. If not currently covered, those migrant workers especially vulnerable and with little protection, such as domestic workers, should be included. Laws and regulations should provide equal treatment of regularly admitted migrant workers with national workers in the workplace. Whenever possible, restrictions on migrant workers being tied to a single employer should be removed, as increased dependency and exploitation can result when workers have to choose between working under abusive conditions or not working at all and leaving the country. Thus, for example, in the United Kingdom, migrant domestic workers are permitted to change their employers. Those who have left their original employer because of abuse or exploitation and are in an irregular situation, may apply for regularization.<sup>27</sup>

Migrant workers are entitled to fundamental workers' rights, such as the right to freedom of association and the right to be free from discrimination, to which national workers are entitled. They are also entitled to safe and healthy working conditions and reasonable working hours. Destination countries should ensure that migrant workers are not paid lower wages than national workers for the same work, that their wages are paid directly to them, and that they are paid all wages due, particularly before they leave the country, when it becomes almost impossible to collect them. If necessary to stay in the country to collect unpaid wages, they should be permitted to do so. Establishing remittance services where migrant workers can transfer their earnings home safely and at low cost, helps protect the wages of migrant workers as well. Such services exist in various countries.<sup>28</sup> The retention of migrant workers' identity documents by others should be prohibited, as is the case in Taiwan, Republic of China.<sup>29</sup>

Attention should be paid to those migrant workers who are especially vulnerable, such as those in irregular status and women. While migrant workers in irregular status may not have the right to remain in the country on the same basis as migrants in regular status, they nevertheless have human rights and workplace rights as workers. Regardless of their legal

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<sup>26</sup> ILO Multilateral Framework on Labour Migration, best practice No. 69.

<sup>27</sup> ILO Multilateral Framework on Labour Migration, best practice No. 82.

<sup>28</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, p. 75; ILO Multilateral Framework on Labour Migration, best practice Nos. 117, 119, 122, 123, 124, 132.

<sup>29</sup> *Idem*, best practice No. 80.

status, employers, and indirectly the destination country as well, profit from the labour they have performed and have a duty to respect their rights as human beings and as workers. Destination countries should prevent employers from treating them as a lower class of workers, undercutting their own citizens, and creating undesirable jobs that their citizens will not accept. Women migrant workers often face “double” discrimination, as women and as migrants.<sup>30</sup> In recognition of this, Canada applies a gender based analysis to new migration policies to ensure that gender considerations are taken into account during policy-making.<sup>31</sup> Women may be especially isolated or vulnerable to abuse due to their gender and should be protected from violence and sexual abuse. Conditions for domestic workers should be improved, as they often have very long work days and may not even have days off.

Destination countries should ensure that laws and regulations protecting migrant workers are actually enforced and are effective deterrents. For example, there should be regular inspections of working and living conditions and supervision of compliance with employment contracts and with bilateral agreements. In Mauritius, the Ministry of Labour has a Special Migrant Workers Unit, which inspects the working, housing, and food conditions of migrant workers, who have the same rights as nationals.<sup>32</sup> Jordan has recently strengthened its labour inspection program in the garment sector, which is largely staffed by migrant workers, to increase compliance with labour laws. In a few instances, factories where serious violations of workers’ rights were committed were shut down.<sup>33</sup> Mistreatment of workers should lead to effective sanctions. Where the rights of migrant workers have been violated, all persons involved should be legally accountable to prevent workers’ from being left without any remedy. A good practice in this area is a Portuguese law holding both the direct employer and the general contractor responsible for the payment of wages to migrant workers. If the employer fails to pay wages due, the general con-

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<sup>30</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, p. 20.

<sup>31</sup> GFMD Background Paper, Roundtable 1, Session 1.2, Brussels, 2007, p. 9; [www.gfmd-fmmd.org/en/system/files/Background+Paper+Session+1.2+EN.pdf](http://www.gfmd-fmmd.org/en/system/files/Background+Paper+Session+1.2+EN.pdf); [http://www.swc-cfc.gc.ca/pubs/gbaperformance/index\\_e.html](http://www.swc-cfc.gc.ca/pubs/gbaperformance/index_e.html).

<sup>32</sup> ILO Multilateral Framework on Labour Migration, best practice No. 74; OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies, Mediterranean Edition, 2007, p. 144.

<sup>33</sup> Labor Compliance in Jordan’s Apparel Sector, Actions to Date and Next Steps, Ministry of Labor, Amman, Hashemite Kingdom of Jordan, March 2007, <http://www.mol.jo/report/ActionPlan-FINALMarch30.pdf>.

tractor must pay.<sup>34</sup> Ensuring accountability for mistreatment of migrant workers may require cooperation with origin and transit countries.

Complaint procedures and remedies for violations should be freely available to migrant workers, and destination countries should ensure that they are aware of their right to complain and seek remedies if their rights are violated. They should have the right to voice grievances without fear of intimidation or retaliation. Destination countries should refrain from engaging in mass detentions and deportations of migrant workers. Instead, they should engage in dialogue with origin countries in the interest of finding mutually satisfactory solutions to problems involving large groups of migrant workers. Legal services should be available to migrant workers, if necessary. Trade unions and civil society should be permitted to promote the welfare of migrant workers and assist them in asserting their rights.

With regard to social welfare, health insurance and medical care should be available to migrant workers. Measures to prevent social exclusion, discrimination and xenophobia in the larger society and encourage the recognition of migrant workers as needed and productive members of society will increase social cohesion. This is of undeniable benefit to destination countries. At all times, destination countries should be cooperative and responsive to concerns and reports of abuse, whether made by origin countries, through their consular services or otherwise, by private parties concerned with migrant workers, or by migrant workers themselves.

Migrant resource centers in destination countries can be of great assistance to workers. In Portugal, the Information and Resource Centre for Migrants, among other things, provides information to migrant workers on their rights and assists them with processing requests for family reunification.<sup>35</sup> Trade unions operate information centers in Finland and Estonia to provide information and resources to migrant workers and to prevent a two-track labour market from developing with lower standards for migrant workers than nationals. Spanish trade unions operate centers throughout the country to provide information and assistance.<sup>36</sup>

Other rights and protections for the families of migrant workers should be respected when migrants are accompanied by them. For example, their children must have the right to education, and their families the right to medical care and decent housing. When migrants become permanent settlers in

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<sup>34</sup> Portuguese Ministry of Internal Administration, Law Decree No. 34/2003, 25 February 2003, Art. 144.4.

<sup>35</sup> OSCE, IOM, ILO Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination, 2006, p.148.

<sup>36</sup> ILO Multilateral Framework on Labour Migration, best practice Nos. 90, 112.

their new countries, those countries should give them the same rights as nationals as much as possible, so that they can fully integrate into the society. They should have the opportunity to advance in their careers, just as citizens do. Non-discrimination and integration enable destination countries to take full advantage of migrant workers' capabilities.

## Return

Even when migrant workers are finished with their work and return home, the destination country is involved in facilitating the termination of work and in making sure that the travel to the origin country is as secure as possible. In cases where migrant workers have been contributing to pension schemes, countries of destination and origin have to explore channels for portability of social security benefits. There are also ways in which those countries can assist the migrant workers to reintegrate into their own countries and further develop there. For example, they can participate in resettlement support programs and co-development schemes. France, for example, links migration and development policies and provides development assistance to francophone Africa. Germany, Italy, and Spain have similar programs with other countries from which their migrant workers come.<sup>37</sup> Destination countries can also assist migrant workers in transferring their skills and investments to small businesses in their countries.

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<sup>37</sup> *Idem*, best practice No. 1.



## 6. INTERNATIONAL STANDARDS PROTECTING THE RIGHTS OF MIGRANT WORKERS

International standards providing rights and protection during all stages of the labour migration process are available to guide countries in formulating and implementing national law and policy. They are contained in international and ILO Conventions and other international instruments, such as human rights instruments. Countries may wish to ratify and implement the terms of these international instruments for the benefit of migrant workers. When all parties follow the same rules, there is a more equal playing field. The use of reporting mechanisms under the human rights instruments and international conventions on behalf of migrant workers advances their rights. Even when countries have not ratified international instruments beneficial to migrant workers, they can adhere to their terms. International human rights law contains the most basic rights, which apply to all human beings, such as the 1948 Universal Declaration of Human Rights<sup>38</sup> setting forth rights held by all persons “without distinction of any kind,” the 1966 International Covenant on Economic, Social and Cultural Rights,<sup>39</sup> and the 1966 International Covenant on Civil and Political Rights.<sup>40</sup>

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<sup>38</sup> <http://www.unhchr.ch/udhr/lang/eng.htm>.

<sup>39</sup> [www.ohchr.org/english/law/cesr.htm](http://www.ohchr.org/english/law/cesr.htm).

<sup>40</sup> [www.ohchr.org/english/law/ccpr.htm](http://www.ohchr.org/english/law/ccpr.htm). These and the other four international human rights treaties are monitored by the human rights treaty bodies, which can advance the protection of the rights of migrant workers. <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>. Those others are the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, <http://www.ohchr.org/english/law/cerd.htm>, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, <http://www.ohchr.org/english/law/cedaw.htm>; the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www.ohchr.org/english/law/cat.htm>; and the 1989 Convention on the Rights of the Child, <http://www.ohchr.org/english/law/crc.htm>.

There are three international Conventions specifically addressing the rights of migrant workers. Two are ILO Conventions, the Migration for Employment Convention (Revised), 1949 (No. 97)<sup>41</sup> and the Migrant Workers (Supplementary Provisions) Convention (No. 143),<sup>42</sup> each of which have accompanying Recommendations.<sup>43</sup> Convention No. 97 applies to migrant workers in regular status and covers issues involving their departure, journey, and reception, and transfer of earnings. Two Annexes address recruitment, placement, and conditions of labour. This Convention requires that migrants in regular status receive treatment no less favourable than those of nationals in certain matters pertaining to employment. Convention 143, on the other hand, focuses on labour migration under abusive conditions and equality of opportunity and treatment. It addresses the need to suppress clandestine movements of migrants and their employment in irregular status by taking action against their organizers and employers (not the workers themselves). It also provides some rights to migrant workers in irregular status arising out of their employment.

The third international Convention specifically pertaining to migrant workers is the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.<sup>44</sup> This Convention covers the entire migration process and provides many areas of protection for migrant workers and their families. In addition to issues related to employment, it includes provisions on human rights, slavery and forced labour, liberty and security of person, protection against violence, confiscation of identity documents, expulsion, medical care, the education of migrant workers' children, family reunification, transfer of earnings, recruitment, the right to the protection and assistance of their countries' consular services, and other issues. Another Convention related to the situation of migrant workers is the 2000 Convention against Transnational Organized Crime, and its two protocols, 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.<sup>45</sup>

While these Conventions are directed toward workers' *migrant* status, all ILO Conventions generally apply to them as well, because of their status as *workers*. There are eight fundamental ILO Conventions which are consid-

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<sup>41</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C097>.

<sup>42</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143>.

<sup>43</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R086> and <http://www.ilo.org/ilolex/cgi-lex/convde.pl?R151>

<sup>44</sup> <http://www.ohchr.org/english/law/cmw.htm>.

<sup>45</sup> [http://www.unodc.org/pdf/crime/a\\_res\\_55/res5525e.pdf](http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf).

ered human rights at work. They cover freedom of association and the right to collective bargaining, the abolition of forced labour, equality and non-discrimination in employment and occupation, and the elimination of child labour.<sup>46</sup> The Private Employment Agencies Convention, 1997, No. 181,<sup>47</sup> is of particular relevance to the protection of migrant workers, as it provides for a system of licensing or certification of private recruiters, rights for employees who use their services, and protection against abuses.

The 2006 ILO Multilateral Framework on Labour Migration, Non-binding principles and guidelines for a rights-based approach to labour migration,<sup>48</sup> provides, as evident by its title, *rights-based* practical guidance to governments and to employers' and workers' organizations with regard to the development, strengthening and implementation of national and international labour migration policies. It has been drawn from principles contained in relevant international instruments, promotes the rights of migrant workers, and provides guidance in the prevention of and protection against abusive migration practices. It additionally addresses decent work, means for international cooperation on labour migration, global knowledge base, effective management of labour migration, the migration process, social integration and inclusion, and migration and development.

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<sup>46</sup> Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C087>; Right to Organise and Collective Bargaining Convention, 1949 (No. 98), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C098>; Forced Labour Convention, 1930 (No. 29), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>; Abolition of Forced Labour Convention, 1957 (No. 105), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C105>; Equal Remuneration Convention, 1951 (No. 100), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C100>; Discrimination (Employment and Occupation) Convention, 1958 (No. 111), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>; Minimum Age Convention, 1973 (No. 138), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>; Worst Forms of Child Labour Convention, 1999 (No. 182), <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182>.

<sup>47</sup> <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C181>.

<sup>48</sup> [http://www.ilo.org/public/english/protection/migrant/download/multilat\\_fwk\\_en.pdf](http://www.ilo.org/public/english/protection/migrant/download/multilat_fwk_en.pdf); available in Arabic, Chinese, English, French, Russian, and Spanish.



## 7. SUMMARY AND CONCLUSION

The development benefits of labour migration depend upon the degree to which migrants are protected and empowered by the origin countries from which they come and the destination countries in which they live and work. Development gains accrue to both origin and destination countries. There are three basic stages in the labour migration process during which migrants' rights must be protected. These are the pre-departure stage, the post-departure and work stage, and the return stage. While origin and destination countries have a shared responsibility to protect the rights of migrant workers through all of these stages, their responsibilities differ. That is because different events are taking place before and after departure, and because countries have the ability to exercise more supervision in their own countries and much less ability to control what takes place in another. The need to protect migrant workers during the various stages of their migration experience and the ways in which they can be protected should be seen from the standpoint of origin and destination countries, keeping in mind international cooperation to further these ends.

Specific issues and challenges include the formulation and implementation of labour migration policies that respond to the needs of the labour market, coherence between migration laws and labour laws, and respect of rights of all migrant workers and their families. Steps towards the effective protection of migrant workers can take into consideration the ratification and effective implementation of ILO fundamental Conventions and Conventions on migrant workers (C.97 and C.143), the use of guidelines and principles provided by the ILO Multilateral Framework on Labour Migration, the promotion of labour and social security bilateral agreements between sending and receiving countries, the monitoring through labour inspection systems, the reduction of cost of remittances and recognition and efficient use of skills.

Examples of good practices exist, which have been implemented in different regions of the world and can be replicated by other countries. These examples show that development gains from migration for both countries of

origin and destination, as well as migrant workers themselves, are inseparable from the protection of their rights. ILO and UN Conventions and the ILO Multilateral Framework on Labour Migration provide guidance in formulating and implementing national law and policy for the protection of migrant workers.

## **ANNEX**

### ***Human rights instruments***

- 1948 Universal Declaration of Human Rights
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination
- 1966 International Covenant on Economic, Social and Cultural Rights
- 1966 International Covenant on Civil and Political Rights
- 1979 Convention on the Elimination of All Forms of Discrimination Against Women
- 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1989 Convention on the Rights of the Child

### ***United Nations Convention specific to migrant workers***

- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

### ***United Nations Convention addressing trafficking and smuggling***

- 2000 UN Convention against Transnational Organized Crime, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol against the Smuggling of Migrants by Land, Sea and Air

### ***ILO Instruments specific to migrant workers***

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

Migrant Workers Recommendation, 1975 (No. 151)

Multilateral Framework on Labour Migration, Non-binding principles and guidelines for a rights-based approach to labour migration

### ***Fundamental ILO Conventions***

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Forced Labour Convention, 1930 (No. 29)

Abolition of Forced Labour Convention, 1957 (No. 105)

Equal Remuneration Convention, 1951 (No. 100)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Minimum Age Convention, 1973 (No. 138)

Worst Forms of Child Labour Convention, 1999 (No. 182)

### ***Other ILO Conventions of particular relevance to migrant workers***

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Labour Inspection Convention, 1947 (No. 81)

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

Protection of Wages Convention, 1949 (No. 95)

Social Security (Minimum Standards) Convention, 1952 (No. 102)

Plantations Convention, 1958 (No. 110)

Equality of Treatment (Social Security) Convention, 1962 (No. 118)

Employment Policy Convention, 1964 (No. 122)

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Minimum Wage Fixing Convention, 1970 (No. 131)

Nursing Personnel Convention, 1977 (No. 149)

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

Maintenance of Social Security Rights Convention, 1982 (No. 157)

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)

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

Private Employment Agencies Convention, 1997 (No. 181)

Maternity Protection Convention, 2000 (No. 183)

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