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Common interests, shared goals: Promoting decent work from Asia and Africa to the Middle East

Background Paper to the Interregional Consultation on
Labour Migration and Mobility from Asia and Africa
to the Middle East

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The Arab States of the Middle East region (referred to hereafter as 'Arab States') hosted over 30 million international migrants (including refugees) in 2015.¹ International migrants are particularly predominant in the countries of the Gulf Cooperation Council (GCC), where more than 25 million international migrants lived and worked in 2015. The majority of these migrants are migrant workers² and come from Asia (with India, Bangladesh and Pakistan offering the biggest stock of migrants in the Arab States), although numbers from a diverse range of countries in Africa are now on the rise (with particularly high numbers coming from, amongst others, Sudan, Somalia, Ethiopia and Kenya).³ The migrant workforce is expected to rise further given continuing labour market shortages in the Arab States and a rapidly growing global labour force in countries of origin, which increases by 80 million young people every year.⁴

The Global Compact for Safe, Orderly and Regular Migration (hereafter 'the GCM') that the international community committed to developing by the end of 2018 has created momentum and urgency for dialogue on key mechanisms that can help to ensure well-governed migration that benefits migrants and their families, employers, and both countries of origin and destination. A series of global thematic sessions, regional consultations, and regional and national multi-level stakeholder consultations are taking place as part of the preparations for the development of the GCM.⁵ Discussions on the GCM have also taken place in relevant regional consultative processes, such as the Arab Regional Consultative Process on Migration and Refugees' Affairs, the Abu Dhabi Dialogue and the Colombo Process. However, there have been few opportunities for a holistic exchange of challenges and good practices between the tripartite partners of the two largest regions of origin (Asia and Africa), along with their key destination labour market (Arab States) on the topic of labour migration.⁶ Moreover, when interregional dialogues on international migration take place, key stakeholders, such as Ministry of Labour and social partners may not be directly involved in discussions and decision-making.

¹ United Nations Department for Economic and Social Affairs (UNDESA) (2015), Trends in international migration stock: The 2015 revision at <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.html>.

² The term 'migrant worker' is used throughout this concept note in accordance with international standards, in particular, Article 2 of the International Convention on the Protection of all Migrant Workers and Members of their Families (1990), which defines a 'migrant worker' as a "person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". Similar definitions are found in the ILO Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). It is important to note that governments in the Arab States view most labour migration as temporary and tend to prefer to use the term 'temporary foreign contract labourers' or 'temporary expatriate workers'.

³ UNDESA (2015), Trends in international migration stock: The 2015 revision, above note 1 and Malit, F. and Al Youha, A. (2016), 'Kenyan migration to the Gulf countries: Balancing economic interests and worker protection' at <http://www.migrationpolicy.org/print/15632#.W0tDGK103cs>.

⁴ The population of Africa is forecast to increase from about 1.1 billion in 2015 to 4.4 billion by the end of the century. UNDESA (2015), The World population prospects: The 2015 revision at https://esa.un.org/unpd/wpp/publications/files/key_findings_wpp_2015.pdf.

⁵ These regional meetings are scheduled for the Middle East and North Africa (MENA) region in Beirut on 26-27 September 2017, for Africa in Addis Ababa on 18-20 October 2017, and for Asia in Bangkok on 6-8 November 2017, and a global thematic meeting on decent work and mobility in Geneva on 12-13 October 2017.

⁶ This meeting aims also to build on the ILO Inter-Regional Knowledge Sharing Forum: Good practices and lessons learn in realizing fair migration agenda for migrant domestic workers in Africa, Arab States and Asia, held in Antananarivo, Madagascar on 5-7 May 2016, and on the Inter-regional Experts Meeting on Realizing a Fair Migration Agenda: Labour Flows between Asia and the Arab States, held in Kathmandu, Nepal on 3-4 December 2014.

The projected growth of labour migration and mobility from both Asia and Africa creates an imperative to continue to tackle some of the major risks of migration, while also learning from each region's good practices, including in regulating a complex recruitment system of labour recruiters and intermediaries, addressing limited forms of worker protection, and improving access to justice for migrant workers. The Interregional Consultation on Labour Migration and Mobility from Asia and Africa to the Middle East (hereafter, the 'Interregional Consultation') aims to bring together leading experts from tripartite delegations to make a technical assessment of key challenges and proposed ways forward to realise fair migration. The deliberations will focus on exploring (a) how decent work for migrant workers can be achieved, (b) how the prosperity that migrant workers help to generate can be shared more equitably, and (c) how migrant workers can contribute more optimally to sustainable development in line with the 2030 Agenda for Sustainable Development.

This Background paper aims to inform the Interregional Consultation, to provide questions for discussion, and possible ideas for actionable commitments, which could form part of the GCM negotiations going forward. Part 1 provides an overview of stocks and flows of migrants (and where possible, migrant workers) from Asia and Africa to the Arab States, noting the challenges of limited availability of data. Part 2 sets out the key themes of the Interregional Consultation, namely: (a) fair recruitment, (b) decent work for migrant workers, (c) addressing irregularity, and (d) governance of labour migration. The Paper discusses the challenges in the Asia and Africa to Arab States corridors with respect to these thematic areas, with reference to relevant international standards, and elaborates promising practices to address these challenges.

Part 1: Overview of labour migration in the interrelated regions

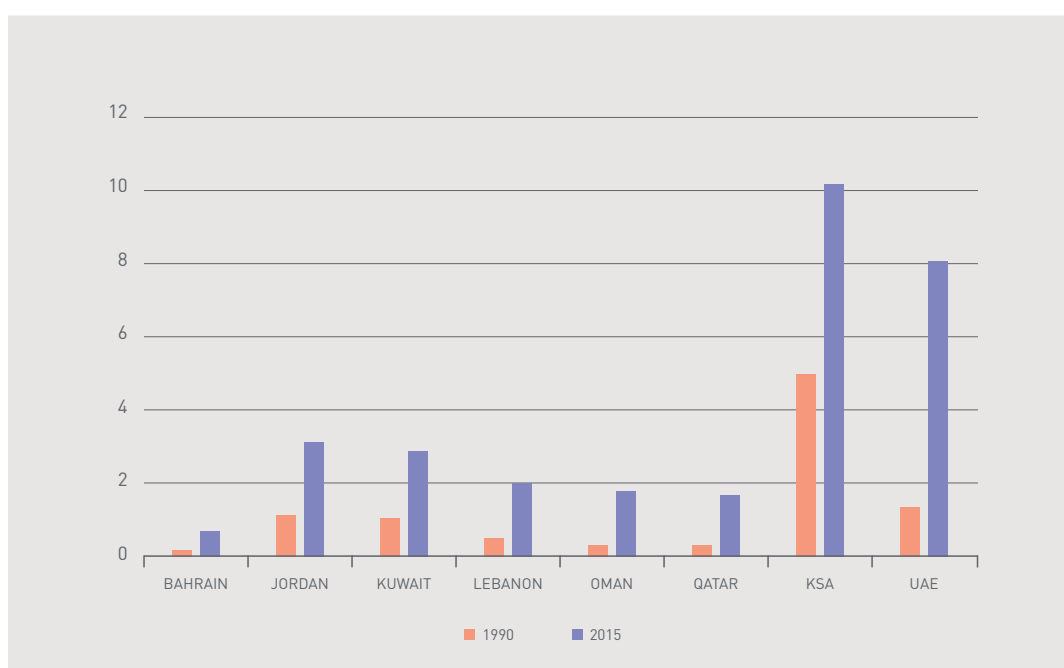
1.1 INCREASE OF MIGRATION FLOWS TO THE ARAB STATES

The Arab States region is one of the main regions of destination for international migrants. While there is a dearth of reliable data on migration across the Asia and Africa to Arab States corridors (in particular in relation to irregular migration), some relevant statistics, sex-disaggregated where possible, are presented and discussed below.

In 2015, the Arab States hosted nearly 35 million international migrants, including refugees,⁷ compared to 9.8 million in 1990, which represents a threefold increase in a generation.

The GCC countries hosted by far the largest migrant population in the Arab region and one of the largest worldwide. The total migrant stock of the sub-region – at 25.4 million – has more than tripled during the last 15 years, with the Kingdom of Saudi Arabia (KSA) hosting the largest number of migrants in the region as well as being the fourth largest destination country worldwide,⁸ followed by the United Arab Emirates (UAE), which is the world's sixth largest destination country.⁹ As Figure 1 illustrates, the UAE saw the most significant increase: between 1990 and 2015, the number of international migrants had risen from 1.3 million to 8.1 million.

FIGURE 1: INCREASE OF THE STOCK OF INTERNATIONAL MIGRANTS BETWEEN 1990 AND 2015 (MILLIONS)



Source: Data from UN-DESA, 2015.

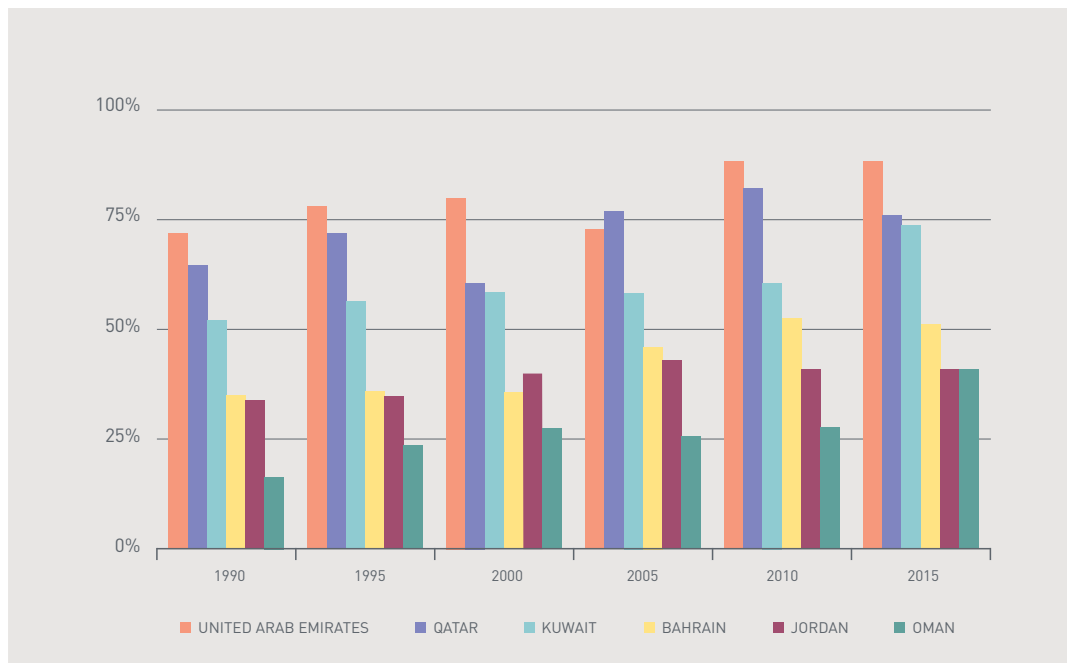
⁷ Data in this section is based on UNDESA and the definition by the United Nations Economic and Social Commission for Western Asia (UNESCWA) of the Arab States region, which comprises Gulf countries, Mashreq countries and Algeria, Libya, Morocco, and Tunisia; and Arab Least Developed Countries (Arab LDCs): Comoros, Djibouti, Mauritania, Somalia, Sudan, and Yemen. The definition of international migrants used by UNDESA and UNESCWA encompasses both migrant workers, other international migrants, including those in an irregular situation, as well as persons from refugee-producing countries, including (but not limited to) registered refugees.

⁸ UNESCWA and IOM (Forthcoming), 2017 Situation Report on International Migration – Achieving Migration-Related SDGs. Data from 2015 showed 10.2 million migrants in KSA.

⁹ UNESCWA and IOM (Forthcoming), 2017 Situation Report on International Migration, above note 8. Data from 2015 showed 8.1 million migrants in the UAE.

The number of international migrants in the Arab States is not only high in absolute terms, but also as a share of the total population. With the exception of Oman and KSA, migrants make up the majority of the population in GCC countries. In the UAE, migrants comprise 88 per cent of the total population, while in Qatar and Kuwait they make up 75 per cent and 73 per cent of the population, respectively, and in Bahrain 51 per cent [see Figure 2].¹⁰

FIGURE 2: MIGRANTS AS A PERCENTAGE OF THE TOTAL POPULATION, IN COUNTRIES WITH THE HIGHEST MIGRANT CONCENTRATION IN THE ARAB REGION, 1990-2015



Source: United Nations Economic and Social Commission for Western Asia (UNESCWA) and International Organization for Migration (IOM) (Forthcoming), 2017 Situation Report on International Migration (based on data from UNDESA, 2015).

A large proportion of migrants in the Arab States are in the labour force, with data from 2013 showing a labour force participation rate of more than 89 per cent – the highest of any sub-region in the world.¹¹ In some Gulf countries, the figures are even higher. In the UAE and Qatar, more than 93 and 94 per cent of migrants respectively are migrant workers (as of the last quarter of 2013).¹²

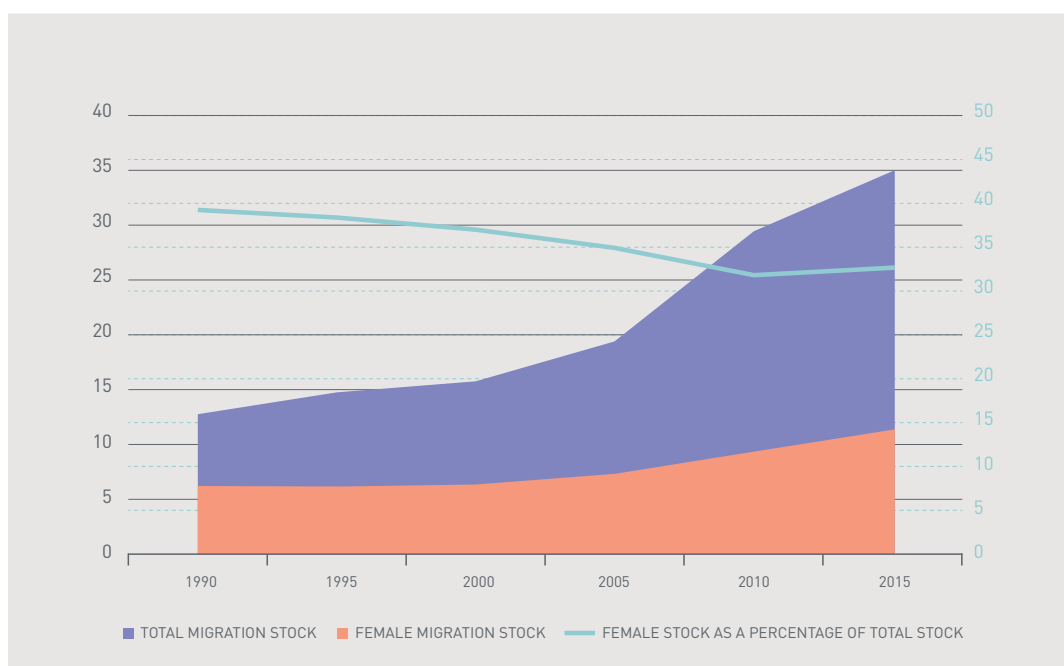
The number of women migrants and refugees in the Arab region doubled from 5.6 million in 1990 to 11.6 million in 2015. However, the proportion of women among the total stock of migrants and refugees decreased from 39 per cent to 33 per cent during the same period (Figure 3). The data also show large differences in the proportion of women migrants and refugees between sub-regions, as well as by country of origin. For example, the proportion of women migrants in the Gulf was 38 per cent in 2015 (in contrast to nearly half of all migrants and refugees in the Mashreq) but the rate is highly varied depending on the country of origin (see Table 1).

¹⁰ UNESCWA and IOM (Forthcoming), 2017 Situation Report on International Migration, above note 8.

¹¹ ILO (2015), ILO global estimates on migrant workers: Results and methodology, Geneva.

¹² Gulf Labour Markets and Migration (GLMM), Demographic and Economic Database, at <http://gulfmigration.eu/category/database-demoeco/>.

FIGURE 3: SHARE OF WOMEN MIGRANTS AND REFUGEES AMONG TOTAL MIGRANT AND REFUGEE STOCK IN THE ARAB REGION, 1990-2015 (MILLIONS)



Source: UNESCWA and IOM (Forthcoming), 2017 Situation Report on International Migration (based on data from UNDESA, 2015).

TABLE 1: GENDER COMPOSITION OF MIGRANTS IN THE SIX GCC COUNTRIES FROM THE SEVEN MAIN ORIGIN ASIAN COUNTRIES

COUNTRY	YEAR	MALE	FEMALE	TOTAL
BANGLADESH¹	2016	480,106	91,922	572,028
%		83.9	16.1	100.0
INDIA⁴	-	-	-	-
INDONESIA²	2014	186,243	243,629	429,872
%		43.3	56.7	100.0
NEPAL¹	2014-15	478,199	21,421	499,620
%		95.7	4.3	100.0
PAKISTAN⁴	-	-	-	-
PHILIPPINES^{2,3}	2010	154,677	185,602	340,279
%		45.5	54.5	100.0
SRI LANKA²	2015	172,630	90,677	263,307
%		65.6	34.4	100.0

¹ Numbers of migrants going to GCC countries.

² Numbers of migrants going to all countries of the world, including the GCC.

³ New hires.

⁴ Data for India and Pakistan unavailable.

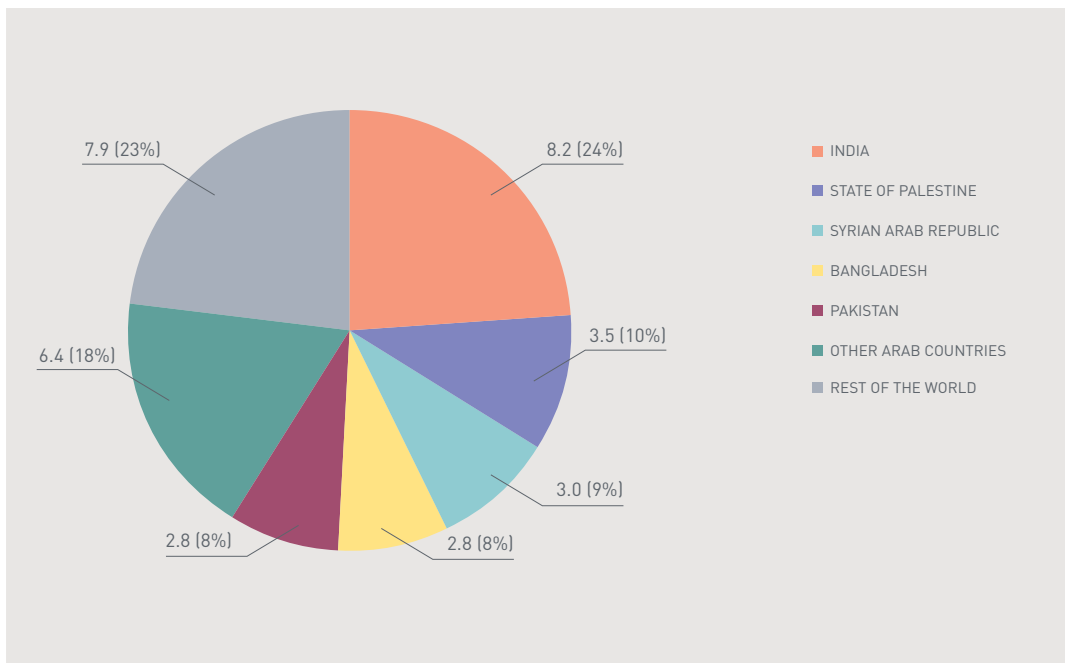
Source: Shah, N. (Forthcoming), *Emigration Policies of Major Asia Countries Sending Temporary Labour Migrants to the Gulf*, Conference Paper, Cambridge Gulf Research.

While helping to fill the significant demand for labour in GCC States, labour migration is also, at times, promoted openly by origin countries, as it offers migrants the opportunity to escape poverty and unemployment, acquire additional skills, and contribute to development, including through remittance flows.

1.2 MIGRANT WORKERS PREDOMINANTLY COME FROM ASIA AND INCREASINGLY FROM AFRICA

The majority of international migrants in the Arab States come from Asia, and the vast majority of these migrants come for work. Indeed the number of international migrants from Asia to the Arab States has more than tripled, from 5.7 million in 1990 to 19 million in 2015.¹³ The largest stock of international migrants in the Arab States originates from India: 8.2 million representing nearly one quarter of all migrants and refugees in the region, whereas Bangladesh (2.82 million) and Pakistan (2.8 million) are the fourth and fifth largest origin countries (see Figure 4). Indonesia (1.8 million) and the Philippines (1.5 million) also send a large number of their nationals to the Arab States.

FIGURE 4: MAIN COUNTRIES OF ORIGIN OF MIGRANTS IN THE ARAB REGION, 2015 (MILLIONS)



Source: UNESCWA and IOM (Forthcoming), 2017 Situation Report on International Migration (based on data from UNDESA, 2015).

South Asian migrants are particularly likely to travel to Gulf countries. For example, more than 95 percent of migrant workers from Pakistan travelled to Gulf countries in 2015,¹⁴ as did 90 per cent of migrant workers from India,¹⁵ and 84 per cent of Sri Lankan migrant workers.¹⁶ For Nepal and Bangladesh however, 50 per cent of their migrant workers travel to the Gulf countries for work.¹⁷ The proportion of migrants from Asia is significantly larger than from Africa in the Gulf

¹³ UNDESA (2015), Trends in international migration stock: The 2015 revision, above note 1.

¹⁴ Ministry of Overseas Pakistanis and Human Resource Development (2016), Labour migration from Pakistan: 2015 status report, ILO.

¹⁵ Sasikumar, S.K. and Timothy, R., From India to the Gulf Region: Exploring Links Between Labour Markets, Skills and the Migration Cycle, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) and ILO, New Delhi.

¹⁶ ILO and IOM (2017), Labour Market Trends & Skills Profiles of Sri Lankan Migrant Workers in the Construction Industry in GCC Countries, Colombo.

¹⁷ UNESCWA and IOM (Forthcoming), 2017 Situation Report on International Migration, above note 8.

countries. For example, in 2015, the UAE and Kuwait hosted 6.2 million and 2 million migrants from Asia respectively, whereas the number of migrants from Africa amounted to 156,089 and 64,485 in the UAE and Kuwait respectively.¹⁸

As observed in the Introduction, labour migration from Africa to the Arab States is on the rise with particularly high numbers coming from, amongst others, Sudan, Somalia, Ethiopia and Kenya.¹⁹ Although data is limited, official records show around 500,000 Ethiopian migrant workers migrated regularly between 2011 to 2013 to the Gulf countries; however, it is estimated that double this figure migrate irregularly.²⁰ Additionally, there were estimated to be at least 50,000 Ethiopian migrant domestic workers in Lebanon in 2016, despite the Ethiopian government's ban on sending domestic workers to that country since 2006.²¹

Data also suggests that there are over 636,000 Sudanese migrants in Gulf Countries,²² as well as between 100,000 and 300,000 Kenyan migrants – mostly low-skilled workers – with the Kenyan migrant population being one of the fastest growing low-skilled migrant worker populations in Gulf countries.²³

Although most African migration is intra-regional, several push and pull factors encourage migrant workers from Africa to move to the Arab States, including the absence of sufficient regular migration pathways to the European Union (EU), significant demand for labour coming from GCC countries, as well as high unemployment rates in African countries of origin. This increase in migration serves to alleviate the pressure on local labour markets.²⁴ Further, the increasing demand for minimum wages or 'minimum referral wages'²⁵ promoted by countries of origin in Asia for their nationals, and the deepening demand from employers in the Gulf for labour, have prompted Gulf governments to encourage other migrant worker flows, particularly from the African continent.²⁶ Some African countries have also been opening more regular migration channels for their nationals to work in the Gulf, including through conclusion of bilateral agreements.²⁷

¹⁸ UNDESA (2015), Total migrant stock at mid-year by origin and by major area, region, country or area of destination, 2015.

¹⁹ UNDESA (2015), Trends in international migration stock: The 2015 revision, above note 1, and Malit, Jr. F. and Al Youha, A. (2016), 'Kenyan migration to the Gulf countries: Balancing economic interests and worker protection' at <http://www.migrationpolicy.org/print/15632#.W0tDgK103cs>.

²⁰ Estimates by the Ethiopian Ministry of Labour and Social Affairs (MoLSA) of the number of Ethiopian migrant workers that lawfully migrated to Saudi Arabia indicated more than 160,000 in 2012, but noted that there are an additional 300,000-350,000 Ethiopians in an irregular situation in the Gulf countries. RMMS, 'Responses to Mixed Migration in the Horn of Africa & Yemen: Policies and Assistance Responses in a Fast-changing Context,' Nairobi, Regional Mixed Migration Secretariat, 2013.

²¹ Ministry of Labour (2016), Data on migrant domestic workers in Lebanon.

²² UNDESA (2015), Trends in international migration stock: The 2015 revision, above note 1.

²³ Malit, Jr. F. and Al Youha, A. (2017), 'Labor Protection in the Gulf Countries: A Comparative Analysis of Kenyan Governmental Dilemmas in the United Arab Emirates and Saudi Arabia' at <http://digitalcommons.ilr.cornell.edu/workingpapers/181/>.

²⁴ Martin, P. and Malit, Jr. F. (2017), 'A new era for labour migration in the Gulf?' at <http://www.tplondon.com/journal/index.php/ml/article/view/643>.

²⁵ Minimum referral wages have been adopted in some countries in South Asia, including India, Sri Lanka and Nepal, although compliance is not guaranteed. See ILO (2016), Minimum Referral Wages for International Migrant Workers from India: An Assessment.

²⁶ Malit, Jr. F. and Al Youha, A. (2017), 'Labor Protection in the Gulf Countries: A Comparative Analysis of Kenyan Governmental Dilemmas in the United Arab Emirates and Saudi Arabia', above note 23.

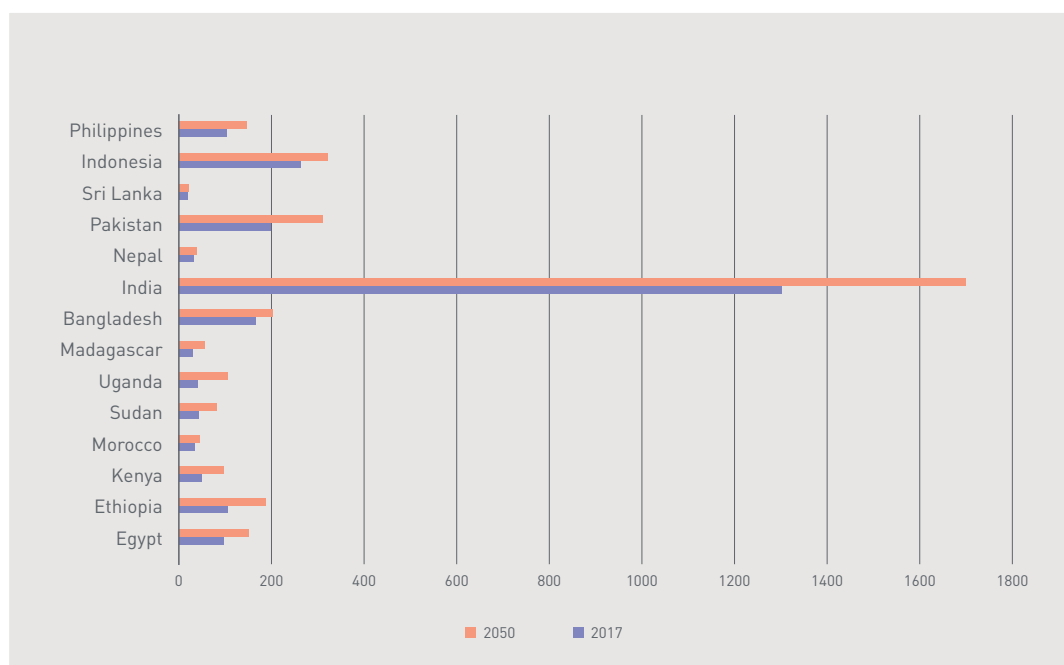
²⁷ A number of bilateral agreements have recently been signed or are currently under negotiation, including between Mauritania and KSA, Somalia and KSA, and between Ethiopia and Jordan, Kuwait, KSA, and Qatar. The number of bilateral agreements signed between countries of origin and KSA also comes during a period of increased deportations from the Kingdom of foreigners who have been deemed to infringe residency rules. Gulf News (2016), 'Saudi Arabia clarifies deportations policy', 11 January 2016.

1.3 THE SCALE OF LABOUR MIGRATION IS LIKELY TO FURTHER INCREASE

Owing to high population growth, the least developed countries (which comprise a significant proportion of countries of origin) have a large and rapidly expanding youth population. Today, about 60 per cent of their population is under the age of 25, and by 2050 the population in this age group will expand by an additional 60 per cent. This means that the working age population of least developed countries will increase by about 15 million persons per year, and their labour force will expand by about 33,000 persons per day.²⁸

The increase of the working age population is particularly stark in Ethiopia and Uganda, where its share of the overall population is projected to increase from 56.2 per cent and 49 per cent to 67.1 per cent and 60.2 per cent respectively between 2017 and 2050.

FIGURE 5: PROJECTED POPULATION GROWTH IN SELECTED COUNTRIES IN ASIA AND AFRICA (MILLIONS)



Source: Data from World Bank Population Estimates and Projections available at <http://datatopics.worldbank.org/health/population> (accessed 28 August 2017).

The limited capacity of local labour markets in developing countries to integrate young people, and the continued wage differential with the GCC States, also increases the incentive of young people to migrate to countries facing labour shortages. Forecasts suggest that more than 390 million additional people will join the global labour force by 2030 in South Asia and sub-Saharan Africa alone, which is likely to increase the push to migrate. An added push factor relates to crisis and climate-induced migration, including from countries such as Bangladesh and in sub-Saharan Africa.

While the volatility of labour markets in the GCC, as well as the persistent low price of oil/energy and declining government revenues, suggests that demand for labour may decrease, short-term projections suggest demand for migrant workers will remain high in

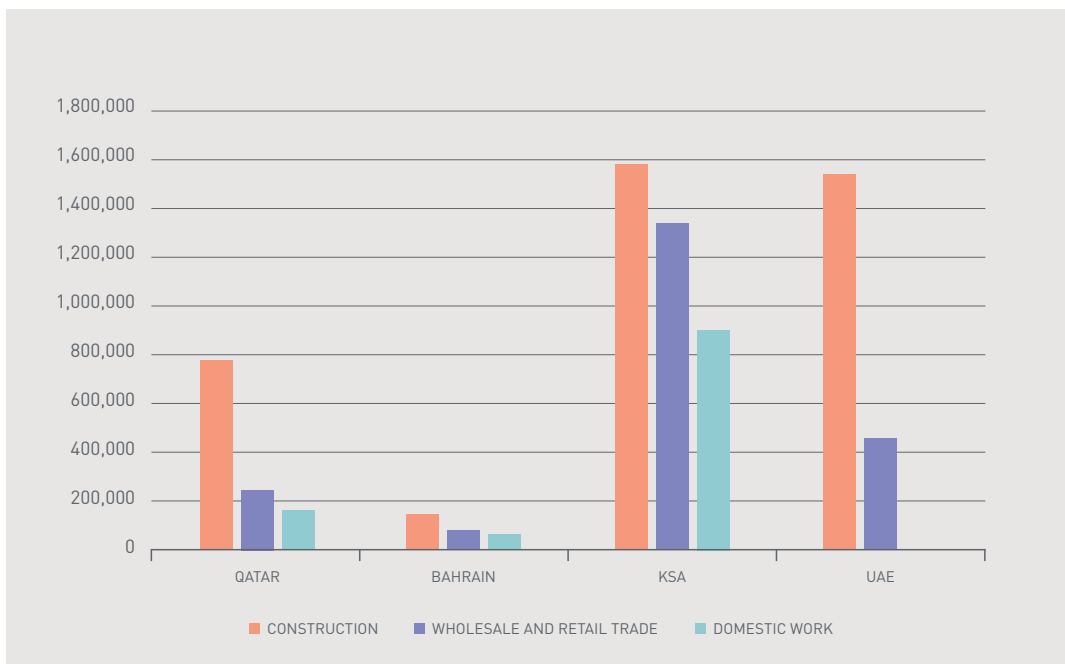
²⁸ United Nations Population Fund (UNFPA) [2012], Population Matters for Sustainable Development, New York, p. 7.

the GCC region.²⁹ The current mega structure projects in the Middle East (up to USD\$100 billion) are scheduled to be implemented over the next 10 to 20 years, including the UAE's Expo 2020 and Qatar's World Cup 2022, KSA's Kingdom Tower,³⁰ Bahrain's The Avenues, Kuwait's Olympic Village, Oman's Ras Al Khar Eco-Resort Sur, Qatar's Lusail City, KSA's Riyadh Metro, and Dubai's Blue Waters Island. This will require a large pool of construction and hospitality workers. Meanwhile social and demographic changes, including an ageing population and the growing participation of women in the workforce, will also continue the demand for care and domestic workers.

1.4 MIGRANT WORKERS IN THE ARAB STATES MAINLY WORK IN CONSTRUCTION AND DOMESTIC WORK

Migrants in the Arab States work in a variety of sectors, including construction, domestic work, oil and gas, transportation, garment manufacturing, hospitality and retail. By far the largest number of migrant workers, however, particularly in the Gulf States, are to be found in construction (and these are mostly men), with sizeable numbers also in domestic work (mostly women in household-related work and mostly men as drivers, guards and gardeners). Countries in the Mashreq also receive significant numbers of seasonal workers in agriculture (both women and men). Figure 6 gives an overview of the sectors in the GCC in which migrant workers are employed.

FIGURE 6: MIGRANT WORKERS PER MAIN SECTORS IN SELECTED COUNTRIES IN THE GCC (2015)



Source: Data from *Gulf Labour Markets and Migration (GLMM) Demographic and Economic Database*.

Note: The data on the number of domestic workers in the UAE was unavailable.

Data on domestic workers is especially difficult to collect and analyse in Arab states. Estimates published by the International Labour Organization (ILO) in 2015, showed that more than a quarter of the global total of migrant domestic workers in 2013 were in the Arab states (27.4 per cent), which amounted to 3.16 million workers, with roughly equal

²⁹ ILO (2017) (Forthcoming), 'Future of Work: Skills and Migration in the Middle East', Background paper to the Inter-Regional Experts Forum on Skills and Migration in the South Asia – Middle East Corridor, 25-26 July.

³⁰ Arabian Business (2014), 'Jeddah firm in talks to raise \$3.73bn Kingdom City funds', <http://www.arabianbusiness.com/jeddah-firm-in-talks-raise-3-73bn-kingdom-city-funds-549907.html>.

shares of men and women migrant domestic workers. Men domestic workers amounted to over 10.4 per cent of all men migrant workers in the region.³¹ These numbers may be underestimated due to the concentration of domestic workers in informal employment and among migrants in an irregular situation. In terms of specific numbers of migrant domestic workers in different Arab states, Table 2 below provides estimates from 2012 and 2013, although data from a number of notable countries is unavailable, such as Jordan and the UAE.³²

TABLE 2: NUMBER OF REGISTERED DOMESTIC WORKERS IN SELECTED ARAB STATES (2012-2013)

COUNTRY	DOMESTIC WORKERS
BAHRAIN	103,728
KUWAIT	574,577
OMAN	125,885
QATAR	139,904
SAUDI ARABIA	927,545
LEBANON	156,903

Source: GLMM Demographic and Economic Database: Percentage of non-nationals in government sector and in private and other sectors in GCC countries 2014; and Ministry of Labour, Data on migrant domestic workers in Lebanon, 2016.

It is likely that an increasing number of domestic workers are coming from African countries. The only country to provide a breakdown of countries of origin of domestic workers is Kuwait, which in 2012 showed approximately 11.2 per cent of domestic workers from Africa, as compared to 88 per cent from Asia.³³ However, based on concluded Memoranda of Understanding regarding the flow of domestic workers from Uganda,³⁴ Ethiopia and Somalia to KSA, there is an estimated increase in the numbers of domestic workers from these countries.³⁵

With regard to construction workers, the data shows that the largest numbers of migrant workers in this sector are in KSA, and the UAE (Figure 6).

While migrant workers in the oil and gas industry, transportation and hospitality tend to be higher skilled and usually experience better working conditions, migrant workers in construction, domestic work and agriculture are mostly low-skilled and often subject to abusive and fraudulent recruitment practices in the migration process prior to their employment as well as a variety of decent work deficits.

³¹ ILO (2015), ILO global estimates on migrant workers: Results and methodology, Geneva.

³² According to Human Rights Watch (2010), there are estimated 1.5 million migrant domestic workers in Saudi Arabia alone and 700,000 in Kuwait.

³³ GLMM Demographic and Economic Database: Kuwait Article 20 (Domestic Services) residence permits granted by nationality group and sex of holder (2014).

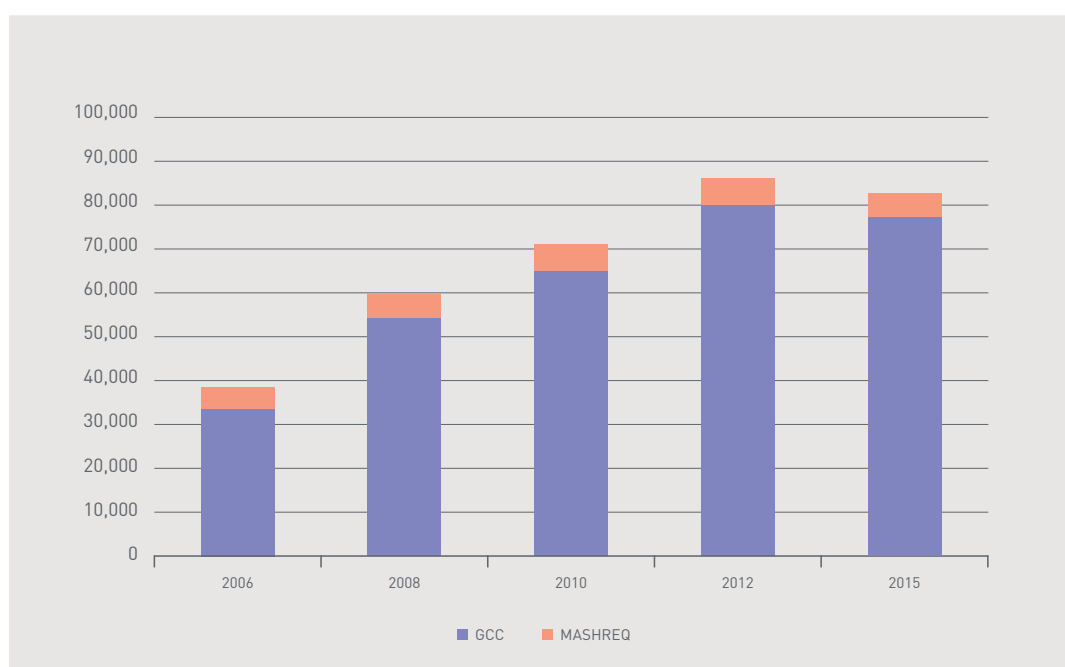
³⁴ Uganda imposed a temporary ban on domestic workers to KSA in 2016. This ban was lifted in 2017.

³⁵ Goobjoog News (2017), 'Somalia to send 2,000 domestic workers to Saudi Arabia starting this month, Labour Ministry', 10 May.

1.5 MIGRANT WORKERS SEND A SIGNIFICANT SHARE OF THEIR SALARIES HOME

Remittances to developing countries reached around US\$429 billion in 2016. By volume, official transfers to East Asia and the Pacific were estimated at US\$126 billion, to South Asia at US\$110 billion, to the Middle East and North Africa at US\$49 billion, and to Sub-Saharan Africa at US\$33 billion in 2016.³⁶ Migration to the GCC, and, to a lesser extent to the Mashreq countries, has provided millions of jobs and generated billions of dollars in remittances for migrant workers and their families. The Arab region is one of the top remittance sending regions in the world, with migrants in the region sending an estimated US\$105 billion in 2014, amounting to 28 per cent of the global total. With an estimated US\$98 billion of remittances sent from the GCC in 2014, the sub-region accounts for the vast majority of outflows (93 per cent) from the Arab States (see Figure 7).³⁷

FIGURE 7: REMITTANCE OUTFLOWS FROM THE ARAB REGION BETWEEN 2006-2015 (US\$ MILLIONS)



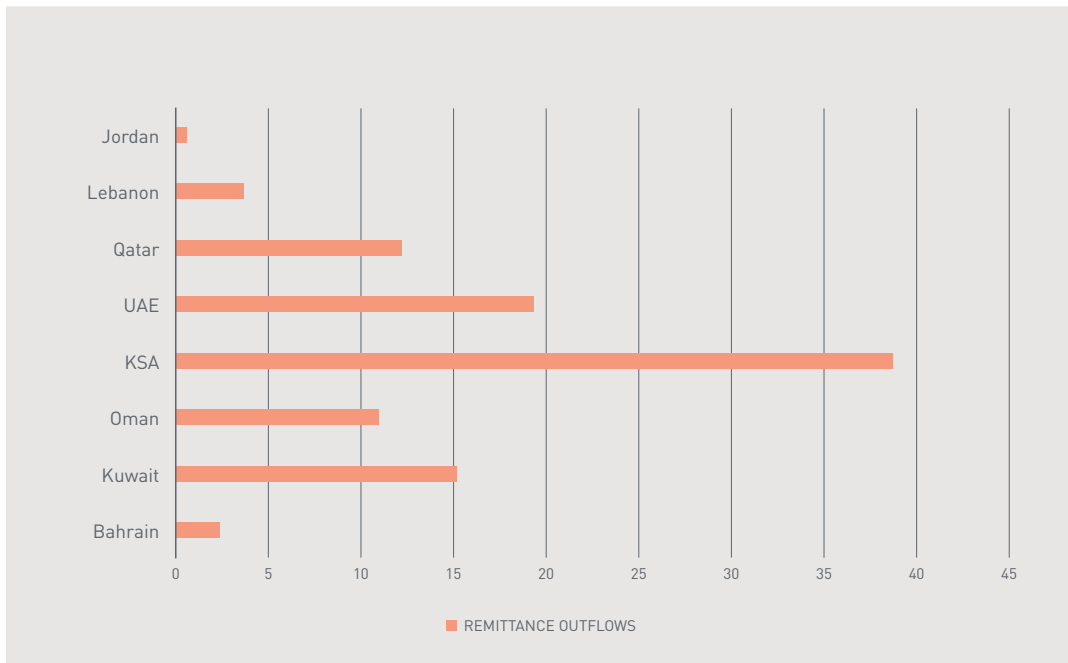
Source: World Bank, *Migration and Remittances Data*, update April 2017.

As Figure 8 highlights, Saudi Arabia is by far the largest source of remittances in the region and one of the top in the world, with migrant workers in the country sending home nearly US\$39 billion in 2015, followed by the UAE, Kuwait, Qatar and Oman. Lebanon is the top non-GCC country for sending remittances (US\$3.7 billion in 2015).

³⁶ World Bank (2017), 'Remittances to Developing Countries Decline for Second Consecutive Year' (Press release 21 April).

³⁷ UNESCWA and IOM (2017) (Forthcoming), 2017 Situation Report on International Migration, above note 8.

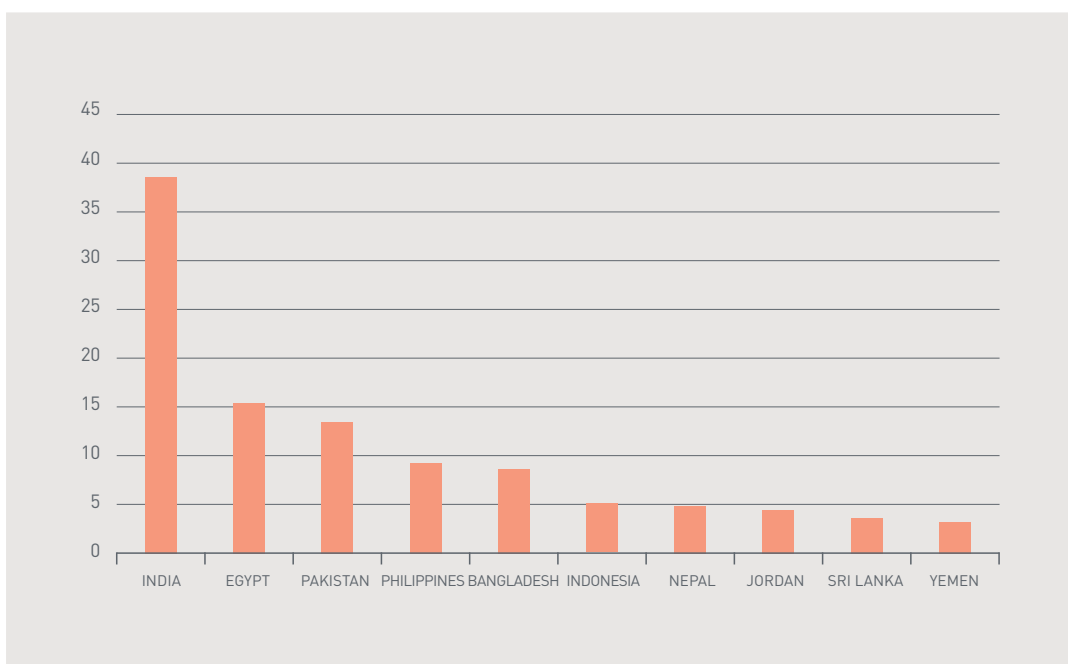
FIGURE 8: REMITTANCE OUTFLOWS FROM THE ARAB REGION BY COUNTRY (2015)* (US\$ BILLIONS)



Source: World Bank, Migration and Remittances Data, updated April 2017.

The largest recipients of remittances from the Arab region are India (US\$38.6 billion), Egypt (US\$15.3 billion), Pakistan (US\$13.5 billion), and the Philippines (US\$9.1 billion), as illustrated by Figure 9. Further, remittance-sending patterns correlate closely with migration patterns across the region. The remittance corridor UAE to India and KSA to India are in the top ten remittance corridors (4th and 6th place) worldwide, with US\$ 13.2 billion dollars and US\$ 11 billion dollars sent in 2015 respectively.

FIGURE 9: MAIN RECIPIENT COUNTRIES OF REMITTANCES FROM THE ARAB REGION IN 2015 (US\$ BILLIONS)

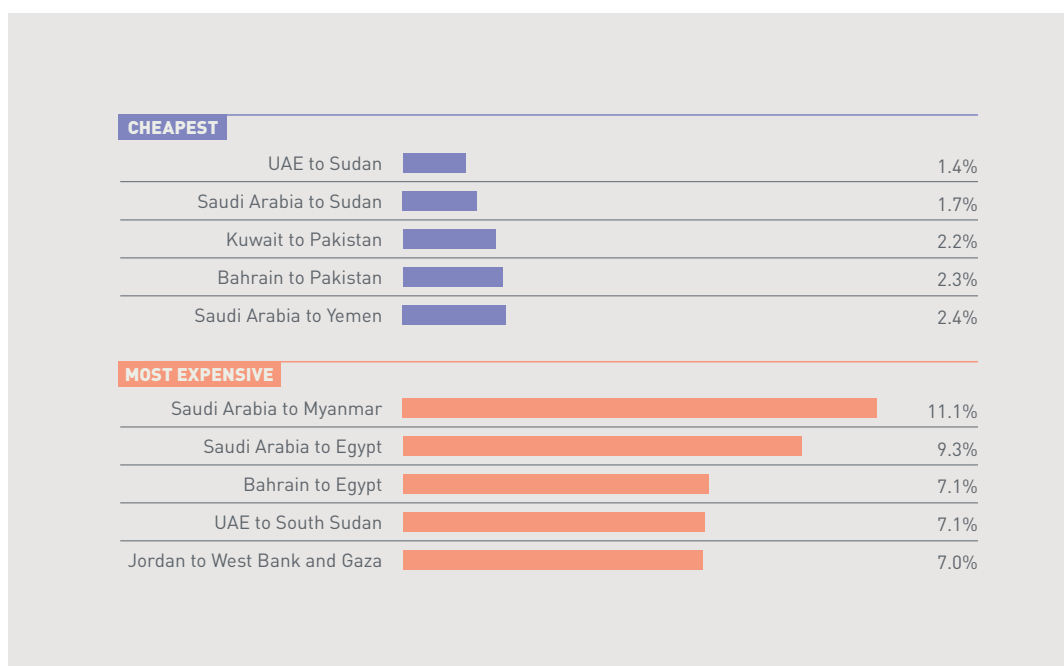


Source: UNESCWA and IOM (Forthcoming), 2017 Situation Report on International Migration, based on data from World Bank, Bilateral Remittance Matrix, 2015 (October 2016 Version).

While migrant workers from India, Bangladesh and Pakistan send millions of workers abroad, compared to the total population of these countries migrant workers represent only a small proportion and only contribute a small proportion of GDP through remittances, whereas smaller countries such as Nepal and Somalia, with much lower numbers of migrant workers, are highly dependent upon their remittances.³⁸ As such, the total amount of remittances to Nepal in 2014 represented 29.2 per cent of that country's GDP, which is the third highest in the world after the Kyrgyz Republic (30.3 per cent) and Tajikistan (41.7 per cent).³⁹

The average cost of sending remittances in the Middle East and North Africa (MENA) region stands at 7.6 per cent as of the fourth quarter of 2016, slightly higher than the global average of 7.4 per cent for the same period, but short of the standard set by SDG target 10.c to reduce the transaction costs of migrant remittances to less than 3 per cent of the amount remitted, and eliminate remittance corridors with costs higher than 5 per cent by 2030.⁴⁰ The cost – calculated as the average total cost of sending US\$200 (or equivalent in local sending currency, adjusted for inflation) in each country corridor – varies significantly between corridors (Figure 10). For some corridors where remittances are low, the cost of sending a base amount of US\$200 can be exceptionally high. For example, cost of sending remittances from Saudi Arabia to Algeria, Djibouti and Tunisia goes up to 25 per cent of the principal through the money-transfer operator (MTO), MoneyGram, as few remittances flow from the GCC region to these countries.

FIGURE 10: TOP 5 CHEAPEST AND MOST EXPENSIVE REMITTANCE CORRIDORS IN THE ARAB REGION (2016)



Source: UNESCWA and IOM (2017) (Forthcoming), 2017 Situational Report on International Migration.

³⁸ See for example, ILO (2016), Labour Migration for Employment: A Status Report for Nepal 2014/2015, Kathmandu.

³⁹ World Bank (2016), Migration and Remittances Factbook, Washington, D.C.

⁴⁰ UNESCWA and IOM (Forthcoming), 2017 Situational Report on International Migration, above note 8.

Part II: Key issues for a fair migration agenda from Africa and Asia to the Middle East

The changing patterns of migration and the increasing level of human mobility occurring today have moved the issue of migration to the top of constituents' policy agendas at the national and international level, as reflected in a number of global and inter-regional declarations and agreements on, or related to, labour migration. This section will outline some of the key instruments and initiatives on the global and regional level, before discussing the four themes for consideration at the Interregional Consultation, namely fair recruitment, decent work, addressing irregularity and good governance of migration. Within the four themes, the Paper will consider key issues for action, and present a number of promising practices and recommendations for consideration moving forward.

2.1 GLOBAL CONTEXT

The UN Member States adopted the **New York Declaration for Refugees and Migrants** in September 2016 which commits them to adopting for the first time a Global Compact for Safe, Orderly and Regular Migration (GCM) in 2018.⁴¹ Six themes have been identified by the UN General Assembly modalities resolution for consideration in the consultations on the GCM.⁴² ILO and UN Women served as co-leads to prepare inputs to the Secretary-General's inter-agency issue brief, coordinated by the Special Representative on International Migration, on the theme 'Irregular migration and regular pathways, including decent work, labour mobility, recognition of skills and qualifications, and other relevant measures', for discussion in Geneva on 12-13 October 2017.

Ensuring safe and orderly migration is also an important feature of the **2030 Agenda for Sustainable Development**, adopted in 2015, which includes Sustainable Development Goal (SDG) 8 to "promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all". Relevant targets include target 8.7 on freedom from trafficking and forced labour situations and target 8.8 on protection of the labour rights and promotion of safe and secure working environments of all workers, including migrant workers, particularly women migrants, and those in precarious employment. Under SDG 10 on reducing inequality within and among countries, target 10.7 concerns the facilitation of "orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies". One of the indicators aligned with this target, indicator 10.7.1, addresses recruitment fees, adopting the measurement of "recruitment cost borne by employee as a proportion of yearly income earned in country of destination", for which the ILO and World Bank are developing a methodology of measurement. The **2015 Addis Ababa Action Agenda of the Third International Conference on Financing for Development**, which is an integral part of the 2030 Agenda, also commits Member States to reduce the costs of migration by cooperating internationally "to ensure safe, orderly and regular migration, with full respect for human rights ... [and] to endeavour to increase cooperation on access to and portability of earned benefits, enhance the recognition of foreign qualifications, education and skills, lower the costs of recruitment for migrants and combat unscrupulous recruiters. [...]"⁴³

⁴¹ UN, General Assembly, New York Declaration for Refugees and Migrants, A/RES/71/1 (3 Oct. 2016), para. 63.

⁴² UN, General Assembly, Modalities for the intergovernmental negotiations of the global compact for safe, orderly and regular migration, A/RES/71/280 (17 April 2017), para. 15. Annex II of the New York Declaration, above note 41, para. 8, also lists 24 non-exhaustive elements that could be included in the GCM.

⁴³ UN, General Assembly, 69th Session, Addis Ababa Action Agenda of the Third International Conference on Financing for Development, A/RES/69/313 (17 Aug. 2015), para. 111.

The SDG targets referred to above are underpinned by the ***ILO Fair Migration Agenda*** – endorsed by the International Labour Conference in 2014 – which calls for “constructing an agenda for fair migration which not only respects the fundamental rights of migrant workers but also offers them real opportunities for decent work”.⁴⁴ The ILO Fair Migration Agenda is about recognizing the contribution that migrant workers make to their countries of origin and destination, and securing a fair sharing of the prosperity migrant workers help to create, through building migration regimes which respond equitably to the interests of countries of origin, destination, migrant workers and their families, employers and nationals.

At the 106th Session of the ***International Labour Conference in 2017***, ILO constituents held a general discussion on labour migration, which focused on the governance of labour migration at the national, bilateral, regional and interregional levels, and fair recruitment.⁴⁵ The outcome of the discussion was a consensus document in the form of Conclusions concerning fair and effective labour migration governance, which also requested the Director-General to prepare a plan of action to give effect to the Conclusions; and for the outcome to be considered as part of ILO’s inputs to the GCM. Key elements of the Conclusions document included protecting migrant workers and reducing the costs of labour migration, promoting fair recruitment migration corridors, and improving statistics and data for evidence-based policymaking.⁴⁶

2.2 REGIONAL CONTEXT

In December 2016, at the ***16th ILO Asia-Pacific Regional Meeting***, which included representatives from across the Arab States, ILO constituents adopted the Bali Declaration,⁴⁷ which in paragraph 8 includes agreement to enhance labour migration policies based on relevant international labour standards that:

- A. recognize the labour market needs of all;
- B. are based on the General principles and operational guidelines for fair recruitment (2016), including no charging of recruitment fees or related costs to workers; and the entitlement of workers to keep in their possession travel and identity documents;
- C. provide adequate protection to all migrant workers, including through better portability of skills and social security benefits;
- D. take into account the ILO Multilateral Framework on Labour Migration (2005);⁴⁸ and
- E. redress employer-worker relationships that impede workers’ freedom of movement, their right to terminate employment or change employers, taking into account any contractual obligations that may apply, and their right to return freely to their countries of origin.

In January 2015, the African Union Heads of State and Government in January 2015

⁴⁴ ILO (2015), Fair Migration: Setting an ILO Agenda, Report of the Director General, International Labour Conference, 103rd Session, para. 18, at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_242879.pdf.

⁴⁵ The discussion was based on based on ILO (2017), Addressing governance challenges in a changing labour migration landscape, Report IV, International Labour Conference, 106th Session, at http://www.ilo.org/ilc/ILCSessions/106/reports/reports-to-the-conference/WCMS_550269/lang-en/index.htm.

⁴⁶ ILO (2017), Resolution and Conclusions concerning fair and effective labour migration governance, International Labour Conference, 106th Session, at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_561871.pdf.

⁴⁷ ILO (2016), Bali Declaration of ILO Asia-Pacific Regional Meeting, para 8, at http://www.ilo.org/global/meetings-and-events/regional-meetings/asia/aprm-16/reports/WCMS_537445/lang-en/index.htm.

⁴⁸ The ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration, adopted by a tripartite meeting of experts in November 2005 and approved by the ILO Governing Body in March 2006, aims to assist governments, social partners and other relevant stakeholders in their efforts to govern labour migration and protect migrant workers. It provides a comprehensive set of rights-based principles and guidelines, and includes a global compilation of good practices on labour migration developed by governments and social partners. See also the ILO Good practices database – Labour migration policies and programmes: <http://www.ilo.org/dyn/migpractice/migmain.home>.

adopted the African Union (AU) Commission/ILO/IOM/UN Economic Commission for Africa (ECA) Joint Programme on Labour Migration Governance for Development and Integration in Africa (JLMP) as a comprehensive programme on labour migration governance for the region. This programme supports the implementation of the labour migration component of the AU's Migration Policy Framework for Africa (2006) and the AU Declaration and Plan of Action on Employment, Poverty Eradication and Inclusive Development as well as the AU Agenda 2063, which calls for a rights-based approach to labour migration and aims to contribute to obtaining the development potential of labour and skills mobility in Africa by supporting effective governance of labour migration and protection of migrants. Furthermore, in December 2015, ILO constituents in Africa adopted the Addis Ababa Declaration at the 13th African Regional Meeting, which includes agreement to: (a) continent-wide policy priorities on enhancing labour migration governance at national, subregional, regional and international levels, and developing policies that take into account labour market needs, based on relevant ILO standards and in accordance with the ILO Multilateral Framework on Labour Migration; and to (b) facilitate the implementation of the JLMP.

2.3 PROMOTING FAIR RECRUITMENT

As the first step in the process that brings millions of migrant workers to the Arab States region, the recruitment stage can determine whether a worker has a positive migration experience, with the opportunity to earn a decent wage, acquire skills and send remittances; or an exploitative one, characterized by excessive recruitment fees and related costs, low earnings, poor working conditions, and sometimes even situations of trafficking and forced labour. Defined as including advertising, information dissemination, selection, placement into employment and return to the country of origin where applicable,⁴⁹ recruitment can be undertaken through a number of modalities, including direct hiring and recruitment through public employment services and private employment agencies. However, for migrant workers within the Asia and Africa to Arab States corridors, recruitment takes place predominately through a complex network of private employment agencies and brokers.

When appropriately regulated – including through coordinated licensing and/or certification – private employment agencies play an important labour market function by matching supply and demand, increasing business efficiency and productivity, and supporting migrants to navigate the labour migration process.⁵⁰ However, the recruitment industry within the Asia and Africa to Arab States migration corridors is characterized by a number of fraudulent and abusive practices facilitated by a complex network of intermediaries including informal actors, unauthorized sub-agents and those operating outside of the legal and regulatory framework in countries of origin and destination.⁵¹ Low-skilled workers are particularly vulnerable to such practices, especially during periods of high unemployment when competition for jobs is intense, and when there are gaps in legal protection and enforcement. This segment of the recruitment industry, working in tandem with certain employers, generates large profits through collection of excessive fees and related costs from low-skilled, low-wage workers – in breach of international standards.⁵² From 2014, the Global Knowledge Partnership on Migration and Development (KNOMAD),

⁴⁹ ILO (2016), ILO General principles and operational guidelines for fair recruitment, Part II: http://www.ilo.org/global/topics/fair-recruitment/WCMS_536755/lang--en/index.htm.

⁵⁰ ILO (2016), Ways forward in recruitment of 'low-skilled' migrant workers in the Asia-Arab States Corridor, ILO White Paper, at http://www.ilo.org/beirut/publications/WCMS_519913/lang--en/index.htm.

⁵¹ See for example, New York University (NYU) Stern Center for Business and Human Rights, 2017, Making Workers Pay: Recruitment of Migrant Labor Force in Gulf Construction Industry, at <http://www.stern.nyu.edu/experience-stern/faculty-research/making-workers-pay-recruitment-migrant-labor-force-gulf-construction-industry>.

⁵² ILO (2017), Addressing governance challenges in a changing migration landscape, *above note 45*, p. 60, para. 164.

hosted at the World Bank, undertook jointly with the ILO surveys of worker-paid migration costs in several migration corridors, in some of it, using a standard questionnaire. Some of the results of the surveys are included in Table 3 below, indicating that in some migration corridors, the costs of recruitment amounted to nine months or more of monthly earnings.

TABLE 3: COMPARISON OF MIGRATION COSTS AND EARNINGS IN VARIOUS CORRIDORS (2014)

MIGRATION CORRIDOR		MIGRATION COST (US\$)	MONTHLY EARNINGS (US\$)	COSTS IN MONTHS OF EARNINGS
DESTINATION	ORIGIN			
SAUDI ARABIA	INDIA	1334	376	3,5
	PAKISTAN	4190	480	8,7
	PHILIPPINES	336	456	0,7
	ETHIOPIA	995	333	3,0
UAE	PAKISTAN	3573	387	9,2
QATAR	INDIA	962	555	1,7
	PHILIPPINES	698	485	1,4
	NEPAL	916	225	4,1
KUWAIT	BANGLADESH	3136	347	9,0
	INDIA	1248	494	2,5
	SRI LANKA	352	339	1,0
	EGYPT	2979	611	4,9
MALAYSIA	VIETNAM	1374	370	3,7
REP. OF KOREA	VIETNAM	1582	1200	1,3
	INDONESIA	1506	1200	1,3
	THAILAND	1466	1200	1,2

Notes:

small samples used for Pilot surveys of migrants in Spain, Republic of Korea and Kuwait.

surveys in India, Nepal, Pakistan, Philippines and Ethiopia were of returned migrant workers.

surveys in Malaysia and Republic of Korea were of currently employed migrant workers.

Source: adapted from Abella, M. (Forthcoming), The high cost of migrating for work to the Gulf, Conference Paper, Cambridge Gulf Research; draft as at July 2017.⁵³

Other reported abuses during recruitment include deposits and illegal wage deductions; violence, including physical and sexual violence; deception about the nature and conditions of work, leading to contract substitution; retention of passports and other identity documents; debt bondage linked to repayment of recruitment fees and related costs; and threats if workers wish to leave their employer. Compulsory pregnancy and HIV and AIDS tests imposed by countries of destination and routinely implemented by labour recruiters, amount to discrimination in violation of recognized international standards.⁵⁴ Challenges specific to women migrant workers include bans on migration imposed by countries of origin. Along with being discriminatory and in breach of international standards, bans and other restrictions on women's migration offer an opportunity for further exploitation by recruitment agencies – and exacerbate the risks involved in irregular migration. The ILO **Private Employment Agencies Convention, 1997 (No. 181)**, and accompanying Recommendation (No. 188) are the current international standards applicable to private employment agencies. Convention No. 181 establishes the principle that workers shall

⁵³ The final version of this paper will be available in October 2017.

⁵⁴ ILO (2017), Addressing governance challenges in a changing migration landscape, above note 45, p. 61, para. 164.

not be charged “directly or indirectly, in whole or in part, any fees or costs” (Article 7). It also requires ILO Members to provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in its territory by private employment agencies, including through conclusion of bilateral agreements. Other ILO sector-specific instruments contain provisions on recruitment across borders, including the **Domestic Workers Convention, 2011 (No. 189)**. With a view to the prevention of forced or compulsory labour, the **Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)**, accompanied by Recommendation, 2014 (No. 203), requires, inter alia, measures “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process” and “supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour”.⁵⁵ Principle 13 of the 2006 **ILO Multilateral Framework on Labour Migration** calls upon governments in both origin and destination countries to give “due consideration to licensing and supervising recruitment and placement services for migrant workers” in accordance with Convention No. 181 and Recommendation No. 188, and is accompanied by a series of guidelines on protection of migrant workers in the recruitment process and regulatory measures that countries may wish to consider to bring recruitment agency practices more in line with international standards.⁵⁶

In 2014, the ILO launched the global multi-stakeholder Fair Recruitment Initiative.⁵⁷ Under the auspices of this Initiative, the **ILO General principles and operational guidelines for fair recruitment** were adopted by tripartite consensus at a meeting of experts in September 2016 and approved by the ILO Governing Body in November 2016 for publication and dissemination. The objective of these non-binding principles and guidelines is to inform the current and future work of the ILO and of other organizations, governments, national legislatures, and the social partners on promoting and ensuring fair recruitment. The principles and guidelines are derived from a number of sources – including international human rights and international labour standards and related ILO instruments. They apply to recruitment both within and across national borders and cover all relevant actors, namely governments, public employment services and enterprises, including labour recruiters and employers. A distinction is drawn between general principles – which are intended to orient implementation at all levels – and operational guidelines – which address the responsibilities of specific actors in the recruitment process and include possible interventions and policy tools.

The Conclusions concerning fair and effective governance of labour migration of the 2017 International Labour Conference specifically identify fair recruitment as an area warranting special attention. The Conclusions call for operationalization of the principles and guidelines through dissemination, capacity building and technical assistance, and by capitalizing on synergies with other tools and initiatives aimed at promoting fair recruitment. The conclusions also point to the need to pursue the development and testing of a methodology to measure recruitment costs under SDG target 10.7, and further work to determine the scope and definition of recruitment fees and related costs. A first step in the development of a definition of recruitment fees and costs may be a mapping of existing definitions among actors in different countries.⁵⁸

⁵⁵ Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29), Arts 2(d) and (e).

⁵⁶ ILO (2006), ILO Multilateral Framework on Labour Migration, above note 48, pp. 24-25.

⁵⁷ The purpose of the Fair Recruitment Initiative is to prevent human trafficking and forced labour; protect the rights of workers in the recruitment process; and reduce the costs of labour migration and enhance sustainable development outcomes. This multi-stakeholder initiative is implemented in close collaboration with governments, representative employers’ and workers’ organizations, the private sector, international organizations, non-governmental organizations, and other key partners. The initiative is embedded in the Fair Migration Agenda endorsed by the International Labour Conference in 2014, which includes fair recruitment as one of its main pillars.

⁵⁸ A number of ILO Technical Cooperation projects address fair recruitment, including the Integrated Programme on Fair Recruitment (FAIR), the Global Action to Improve the Recruitment Framework of Labour Migration (REFRAME), the Regional Fair Migration Project in the Middle East (FAIRWAY), Work in Freedom, as well as national-level projects in Bangladesh, Sri Lanka, and Ethiopia, among others.

PROMISING PRACTICES

RECRUITMENT FEES

- Launched in May 2016, the **Leadership Group for Responsible Recruitment** is a collaboration between leading companies and expert organizations to drive positive change in the way that migrant workers are recruited, including companies like IKEA that have operations in the Middle East. Members of the Leadership Group have committed to the 'Employer Pays Principle': *"No worker should pay for a job – the costs of recruitment should be borne not by the worker but by the employer."*
- National legislation **banning the charging of fees to migrant workers** has been adopted in a number of countries, including Ethiopia, Jordan, KSA, Nepal, the Philippines (for domestic workers), Qatar and the UAE, although regulation remains difficult.
- The ILO REFRAME project will support the work of the ILO and the World Bank, who are the custodians for SDG indicator 10.7.1, to develop a methodology on measuring recruitment costs.

ONLINE RECRUITMENT SYSTEMS

- The **Kingdom of Saudi Arabia's Musaned electronic recruitment system** for domestic workers (www.musaned.com.sa/en) allows the Ministry of Labour and Social Development to monitor the contracting process (including transactions) between citizens and recruitment offices, as well as serve as an online documentation archive in case of a dispute between the parties.
- The **E-migrate (India)** electronically links all key stakeholders involved in the labour migration cycle. Through the public website (www.emigrate.gov.in), the Government provides information to all parties on procedures and services, and includes features such as the processing of applications and payments online which increases transparency. Clearance is based upon automatic verification of employers, verification of passports, wages in line with the specified minimum referral wages, and insurance coverage. The system can draw attention to recruitment agencies that have not addressed complaints, which can prevent them from obtaining further clearances.⁵⁹

REGULATION AND MONITORING

- The **Bahrain Labour Market Regulatory Authority (LMRA)** registers and monitors recruitment agencies and can investigate fraudulent recruitment practices. The LMRA attests to the validity and authenticity of documentation for work visas and verifies the existence of an employer and workplace. A 'blacklist' is maintained on employers and recruitment agencies that have committed offenses or misled migrant workers, banning them from future hiring. An explanatory brochure in the workers' language and SIM card are provided to all arriving migrant workers. All information concerning their work permit is transferred to the SIM card, and the SIM card can be used to report grievances and violations.
- The Philippines regulates the responsibility and liability of all recruitment actors through a **joint liability clause**, which means that the recruitment agency at source can be held liable for abuse of the migrant worker at destination.
- Another innovative idea is **Kuwait's public-private corporation** for recruiting workers, which was passed into law in 2015, established in September 2017. The corporation is designed "in order to control price hikes and avoid human rights violations," with government agencies to own 40 per cent of the corporation, and 60 per cent will be open to national shareholders (i.e. citizens via local cooperatives).⁶⁰ The corporation's performance will be monitored by the Ministry of Interior, although the exact indicators of performance – including measures that will be taken to minimize recruitment fees and protect workers' rights – are yet to be outlined. The **Migrant Recruitment Monitor (MRM)** website is an online system that allows migrant

⁵⁹ E-lockers are provided to migrants where all the information related to their migration process is digitally stored in one place

⁶⁰ Migrant Rights Org. (2017), Kuwait's Domestic Law, One year later (January 2017). Available at: <https://www.migrant-rights.org/2017/01/kuwaits-domestic-labor-law-one-year-later/>.

workers to rate their recruitment agency and be referred to a complaint mechanism administered by the NGO, Migrant Forum in Asia. The MRM is being implemented by the International Trade Union Confederation (ITUC) with country pilots through national affiliates in Nepal, Indonesia, Malaysia and the Philippines.

VOLUNTARY CERTIFICATION

- The **IOM International Recruitment Integrity System (IRIS)** is a voluntary multi-stakeholder certification system for private labour recruiters developed to support ethical recruitment of migrant workers. It is comprised of an international standard, certification scheme and a compliance and monitoring mechanism.

DEMONSTRATING THE BUSINESS CASE FOR FAIR RECRUITMENT

- The ILO's FAIR project is currently implementing, in collaboration with Better Work Jordan, a pilot intervention model to eliminate deceptive and coercive recruitment practices in the apparel industry in Jordan and thus reduce the vulnerability of migrant workers to forced labour. The aim of the pilot intervention is to demonstrate that fair recruitment is possible and that it benefits both employers and workers. A key strategy is to promote strategic engagement with international buyers to develop and share innovative ways to reduce fraudulent and abusive recruitment practices in the global supply chain.

QUESTIONS FOR DISCUSSION

- A. What are successful strategies in cutting the cost of recruitment for employers, and eliminating the cost of recruitment for workers? What do countries of destination require from countries of origin; and what do countries of origin require from countries of destination?
- B. What are the promising practices of recruitment through public placement agencies, direct recruitment by accredited employers and/or through the use of information technology (including E-matching services), which can successfully cut out intermediaries?
- C. What are the challenges faced in terms of developing legislation to ensure payment of recruitment fees only by employers, and ensuring adequate enforcement and application of sanctions and penalties, including possible joint liability? How can harmonization of practices/policies be achieved across migration corridors?
- D. What are successful strategies to combat 'visa trading' – for example, in terms of closer assessment of labour market needs of employers seeking a quota for migrant workers?
- E. How can labour market information systems (LMIS) in countries of origin and destination contribute to better skills matching, more efficient labour market functioning, and greater sustainable development outcomes?

2.4 ENSURING DECENT WORK FOR MIGRANT WORKERS

The potential for migrant workers to benefit from productive employment, learn new skills and send remittances to their families, and for employers to ensure a productive workforce, depends on the assurance of decent working conditions for migrant workers (like for all workers), including decent wages, occupational safety and health, an effective system of dispute resolution, and the ability of both parties to terminate the employment agreement, particularly if the terms of the contract are not being met.

At a basic level, all ILO member States are obliged to comply with the **fundamental principles and rights at work outlined in the eight ILO fundamental conventions** addressing forced labour, child labour, trade union rights, and non-discrimination in employment and occupation, which apply to all workers irrespective of their nationality, residence or migration status. The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, affirms this and calls on the ILO to give special attention to the problems of persons with special social needs, including migrant workers.

Whilst many migrant workers have a positive working experience in the Arab States, a large number of them are subject to significant decent work deficits, including forced labour, particularly in high risk sectors where migrant workers predominate, such as agriculture, construction and domestic work.⁶¹

Migrant workers are best protected in law and practice when they are covered by national labour laws and labour market institutions – such as inclusion in minimum wages, social security provision, employment protection legislation, labour inspection, and collective bargaining processes – on an equal footing with national workers. However, in the Arab States, there are examples where **national labour laws exclude certain sectors from coverage**, such as agriculture and domestic work, with a disproportionate impact on the large numbers of migrant workers in those sectors. The trend regarding domestic work is for the sector to be governed by a separate, weaker piece of legislation, or by a standard unified contract, not grounded in labour law and hence difficult to enforce effectively.

A lack of internal labour market mobility under the *kafala* sponsorship system in a number of countries in the Arab States region results in the delegation of responsibility by the State to the private employer to oversee both a migrant worker's immigration and employment status. This is inherently problematic as it creates an **imbalance between the rights and abilities of workers and employers to terminate an employment relationship and mobility in the labour market**. Limits on internal labour market mobility not only make migrant workers vulnerable to labour exploitation, including forced labour, they also result in inefficient labour markets. The ILO's independent Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stated in its observations with regard to the Forced Labour Convention, 1930 (No. 29) that "the so-called visa 'sponsorship system' (or '*kafala*' system) in certain countries in the Arab States may be conducive to the exaction of forced labour".⁶² The CEACR has urged governments to "take the necessary measures in law and practice, to ensure that migrant domestic workers are fully protected from abusive practices and conditions that amount to the exaction of forced labour".⁶³

Restrictions on the rights to freedom of association, to organize and to bargain collectively, and a general lack of voice and representation among migrant worker populations, are a feature in a number of countries in the Arab States region. While in some situations, such as in the garment sector in Jordan, migrants have the right to join trade unions, they face difficulties in doing so and do not have the right to vote in the union. In the case of domestic workers, they face barriers in the law and also in practice as they are isolated in private households. Migrants need better knowledge of their rights and access to

⁶¹ In 2014, the ILO estimated that some 600,000 migrants were victims of forced labour in the region. ILO (2013), *Tricked and trapped: Human trafficking in the Middle East*, Regional Office for Arab States (ROAS), Beirut.

⁶² ILO (2012), *Giving globalization a human face*, CEACR General survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III (1B), International Labour Conference, 101st Session, Geneva, pp. 126-127, para. 295.

⁶³ ILO (2016), CEACR, *Application of International Labour Standards 2016 (I)*, International Labour Conference, 105th Session, Geneva, p. 211, at [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\[2016-105-1A\].pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661[2016-105-1A].pdf).

support services supplied by government agencies, labour attachés, trade unions, and civil society organizations (CSOs), including through Migrant Worker Resource Centres. Moving beyond a service delivery approach, men and women migrant workers should also be empowered to represent their own interests and safeguard their rights.

Poor occupational safety and health (OSH) is a concern in the construction, domestic and agriculture sectors, among others. Key OSH concerns include work at a height; the use of chemicals, heavy electronics and machinery; and working in extreme heat. Migrant workers in these sectors may not be provided with sufficient training, personal protective equipment, medical supervision and insurance in case of an occupational accident. If instructions and guidance are not provided in a language that the worker understands, OSH risks are increased. Long working hours and lack of rest exacerbate risks of OSH accidents.

Migrant workers are vulnerable to **violence and harassment** at all stages of the migration cycle, with studies showing that labour recruiters, agents and employers can be sources of, and contributors to, violence. Domestic workers face greater vulnerabilities because they work in their employer's home and are not always covered by relevant legislation. Migrant workers entering the Arab States under the *kafala* sponsorship system are particularly at risk of violence and harassment. The ILO CEACR has expressed concern on a number of occasions regarding the lack of effective protection of migrant workers and migrant domestic workers from abuse. The CEACR recalled the importance of taking effective action to ensure that systems governing the employment of migrant workers, especially migrant domestic workers, do not place the workers concerned in a situation of increased vulnerability to violence and harassment.⁶⁴

The issue of **delayed and non-payment of wages** can be an intentional strategy used by employers as a means to ensure that the worker does not leave the place of work, which is considered an indicator of forced labour.⁶⁵ In some cases, particularly in the construction sector, it can also be a consequence of a long subcontracting chain, in which delays in payment are passed down through subcontracting layers, resulting in migrant workers often experiencing late or non-payment of wages. If a company becomes bankrupt/insolvent, there may be little recourse for recovery of wages.⁶⁶

Withholding of passports and personal documents is common among employers of migrant workers, despite the existence of legislation outlawing the practice in many countries. Withholding passports is also an indicator of forced labour.

Migrant workers face significant challenges in accessing **social protection**, including health care, employment injuries benefit, and other social security benefits. Although migrant workers contribute fully to the economies of their home and host communities, they can be excluded from even basic coverage by social protection instruments and schemes. Migrant workers may risk losing their entitlement to social security benefits in their country of origin due to their absence, and may at the same time encounter restrictions under the social security systems in the country of destination. Migrant workers also face constraints in portability of these rights.

Within the South Asia–Arab States as well as Africa–Arab States migration corridor,

⁶⁴ ILO (2017), Ending violence and harassment against women and men in the world of work, International Labour Conference, 107th Session, Geneva, pp. 57-58, paras 229-230. The ILO will host a discussion on violence and harassment against women and men in the world of work at the International Labour Conference in June 2018, with a view to adoption of a new standard. While the ILO has adopted numerous standards referring to specific forms of violence and harassment, none of these addresses violence and harassment as its primary aim, defines such conduct, or provides detailed guidance on how to address the problem.

⁶⁵ ILO indicators of forced labour, at http://www.ilo.org/global/topics/forced-labour/publications/WCMS_203832/lang--en/index.htm.

⁶⁶ Wells, J. (2014), Improving employment standards in construction in Qatar, Engineers Against Poverty, London.

migrant workers may be required to undergo mandatory medical tests, including **HIV and pregnancy testing** as a condition to enter or remain in the destination country. Mandatory HIV testing or disclosure of HIV status for employment purposes is prohibited under the ILO HIV and AIDS Recommendation, 2010 (No. 200). Requiring a test for pregnancy or a certificate of such a test when a woman is applying for employment is prohibited under the ILO Maternity Protection Convention, 2000 (No. 183).⁶⁷ Women migrant workers are also subject to loss of employment and deportation if they become pregnant during their employment.⁶⁸

Migrant workers suffer from **discrimination on multiple grounds including race, ethnicity, religion, gender and nationality**. For example, typically recruitment agencies will disclose the religion of migrant domestic workers, as employers strive to select workers with the same religion as the household. Migrant domestic workers are often paid according to their nationality, rather than the job description or in accordance with their skills and experience. The ILO CEACR has emphasized the importance of taking specific steps to combat xenophobia and social and cultural stereotypes that contribute to discrimination against migrants, including in employment and occupation. The New York Declaration strongly condemns xenophobia against refugees and migrants and Member States pledged to support a global campaign to counter it.⁶⁹

Realizing decent work for migrant workers includes addressing weak labour inspection and barriers to accessing justice and effective complaints mechanisms, which are also key aspects of the governance of labour migration discussed in Section 2.6 below. **Labour inspection** systems that conduct regular inspections, provide guidance and advice to both employers and workers, including migrant workers, and ensure effective enforcement in cases of non-compliance have a key role to play in reducing decent work deficits. However, current labour inspection is limited, and does not extend to the domestic work sector. As noted above, there are also concerns that labour inspectors are required to focus on detecting migrant workers in an irregular situation, rather than on their primary function which is to determine enforcement of the legal provisions relating to conditions of work and the protection of all workers.⁷⁰

Migrant workers face **barriers to accessing justice** in cases of disputes or complaints against abusive treatment. Often labour recruiters or labour supply agencies constitute the first line of dispute resolution and conciliation. If informal mechanisms to resolve disputes are unsuccessful, options for filing a formal complaint include at the worker's embassy or consulate; with the police (in cases where the sector falls under the mandate of the Ministry of Interior, or the complaint concerns a criminal matter); or with the Ministry of Labour. The accessibility of each of these mechanisms – in terms of physical access, language, and capacity and sensitivity of responding officials – will vary greatly. In this regard, migrant workers need to receive information on their rights and how to access and navigate grievance and dispute settlement procedures, and should be offered free or affordable legal assistance and adequate language translation services. To ensure that access to justice is real and effective, migrant workers with an insecure migration status should be able to remain in the country on a valid visa until their claims have been resolved.⁷¹

⁶⁷ ILO (2017), Addressing governance challenges in a changing migration landscape, above note 45, p. 24, para. 52.

⁶⁸ See e.g. 'Qatari laws target pregnant migrant workers', Deutsche Welle, 24 June 2017, at <http://www.dw.com/en/qatari-laws-target-pregnant-migrant-workers/a-39384445>.

⁶⁹ See TOGETHER campaign: <https://together.un.org/>.

⁷⁰ ILO (2017), Addressing governance challenges in a changing migration landscape, above note 45, p. 25, para. 56.

⁷¹ ILO (2017), Addressing governance challenges in a changing migration landscape, above note 45, p. 25, para. 57.

PROMISING PRACTICES

- In 2016, **three interrelated ministerial decrees came into force in the UAE to regulate the employer-migrant worker relationship** under the labour law providing for *inter alia* a standard employment contract for migrant workers who obtain their work permit through the Ministry of Labour. These reforms aim to end employer control over migrant workers with regard to renewal of stay, termination of contract, and transfer to another employer, while also addressing the issue of contract substitution. The decrees do not extend to domestic work; however, the UAE has recently adopted a draft law on the protection of domestic workers.⁷²
- In an effort to reduce labour disputes relating to wages and ensure that employers pay wages on time, the **UAE introduced the Wage Protection System (WPS)** by Ministerial Decree (No. 788) in 2009. The WPS is an electronic salary transfer system designed to pay wages directly into the personal accounts of workers, allowing workers to prove if they have not been paid. WPS has also been introduced in **KSA, Oman, Qatar and Kuwait**.⁷³ Despite some challenges, these systems show significant promise.⁷⁴
- **Labour attachés** play an important role in information provision and dispute resolution. In particular, the Philippines hosts post-arrival orientation seminars in a number of countries,⁷⁵ while Sri Lanka has developed a manual to guide consular officials in their handling of grievances.
- The **Al Hassan Workers' Centre for garment workers in Jordan**, established in 2013 in the Al-Hassan Industrial Zone in Jordan, provides services, including legal advice and trade union support, educational courses and recreational activities, to the 17,000 garment factory workers in the Industrial Zone (nearly 80 per cent of whom are migrant workers from India, Sri Lanka and Bangladesh). The multi-purpose workers' centre was established with the support of a number of stakeholders, including international brands.⁷⁶
- **Interregional trade union cooperation** serves to provide support services throughout the migration process and includes activities undertaken by the General Federation of Nepalese Trade Unions (GEFONT) in Nepal for Nepali workers abroad through the formation and mobilization of GEFONT Support Groups (GSG). The GSG play a vital role in providing information to Nepali migrant workers on legal policies and provisions of the host country and some of the support groups have also been active in coordinating with Nepali missions and relevant stakeholders in the destination countries to facilitate direct support to migrant workers in need of services such as rescue, repatriation, legal counselling and compensation.
- The Founding Congress of the **Domestic Workers Union in Lebanon** took place on 25 January 2015 in Beirut with participation of 300 national and migrant domestic workers. The union is affiliated to the National Federation of Workers' and Employees' Unions in Lebanon (FENASOL). The Domestic Workers Union is the first union in Lebanon and in the region that represents the interests of migrant domestic workers.

⁷² At the time of writing, the Bill had been approved by the Federal National Council and was awaiting approval by the UAE President Sheikh Khalifa Bin Zayed Al Nahyan to become law.

⁷³ ILO (2017) (Forthcoming), Exploratory study of good policies in the protection of construction workers in the Middle East, ROAS, Beirut.

⁷⁴ Including the fact that the WPS often do not reconcile the wage paid with the contract agreement, fraud by companies and cases of non-payment due to company insolvency, which may be the result of delayed payment by clients). Jureidini, R. (forthcoming), 'Wage Protection Policies and Programs in Various Gulf Countries', Conference paper to Gulf Research Meeting, Cambridge, July.

⁷⁵ The Gulf Today (2016), 'Post-arrival orientation seminars for Filipinos', 22 July.

⁷⁶ Including the U.S. Agency for International Development (USAID), the Jordan Industrial Estates Corporation, the Irbid Chamber of Industry, apparel factories within the industrial zone, the General Trade Union for Garment and Textile Industries, the Jordan Garment, Accessories and Textiles Exporters Association.

QUESTIONS FOR DISCUSSION

- A. What has been the impact on the labour market, and indicators of decent work, in countries that have promoted internal labour market mobility, including by increasing migrant workers' ability to terminate their employment contract at will, or changing jobs without the consent of their current employer and without losing valid immigration status?
- B. Which countries of origin have introduced minimum wages, and in which sectors? What has been the process of introducing and applying these minimum referral wages, and what has been the impact?
- C. What would be the economic and social implications of introducing a 'flexible visa' which allows workers to move between employers, or work for multiple employers, including in the domestic work sector?
- D. How can workers organize to protect and advance their interests, within an environment that challenges formal organizing and limits migrant worker representation in unions?
- E. What mechanisms have been particularly successful in prevention of forced or compulsory labour? This may include education and awareness raising of both potential migrants and employers, as well as coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, and labour inspection services and other services responsible for the implementation of this legislation.
- F. What are the benefits, challenges and feasibility of unannounced labour inspection mechanisms in sectors in countries of destination with large number of vulnerable migrant workers, such as construction, agriculture and domestic work?
- G. What does the concept of 'access to justice' mean for migrant workers? This may include compensation, criminal sanctions against wrongdoers and/or the ability to remain in the country to work with another employer while complaints are being processed. How can countries of origin and destination better facilitate access to justice for migrant workers, and provide for adequate remedies? What scope is there to build up portability of justice – for those workers who have returned home?
- H. How can access to justice be improved and is there scope for greater use of joint investigative work by tribunals, national human rights committees or unions in countries of origin and destination?

2.5 ADDRESSING IRREGULARITY OF MIGRANT WORKERS

Migrants in an irregular situation are particularly vulnerable to mistreatment, exploitation and forced labour. The Global Compact on Migration is premised on the value of 'regular' migration – that is migration through established and lawful means, however migrants can often shift between regular and irregular status over time. Thus, a consideration of migrant workers in a situation of irregularity, and how their status can be regularized, is within the scope of matters relating to the GCM and decent work. Poor labour migration governance can increase the incidence of irregular migration and brings additional risks and challenges to migrants, countries of origin, transit and destination.

Migrant workers may **use irregular migration channels** for a number of reasons – and in at least some cases, this may be due to bans from the countries of origin⁷⁷ – primarily enacted against women who are migrating for domestic work. Following arrival in the country of destination, migrant workers can often **fall into an irregular situation through**

⁷⁷ See ILO (2015), No easy exit – Migration bans affecting women from Nepal, Geneva; and Napier-Moore, R. (2017), Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries, ILO and UN Women.

no fault of their own, due to the role entrusted to sponsors/employers regarding the legality of a migrant workers' status.⁷⁸ There are many ways through which migrant workers may end up in an irregular situation, including if proper administrative processes are not followed when permits are being renewed or transferred to another employer. This can also occur if a worker leaves the employer after facing abuse, and is awaiting the outcome of a legal case, as their residence status is not guaranteed.⁷⁹ Indeed, it is likely that many cases of migrant workers becoming irregular are explicitly linked to the *kafala* system of tying work and residence permits to one sponsor. However, data on the estimated number of migrant workers in an irregular situation in the Arab States, or the reasons for their irregularity, is not readily available.⁸⁰

While it is the sovereign prerogative of all states to manage their borders and regulate labour migration, ***the human rights, including fundamental labour rights, of all migrants, regardless of their status, should be protected in accordance with international law.***⁸¹ This principle is set out in a number of core international human rights instruments and in the eight ILO fundamental conventions addressing forced labour, child labour, trade union rights and non-discrimination in employment and occupation which apply to all workers.

Additionally, the ILO ***Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*** obliges States parties to respect the basic human rights of *all* migrant workers (Article 1). It also stipulates that if a migrant worker has lived and worked lawfully in the country, loss of employment should not be considered a trigger for automatic withdrawal of their residence or work permit (Article 8). Moreover, the migrant worker should also be entitled to enjoy equality of treatment with nationals in particular of guarantees to security of employment, the provision of alternative employment, relief work and retraining. Article 9 of Convention No. 143 further guarantees migrant workers, whose situation cannot be regularized, equality of treatment with migrant workers in a regular situation with respect to rights arising out of past employment regarding remuneration, social security and other benefits.⁸² Other obligations concerning the treatment of migrant workers in an irregular situation can be found in the core international human rights treaties, including the International Covenant on Civil and Political Rights (1966) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).⁸³

Being in an irregular situation has many negative impacts on migrant workers' lives. Such workers are frequently subject to harassment, arrest, detention and deportation without trial, and at greater risk of forced labour and trafficking in persons. Migrant workers in an irregular situation will not feel comfortable in engaging with any government services or moving freely. For example, a migrant worker who is ill may not visit a hospital for fear that their irregular situation will be uncovered. A migrant worker in an irregular

⁷⁸ For further information see: ILO (2017,) Employer-Migrant Worker Relationships in the Middle East: Exploring scope for internal labour market mobility and fair migration, ILO White Paper, ROAS, Beirut, May , p. 5.

⁷⁹ ILO (2017) (Forthcoming), Migrant workers in an irregular situation through no fault of their own: Pathways and response options in the Arab States, ROAS, Beirut.

⁸⁰ Governments often have data on deported or regularized migrant workers and border apprehensions, but these figures do not provide a complete picture. See de Bel Air (2017), 'Irregular Migration in the Gulf States: What Data Reveal and What They Conceal' in Shah, N.M. and Fargues, P. (ed.), *Skilful Survivors: Irregular Migration to the Gulf*, Gulf Research Centre, Cambridge.

⁸¹ It should also be recognized that protecting the human rights of migrants can override State border controls in certain situations, for example when applying the principle of non-refoulement to those migrants at risk of human rights abuses if denied entry and returned to their country of origin or third country.

⁸² See ILO (2016), Promoting fair migration, CEACR General Survey concerning the migrant workers instruments, International Labour Conference, 105th Session, Geneva, chapters 5 and 7.

⁸³ The 1990 Convention sets out a range of human rights, including labour rights, which apply to all migrant workers, including those in an irregular situation (Part III, Articles 8-35). The Convention also provides additional rights for migrant workers who are documented or in a regular situation (Part IV, Articles 36-56). Under Article 2 of the ICCPR, States are required to ensure that the rights in the ICCPR are provided to everyone "without distinction of any kind" and to uphold the rule of law and ensure access to justice for all people on the State's territory in the event of violation of any of these rights.

situation who is experiencing labour exploitation will not feel comfortable seeking help from a labour inspector or police officer. Migrant workers may also be forced to pay bribes to escape confrontation with the police or other officials. Hence being in an irregular situation may actually force workers to engage in clandestine or illegal practices.

Migrant workers in an irregular situation are also vulnerable to deportation without due process. A number of countries in the Arab States region have set quotas for deportation, with the explicit aim of reducing the migrant population, and labour inspectors are sometimes paid ‘bonuses’ for every worker in an irregular situation they identify during inspections. This has led to aggressive immigration detention and deportation practices, during which the workers may not have access to legal representation to contest their deportation and may be held in detention for indefinite periods of time, in breach of international human rights standards. Those who employ migrant workers in an irregular situation can technically also be subject to sanctions – including fines and imprisonment – however, no data is available on the enforcement of these provisions against employers.

Since the 1990s, the typical response of governments to the situation of irregular migration in the Arab States has been to strengthen border controls and implement periodic amnesty programmes, through which migrant workers in an irregular situation are able to ‘regularize’ their status and return to their country of origin without penalty. However, these programmes do not address the fundamental reasons that push migrant workers into an irregular situation in the first place.

There are ***strong economic and labour market efficiency arguments for addressing irregularity*** of migrant workers in the Arab States. Employers need a dynamic and flexible workforce, and maintenance of workers’ residence and work permits under the *kafala* sponsorship system is a considerable administrative burden to employers and labour suppliers, and hampers business flexibility. Workers in an irregular situation face detention and deportation, meaning worksites may lose workers suddenly, and governments spend considerable funds on detaining workers for weeks or even months.⁸⁴ Regularizing migrant workers who are in an irregular situation allows employers to engage workers already in the destination country – thereby saving on time, cost and the bureaucracy involved in recruiting a worker from abroad, and reducing the reputational risk of being associated with exploitative recruitment practices as well as aggressive immigration enforcement measures.

PROMISING PRACTICES

- **A ‘flexible’ work permit for migrant workers in an irregular situation was introduced in Bahrain** in 2017. The permit allows workers to work without a sponsor for two years. Under the scheme, workers bear the costs of the issue of the work permit, healthcare, social insurance and deposit for a return flight ticket. Flexible permit holders will be able to work for multiple employers simultaneously, and essentially be self-employed, rather than tied to a *kafeel*.
- In January, 2007, the **Association of Southeast Asian Nations (ASEAN) adopted a Declaration on the Protection and Promotion of the Rights of Migrant Workers**, which contains the general principle that destination and origin countries “shall, for humanitarian reasons, closely cooperate to resolve the cases of migrant workers who, through no fault of their own, have subsequently become undocumented.”⁸⁵

⁸⁴ Tamkeen (2017), *Walled in by Alienation: Working and living conditions of migrant workers in Jordan*.

⁸⁵ See <http://www.ilo.org/dyn/migpractice/docs/117/Declaration.pdf>.

- The **Democratic Organization of Migrant Workers in Morocco is the first trade union of undocumented workers in Africa**. It is an independent section of the Democratic Organization of Labour (*Organisation démocratique du travail*) and its goals are to: defend the rights of migrant workers of all origins living in the country, raise awareness of the precarious situation of undocumented workers, promote their rights to education, social security, equal pay and equal working conditions; demand regularization of undocumented workers; and promote the integration of migrants in Moroccan society. The union is directly managed by migrants themselves.⁸⁶
- A number of countries have **prohibited detention of migrants in an irregular situation if alternatives are available**. For example, most EU Member States, except for Cyprus and Malta, have legislated that alternatives to detention must be pursued prior to any decision for detention.⁸⁷
- **Key national labour and employment legislation in the United States covers all migrant workers, including those in irregular status**, namely legislation on wages and working hours, child labour, safety and health, trade union activity and employment discrimination. It is unlawful for an employer to retaliate against migrant workers by reporting them to the immigration authorities because they have sought remedies for violations of labour laws; the Government has successfully prosecuted employers for such retaliation.⁸⁸

QUESTIONS FOR DISCUSSION

- A. What role can countries of origin play in reducing irregular migration flows? What alternative protection measures (other than bans) can be applied to protect migrant workers without increasing irregularity and vulnerability of migrants?
- B. How can countries of origin and destination cooperate to increase regular channels available for women and men migrant workers?
- C. How can countries of destination identify migrant workers in an irregular situation through no fault of their own, and what can be suitable remedies for regularizing such workers?
- D. What mechanisms can be applied to protect migrant workers including labour inspection, access to medical services and access to justice irrespective of legal status?
- E. What are the financial and labour market implications of regularizing migrant workers?
- F. How can more regular migration channels be established between Asia and Arab States as well as Africa and Arab States that facilitate fair recruitment and meet real labour market needs at all skill levels?

2.6 GOVERNANCE OF LABOUR MIGRATION

Fair and effective governance of labour migration at the international, regional, sub-regional, bilateral and national levels can ensure that the benefits of migration are shared equitably amongst all parties. Social dialogue and strong and functional labour market institutions are essential to protect the needs and interests of national and migrant workers, and to meet labour market needs.

⁸⁶ African, Caribbean and Pacific Observatory on Migration and IOM (2014), The evidence behind the picture: Irregular migration in ACP countries and the global South, Background note.

⁸⁷ UN, General Assembly, 68th Session, Promotion and protection of human rights, including ways and means to promote the human rights of migrants, Report of the Secretary-General, A/68/292 (9 August 2013), paras. 77 and 79.

⁸⁸ ILO (2006), ILO Multilateral Framework on Labour Migration, above note 48, p. 62 (Annex II – Examples of Best Practices).

At the **international level**, in addition to international human rights and labour standards, and the specific standards relating to the labour migration governance and the protection of migrant workers, there are a number of fora dedicated to improving migration governance, including of labour migration, such as the discussions on the implementation of the migration-related aspects of the 2030 Agenda for Sustainable Development and the Global Forum on Migration and Development (GFMD), which are now coalescing around the consultations on the GCM.⁸⁹

At the **regional level**, there are a number of regional economic communities (RECs) and regional consultative processes (RCPs) on migration, where migration governance can be discussed and strengthened in different ways.

RECs and regional cooperation bodies generally comprise states within the same region and can exist in a variety of labour migration governance models. Within the regions of the Arab States, Africa and Asia, the key regional integration entities are the GCC, the AU, a range of sub-regional arrangements across Africa,⁹⁰ the South Asian Association for Regional Cooperation (SAARC) and the ASEAN. These and other RECs have various objectives with respect to labour mobility and are at various stages of implementation.⁹¹

RCPs on migration, on the other hand, are “restricted information-sharing and discussion forums for states with an interest in promoting cooperation in the field of migration”⁹² and include the Abu Dhabi Dialogue, the Colombo Process, the Euro-African Dialogue on Migration and Development (Rabat Process), and the EU-Horn of Africa Migration Route Initiative (Khartoum Process), which all focus on interregional labour migration governance, although only the first two processes address exclusively labour migration and mobility. These forums provide a framework for enhancing dialogue and coordination; for exchanging recent developments and good practices; and for the adoption – and review – of commitments on further action. A number of important declarations have been adopted in recent years, including the Kuwait Declaration which references the ILO Fair Migration Agenda and the importance of fair recruitment, adopted in 2014 at the Third Ministerial Consultation of the Abu Dhabi Dialogue; the Rabat Process Rome Declaration and Programme, adopted in 2014; and the Political Declaration of the Africa-EU Valletta Summit in November 2015, underpinned by an Action Plan that contains a section on legal migration and mobility and also addresses labour migration.

At the government-to-government level, **bilateral agreements** – which can be legally binding or more informal in the form of memoranda of understanding – can be useful tools to support fair and effective labour migration governance, if they incorporate provisions aligned with international labour standards. ILO Recommendation No. 86 includes a model bilateral agreement in its Annex. The most critical areas for cooperation concern the protection of migrant workers’ rights; fair recruitment processes; improved matching of workers’ skills with available jobs, including by establishing skills standards and skills recognition systems; and enhancing coordination of social security, including the portability of benefits, which is best achieved through separate agreements on social security in line with the model agreements in the Annex to the ILO Maintenance of Security Rights Recommendation, 1983 (No. 167). The

⁸⁹ A further exchange mechanism on labour migration is the Global Migration Group (GMG) comprising 22 UN agencies.

⁹⁰ Economic Community of West African States (ECOWAS), Intergovernmental Authority on Development (IGAD), Common Market for Eastern and Southern Africa (COMESA), Economic Community of Central African States (ECCAS), Community of Sahel-Saharan States (CENSAD), East African Community (EAC), Arab Maghreb Union (AMU), and Southern African Development Community (SADC).

⁹¹ ILO (2017), Addressing governance challenges in a changing migration landscape, above note 45, [chapter 4](#). This includes consideration of residence and establishment (ECOWAS); facilitation of movement for specific categories of workers (ASEAN, SADC); visa reciprocity agreements or regular exchange of information (AMU); or protection of the subregion’s workers in destination countries outside the region (SAARC).

⁹² Harns, C. (2013), Regional Inter-State Consultation Mechanisms on Migration: Approaches, Recent Activities and Implications for Global Governance of Migration, IOM Migration Research Series, No. 45, IOM, Geneva, p. 19.

development of any BLA or MOU among governments should engage social partners, make the BLA or MOU available to the public, include an effective implementation and monitoring mechanism, and adopt a system of periodic assessment, particularly regarding the protection of migrant workers. Numerous bilateral agreements – outlining wages and working conditions in specific sectors or occupations – have been concluded between countries of origin in Asia and Africa and the Arab States destination countries.⁹³ However, BLAs have thus far proven to be a weak tool in the protection of migrant workers' rights in the Arab States, due to poor implementation and monitoring. The ITUC has noted that “the proliferation of bilateral agreements [has] obscured the more pressing need of ensuring that migrant workers are covered by effective national labour legislation in the country of destination”.⁹⁴

At a **national level**, governments should institute a coherent policy on labour migration, taking account of both short and long-term workforce needs as well as wider social and economic contexts in both origin and destination countries. Guaranteeing equality of treatment for men and women migrant workers with nationals and ensuring that migrants can fulfil their human development potential at destination and origin requires robust and well-functioning labour market institutions which devote specific attention to the needs and interests of migrant workers. It is also important to align active labour market and employment policies with migration policies to ensure that labour migration responds to a country's skills needs and economic development plans.⁹⁵ This is particularly important within the context of 'nationalization' policies to move nationals into the private sector within the GCC countries; and also within the context of mixed migration (refugees, migrant workers and nationals on the same labour market) in Jordan and Lebanon.⁹⁶ Such a comprehensive policy framework should be guided by international labour standards.

Labour migration governance touches on the mandates of numerous Ministries – including labour, foreign affairs, home affairs/general security, health, and women. **Effective labour migration governance therefore requires coordination among relevant government agencies** to develop and achieve clearly identifiable and shared goals (through a 'whole-of-government' approach). Social dialogue, in all its various forms, lies at the heart of the ILO's mandate and is central to achieving fair labour migration. There is solid evidence that participation of the ILO's tripartite constituents in national and regional processes can strengthen the effectiveness and sustainability of labour migration policies, including those on fair recruitment, protection of migrant workers, skills development and recognition of qualifications, and improve public perception.⁹⁷

Key concerns regarding national governance of labour migration include weak **labour inspection** and barriers to accessing justice and effective complaints mechanisms. Labour inspection systems that conduct regular inspections, provide guidance and advice to both employers and workers, including migrant workers, and ensure effective enforcement in cases of non-compliance have a key role to play in reducing decent work deficits. However, current labour inspection is limited, and does not extend to the domestic work sector. As noted above, there are also concerns that labour inspectors are required to focus on detecting migrant workers in an irregular situation, rather than on their primary function which is to determine enforcement of the legal provisions relating to conditions of work and the protection of all workers.⁹⁸ Migrant workers face **barriers to accessing justice** in cases of disputes or complaints

⁹³ See Wickramasekara, P. (2015), Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review, http://www.ilo.ch/global/topics/labour-migration/publications/WCMS_385582/lang--en/index.htm.

⁹⁴ ILO (2016), Promoting fair migration, CEACR General Survey, above note 82, p. 51, para. 153.

⁹⁵ ILO (2017) Addressing governance challenges in a changing migration landscape, above note 45, p. 74, para. 200.

⁹⁶ See ILO (2017), A Challenging Market Becomes More Challenging: Jordanian Workers, Migrant Workers and Refugees in the Jordanian Labour Market, ROAS, Beirut, at http://www.ilo.org/beirut/publications/WCMS_556931/lang--en/index.htm.

⁹⁷ ILO (2017), Conclusions concerning fair and effective labour migration governance, above note 46.

⁹⁸ ILO (2017), Addressing governance challenges in a changing migration landscape, above note 45, p. 25, para. 56.

against abusive treatment. Often labour recruiters or labour supply agencies constitute the first line of dispute resolution and conciliation. If informal mechanisms to resolve disputes are unsuccessful, options for filing a formal complaint include at the worker's embassy or consulate; with the police (in cases where the sector falls under the mandate of the Ministry of Interior, or the complaint concerns a criminal matter); or with the Ministry of Labour. The accessibility of each of these mechanisms – in terms of physical access, language, and capacity and sensitivity of responding officials – will vary greatly. In this regard, migrant workers need to receive information on their rights and how to access and navigate grievance and dispute settlement procedures, and should be offered free or affordable legal assistance and adequate language translation services. To ensure that access to justice is real and effective, migrant workers with an insecure migration status should be able to remain in the country on a valid visa until their claims have been resolved.⁹⁹

In order for labour migration to counter risks and challenges in both countries of origin and destination, it is critical to have robust and **harmonized data**. The reluctance to share border control data, and disparities in resources and data protection guarantees, and the low frequency of surveys and statistical coordination mechanisms remain major obstacles to more effective governance.

PROMISING PRACTICES

- The **Abu Dhabi Dialogue (ADD)**, comprising countries of origin in Asia and countries of destination in the Gulf, adopted, in 2014, the Kuwait Declaration, which references the ILO Fair Migration Agenda and the importance of fair recruitment. As well as providing an important forum for discussing policy issues between countries of origin and destination, the ADD has been working on four technical areas of joint action over a two-year cycle, namely: labour recruitment; skills development, certification and recognition; use of technology to facilitate and improve the outcomes of labour mobility; and global consultations on the GCM.
- Although the existence of bilateral labour agreements has limited effect without clear evidence of actual and effective implementation,¹⁰⁰ there are some indications of promising practice, including agreements on domestic workers, which contain a standard employment contract based on the provisions of the Domestic Workers Convention, 2011 (No. 189), such as the **agreement between the Philippines and Saudi Arabia on domestic workers**. The public availability of this agreement, on the website of the Philippine Overseas Employment Administration (POEA), represents a further promising practice.
- In August 2015, **ASEANTUC, SARTUC and ATUC signed an MOU on joint action to promote rights-based cooperation on migration** in organizing and supporting migrant workers. The MOU identified a number of immediate actions, including: protection of migrant workers by offering direct services, either through trade unions or Migrant Resource Centres; raising issues such as gender concerns, confiscation of passports and regularization of the status of migrant workers; and facilitating bilateral labour migration agreements between origin and destination countries. The MOU provides for a system of regular coordination, monitoring and periodic evaluation of the MOU. There are also bilateral MOUs signed between GEFONT and the Kuwait Trade Union Federation (KTUF) and the General Federation of Bahrain Trade Unions (GFBTU) respectively, although these MOUs are not currently being actively implemented.

⁹⁹ ILO (2017), Addressing governance challenges in a changing migration landscape, above note 45, [p. 25, para. 57](#).

¹⁰⁰ While 86 per cent of agreements reviewed in a recent ILO report contained 'concrete implementation and monitoring and evaluation procedures through the establishment of a joint committee of government officials', only limited evidence shows actual functioning and outcomes of such committees, and there have been criticisms over a lack of transparency. ILO (2017), Addressing governance challenges in a changing migration landscape, [above note 45, p. 37, para. 80](#). See also, Wickramasekara, P. (2015), Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A review, above note 93, p. 15.

- In the area of skills development and recognition, the **Regional Model Competency Standards for Asia and the Pacific** covering different sectors, including domestic work and construction work, set benchmarks that define the skills, knowledge and attributes required to perform the job in question. These standards help to facilitate skills recognition across the Asia and Pacific region.
- The **International Labour Migration Statistics (ILMS) Database in ASEAN** is the first of its kind in the region. It gathers together official government data from a number of statistical sources on the stocks and flows of migrant workers within the region as well as on countries' nationals living or working abroad. In doing so, it fills an important knowledge gap, creating a powerful research tool through which policymakers and others can profile and monitor the international migrant labour force within the region. The database has been replicated in the Arab States. In Africa, the African Union and the ILO published the first Africa regional labour migration statistics report in 2017.
- With a view to implementation of resolution IV concerning further work on labour migration statistics of the 19th International Conference of Labour Statisticians, held in October 2013, the ILO has established **an expert working group on labour migration statistics**, which comprises representatives of tripartite constituents and senior labour migration statistics experts, with the aim of sharing good practices and developing a workplan for defining international standards on labour migration statistics that can inform labour market and migration policy.

QUESTIONS FOR DISCUSSION

- A. What are the challenges and good practices on the implementation of bilateral arrangements to protect migrant workers, both between governments and between unions?
- B. What are the good practices in developing fair, evidence-based and gender-responsive labour migration policies through social dialogue and linked with employment policies?
- C. How can inter- and intra-regional dialogue be pursued to ensure that migration systems and recruitment corridors are fair and respectful of human and labour rights and prevent human trafficking and forced labour? What role can workers' and employers' organizations and civil society organizations play in the existing RECs and RCPs?
- D. Is there scope for data harmonization, or joint activities in data collection including through a regional/inter-regional observatory on data?