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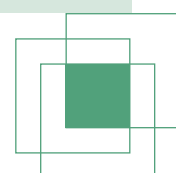
Promoting Equality and Addressing Discrimination



Seasonal worker harvesting apples, Syrian Arab Republic.

6.2 MIGRANT WORKERS: POLICY FRAMEWORKS FOR REGULATED AND FORMAL MIGRATION

■ Migrant workers are often subject to a series of barriers which trap them in situations of informality. Even where migrants have been able to access regulated and formal employment in receiving countries they may still fall into situations of informality at a later point. Normative frameworks have been established by the ILO and the UN to provide guidance on rights-based principles to regulate labour migration, for the benefit of both sending and receiving countries, as well as employers and migrant workers themselves. The application of these instruments can ensure better governance of migration and enable migrant workers to enter and remain in the formal economy. Similarly grounding migration policy in accurate forecasting of labour market demand, particularly in low skilled sectors, is likely to reduce irregular migration and thus informality.



KEY CHALLENGES

- Migration and informality
- Concentration of migrants in precarious employment arrangements
- Poor working conditions of migrant workers
- Vulnerability in economic crises
- Application of international instruments has been lagging
- Policy orientation to high skilled workers
- Administrative barriers
- Irregular migration
- From formal to informal
- Discrimination and social exclusion
- Specific vulnerabilities of women migrant workers
- Absence of social protection
- Lack of freedom of association

■ **Migration and informality.** Labour migration is increasingly recognized as having a positive impact on the development of both countries of origin and of destination, as well as migrant workers themselves. Migrant workers contribute to their home countries by alleviating labour market pressures, sending remittances, and transferring technology, skills and investments. In countries of destination, migrants rejuvenate ageing populations, meet demand for workers of all skill levels, promote entrepreneurship, and support social security and welfare schemes.¹ Yet many of these gains are undercut by inadequate policy frameworks for regulated and formal employment of migrants. A multitude of factors discussed below have seen large proportions of the migrant worker population concentrated in the informal economy, often in conditions of vulnerability, exclusion and insecurity, thereby significantly reducing the potential benefits of migration.

The drive to go abroad in search of better working conditions is not a new phenomenon, nor is the recruitment of foreign workers to fill jobs left vacant by local workers. But in recent years, globalization and the changing labour market dynamics associated with it have affected the ‘push and pull’ factors driving migration. Widening economic and social disparities between countries and the weakened capacity to create decent working opportunities in countries of origin reinforce the push to migrate. At the same time, increased demand for low-skilled labour in industrialized countries pulls migrant workers in. Part of this demand is generated by the move towards deregulation and ‘flexible’ labour, particularly in labour-intensive sectors not easily relocated abroad, such as agriculture, food processing, manufacturing, and construction. In parallel, demographic changes in the form of ageing populations and increased entry of women into the workforce have raised demand for services such as domestic work and home care. The result of these trends is the expansion of jobs characterized by low wages, low status, poor working conditions, and little or no social protection. In

● Supply and demand factors in both sending and receiving countries continue to fuel the growth in labour migration, but policy frameworks have not kept abreast of these developments, often resulting in large sections of the migrant population in informal work

¹ ILO, Rights, Labour Migration and Development International Migration Brief, International Migration Programme, Geneva.

the context of rising living standards in middle and high-income countries, native workers can afford to shun these occupations, leaving them to be filled by migrant workers.²

● Migrant workers are disproportionately concentrated in low-skilled, informal economy jobs. The sectors where migrant workers are concentrated, such as agriculture, small manufacturing and home services are often characterized by atypical employment arrangements which hide informal and unprotected work

■ Concentration of migrants in precarious employment arrangements.

While accurate data is difficult to obtain, it is clear that migrant workers are disproportionately concentrated in low-skilled, informal economy jobs. The sectors where migrant workers are concentrated, such as agriculture, small manufacturing and home services are characterized by precarious employment arrangements, including seasonal and casualized work and subcontracting. Such atypical employment arrangements can be used to hide informal, exploitative work as they are often insufficiently covered by labour regulations and difficult to monitor through labour inspection.

■ Working conditions of migrant workers.

In comparison to workers in the formal economy (both national and migrant), migrant workers in the informal economy generally have poorer working conditions, greater employment insecurity, poorer wages, limited or no access to social protection, and are more likely to be exposed to hazards and risks. They are also less likely to be organized and they have little recourse to justice where their rights are violated. To illustrate these points, evidence from a number of recent research reports³ shows that migrants in irregular status in the informal economy reported substandard working conditions and occupational safety and health situations, while among those in regular status, some of them reported working conditions and safety and health comparable to legally employed workers but with no social and health protection. On the issue of employment practices, migrants in irregular status registered substandard hiring and firing practices (without a contract); employment below actual qualifications or competencies; on a temporary basis; no or lax collective agreements; and underemployment. In the case of documented migrant workers, employers would issue contracts for fewer hours than working time carried out, or would provide lower salaries than agreed for the work actually performed. The same reports showed evidence that the wages of migrant workers in the informal economy are often significantly lower than formal workers. In Kazakhstan for example, in one survey, migrant workers in the informal economy earned 28 percent less than the average wage in the country, and approximately a third of the workers in the survey had encountered difficulties of not receiving pay for the work performed⁴, while in Spain the difference between migrant workers in the informal economy and Spanish workers can reach 30 percent⁵. The research also indicates that the employment of migrant workers in the informal economy is “more common in small and medium-size enterprises than in large ones.”⁶

2 For more details see Resources section to access: Taran, P. and Geronimi, E., 2003. Globalization, labour and migration: Protection is paramount

3 These reports are: ILO, EU, Employment of Migrant Workers in the Informal Economy in Kazakhstan, 2009; IOM, EC, ILO Addressing the Irregular Employment of Immigrants in the European Union (2008, Budapest); Pholphirul, P., Rukumnuaykit, P. 2010 The Economic Contribution of Migrant Workers in Thailand Journal of International Migration, Volume 48, Issue 5, October 2010

4 ILO, EU, Employment of Migrant Workers in the Informal Economy in Kazakhstan: A Study of workers in Southern Kazakhstan, 2009

5 Aparicio, R et.al. op.cit

6 Irregular Employment of Migrant Workers in Germany _Legal Situation and Approaches to Tackling the Phenomenon op.cit.

■ **Vulnerability in economic crises.** The vulnerability of migrants' situation as informal economy workers becomes all the more plain in times of crisis. Insecure working arrangements, combined with a lack of access to social safety nets, and concentration in sectors most sensitive to business-cycle fluctuations, such as construction, wholesale, hotels and restaurants, all make migrant workers particularly susceptible.⁷ The current financial and economic crisis has led, by some accounts, to a "normalization of informality,"⁸ as many migrant workers find themselves with little choice but to accept lower wages and poorer working conditions to avoid unemployment. A number of destination countries have responded to the crisis by implementing tighter restrictions on the admission of migrant workers and on the renewal of temporary work permits, which can close the door to formal employment for migrant workers.

The crisis has also affected internal rural-urban migration. In China, the manufacturing sector, which employs large numbers of internal migrants from rural areas, was hit hard by the decrease in demand for Chinese exports. An estimated 10 million internal migrants returned home after losing their employment in urban factories in 2008-2009, with some reports of protests among laid off workers for failure to pay back wages and severance pay.⁹

■ **Application of international instruments has been lagging.** Since the 1930s, the International Labour Organization has pioneered international instruments for the protection of migrant workers. The two migrant-specific ILO Conventions: *Migration for Employment Convention (Revised)*, 1949 (No.97), and the *Migrant Workers (Supplementary Provisions) Convention*, 1975 (No.143) and their *associated Recommendations* constitute key elements of the international protection framework for migrant workers. The need for "a rights-based approach, in accordance with existing international labour standards and ILO principles" was affirmed at 92nd Session of the International Labour Conference in 2004 through the adoption of the *Resolution for a fair deal for migrant workers* (see box on Protections for Migrant workers).

Despite the existence of an internationally recognized normative framework and a growing global interest in maximizing the positive effects of migration, a great proportion of migrant workers find themselves in the informal economy. Against this background, a number of specific challenges to extending decent work to migrant workers in the informal economy can be identified.

■ **Policy orientation to high skilled workers.** In many destination countries, migration policy is geared towards attracting highly skilled workers while keeping low-skilled migrant workers out. To justify such a bias against low-skilled workers, policymakers typically cite high rates of unemployment among native workers. Yet on closer inspection, high unemployment is not incompatible with persistent demand for low-skilled workers. Native workers may have the option to rely on unemployment insurance or informal social networks rather than accept what are deemed undesirable positions in low-skilled jobs. The unmet demand acts as a 'magnet' for foreign workers, who,

● The current financial crisis is 'normalising informality', lowering standards and wages for many migrants. It is also resulting in large scale movements back to rural areas for those who have lost their jobs

Protections for migrant workers and their families in international law

The protections provided to migrant workers and their families under international law can be summarized in three fundamental notions:

- Universal human rights and core labour rights apply to all migrants, regardless of their status;
- The principles of equality of treatment and non-discrimination between migrant workers in regular status and native workers in employment and occupation should be applied;
- International labour standards providing protection in treatment and conditions at work, such as employment, labour inspection, occupational safety and health, maximum hours of work, minimum wages, social security, freedom of association and maternity leave, apply to regular migrant workers.

Source: International Labour Migration: A rights based approach. ILO, 2010

7 For more information see Resources section to access: OECD, 2009. International Migration and the Economic Crisis: understanding the links and shaping policy responses

8 For more details see Resources section to access: CLANDESTINO, 2009. Workshop on Irregular Migration and Informal Economy.

9 For more details see Resources section to access Martin, P., 2009. The recession and migration: Alternative scenarios

● Unemployment in receiving countries is still compatible with the persistent demand for low skilled workers, which in turn acts as magnet for migrant workers

● The lack of clear, transparent policies and procedures for employing migrant workers has seen a growth in informality

● Migrants entering legally are also vulnerable to falling into irregularity and being trapped in the informal economy

● Labour trafficking can flourish in the absence of legal channels to enter into countries where there is demand for labour, as well as where there is a lack of access to information on existing legal migration channels

in the absence of legal migration channels, turn to irregular migration.¹⁰ The link between labour market demand, restrictive migration policy, and increased irregular migration is strong. Barred from entry to the formal labour market by virtue of their illegal status, irregular migrant workers often have little option but to turn to the informal economy where valid work permits are not checked.

■ **Administrative barriers.** The often complex and bureaucratic procedures for hiring foreign workers also acts as a barrier to regulated and formal work in many countries. Where there are unclear policies and procedures for employing migrant workers, and with few punitive sanctions for hiring irregular migrant workers, the growth of informality will continue. Too often in fact, the brunt of the punishment falls on the workers themselves. In a worrying trend, destination countries are increasingly criminalizing irregular migrant workers. The undue focus on ‘cracking down’ on irregular migration and strengthening border controls has not only failed to stem the flow of irregular migrants, it has further stigmatized migrants, embedding them more deeply into the informal economy and reinforcing negative and even aggressive attitudes towards them. Populist discourses associating migrants with increased criminality as well as policies of arbitrary detention and denial of due process may also expose migrants to ill-treatment and hostility.¹¹

Furthermore, in focusing on blocking the entry of new migrants, these policies fail to recognize that many irregular migrant workers enter their country of destination legally, subsequently falling into irregular status and joining the informal economy. Such cases tend to proliferate when migrant workers are unable to meet the conditions to renew their work or residency permits and the cost of returning home is high.¹² In recent years, developed countries have tended to favour temporary migration programmes which often tie workers to a specific employer, occupation, or geographic location. These restrictions do not always reflect the realities of demand for workers which may in fact be long-term, nor do they provide workers with alternatives in the case of exploitative working conditions. As a result, regularly admitted migrant workers can slip into a situation of irregularity and informality by overstaying their visa or by running away from their designated employers.

Sectors employing irregular migrant workers are often those where minimum labour standards are not respected or enforced, or may not even exist. Irregular migrants may sometimes be denied their wages, abused, or have restrictions imposed on their freedom of movement. In extreme cases they can find themselves victims of trafficking, trapped in situations of forced labour, and subject to a host of other serious human rights abuses. Labour trafficking can flourish in the absence of legal channels to enter into countries where there is demand for labour, as well as where there is a lack of access to information on existing legal migration channels. Victims of trafficking are often found in illegal or underground employment, such as in sweatshops, agricultural work, construction or the sex industry, with little or no regulation of the conditions of work.

10 For more information see Resources section to access: Reyneri, 2003. Illegal immigration and the underground economy

11 United Nations Human Rights Council, 2008. Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development. Report of the Special Rapporteur on the human rights of migrants, Doc. A/HRC/7/12, 25 February 2008, Geneva.

12 For more information see Resources section to access: OECD, International Migration Outlook: SOPEMI 2008. Paris.

■ **Irregular migration.** In addition to exposing workers to a vast array of human rights abuses, irregular migration and informality have negative economic implications for both countries of origin and destination. For destination countries, it represents a loss in social security and tax contributions and creates unfair competition among employers. For countries of origin, it hampers migrant workers' capacity to remit money home, a major source of capital for many developing countries. Migrant workers in informal work situations face barriers to receiving regular wages as well as to accessing formal channels to transfer their earnings home. Remittance transfer costs through informal channels are often high and less reliable than formal mechanisms, such as banks, which may not be accessible to migrants in irregular status.

■ **From formal to informal.** Irregular status is not the only barrier to formal employment for migrant workers - migrants in regular status can also find themselves trapped in the informal economy. A study on the labour insertion of migrant workers in Greece, Italy and Spain found both regular and irregular migrant were concentrated in low-skilled, informal employment.¹³ The following list of groups of documented migrants can be found working in the informal economy, but does not exclude others:

- asylum-seekers with a residence, but no work permit;
- young migrant students with a part-time work permit;
- dependents of principal applicants with a residence permit, but no work permit;
- documented migrants with a residence and work permit that cannot find a job in the formal economy for discrimination practices (can include second generation migrants) or language barriers;
- documented migrants that do not want themselves, or their employers do not want, to pay social security contributions and/or taxes;
- self-employed migrants; and,
- In the case of the EU, nationals of new EU Member States facing transition periods to access the labour market.

■ **Discrimination and social exclusion.** Migrant workers accumulate 'multiple layers of discrimination,' based not only on migration status, but also nationality, ethnicity, and gender, which contribute to their marginalization and exclusion from the formal economy. Migrant workers are regularly subjected to various forms of discrimination, including in access to employment and unequal treatment in the workplace, practices which are inconsistent with the ILO Declaration on the Fundamental Principles and Rights at Work and international instruments on migrant workers. In times of crisis, the perception that migrants are competing with native workers increases, which can reinforce xenophobia and lead to a rise in discriminatory employment measures, mass deportations, and violence against migrants. Migrants also regularly face unequal access to opportunities such as education and training, as well as discrimination in access to public services, housing and education. For many migrants, the result is that they are confined to the margins of the informal economy.

● Discrimination against migrant workers is an important element pushing many into the informal economy

¹³ For more information see Resources section to access: Reyneri, E. 2001. Migrants' involvement in irregular employment in the Mediterranean countries of the European Union

■ **Specific vulnerabilities of women migrant workers.** Nearly half of all international migrants are women. Women are increasingly migrating independently for employment. Labour migration can be an empowering experience for women, but the dynamics of today's migration can also entrench traditional gender roles and exposes women to a number of specific risks and vulnerabilities.

In countries of origin, labour market discrimination, poverty, and unequal access to resources can push women to migrate out of necessity rather than choice. With no access to decent jobs at home, they are obliged to go abroad. For example, in Indonesia and the Philippines, countries which send large number of women migrant workers abroad, unemployment rates are high among young women.¹⁴ As migration opportunities for women in Asia are often temporary and reintegration into home country labour markets can be difficult, women can find themselves trapped in a cycle of temporary migration, whereby they must continually re-migrate for work. The absence of women from households in home countries can also have adverse effects on the family and social structure.

In destination countries, globalization has generated increased demand for women migrant workers, particularly in the manufacturing and service sectors. While both men and women migrants are disproportionately concentrated in low skilled work, women in particular see their opportunities for migrating for employment limited largely to low-skilled jobs in unregulated sectors. Women are often concentrated in repetitive, low-skilled assembly line work in export processing zones and sub-contracted or piece-rate production. Demand is also high for domestic and home care workers as more women in industrialized countries enter the workforce and populations are ageing. Jobs in these sectors are often poorly covered or even totally excluded from labour legislation, leaving workers unprotected by formal regulations and enforcement. (see also brief on Gender Equality).

Compared to men, women also have less access to information on opportunities to migrate for work. They are less informed of legal job opportunities abroad, their labour rights, as well as the conditions of work and life abroad, making them less prepared to cope with the consequences of migration once in the destination countries.¹⁵

■ **Absence of social protection.** Migrant workers in the informal economy face a number of barriers to accessing social protection. As informal economy workers, they are usually not covered by formal social security schemes. Restrictions to social security coverage based on nationality as well as residence exist in a number of countries. Migrants can also face disqualification from benefits if they are in irregular status. Recently arrived migrants are especially vulnerable, as they may not have access to family and social networks that can act as an informal safety net.¹⁶ At the same time, by going abroad, migrants risk losing benefits accrued in their country of origin.

In developed countries with ageing populations, the entry of migrants into the workforce can be a valuable source of income for the State to alleviate the burden on social security schemes. Yet if migrant workers are obligated

● In high-income countries with ageing populations, the entry of migrants into the workforce can be a valuable source of income for the State to alleviate the burden on social security schemes

14 For more details see Resources section to access: ILO, 2007. International Labour Standards on Migrant Workers' Rights: Guide for Policymakers and Practitioners in Asia and the Pacific

15 Council of Europe, 2008

16 Sabates-Wheeler, R. 2009. Extending social security coverage: Good practices, lessons learnt and ways forward. Working Paper No. 12 International Social Security Association, Geneva.

to contribute to social security while being denied the right to withdraw benefits, they may turn to informal employment to avoid losing income to social security. This absence of social protection is particularly serious since migrants in the informal economy may be in occupations with high levels of job and income insecurity and dangerous working conditions. The Trade Union Conference reports that occupational accident rates are about twice as high for migrant workers as for nationals in Europe¹⁷. Migrants predominate in industries with high rates of fatal accidents and injuries such as agriculture, construction, and meat processing. In addition, long working hours, poor housing conditions and little access to information on occupational and safety regulation can make migrants more susceptible to poor health, accidents, and occupational diseases.

■ **Lack of freedom of association.** The ILO upholds the right of all migrant workers to form or join trade unions, regardless of their migration status. Nonetheless, in many countries, migrant workers are routinely denied their right to freedom of association. Restrictions on joining and participating in trade unions on an equal basis as national workers are sometimes enshrined in national legislation. In a few countries, migrant workers are barred completely from joining unions, in breach of the ILO standard: *Freedom of Association and the Right to Organize Convention, 1948 (No. 87)*. Several countries, including in Europe, restrict migrant workers' rights to hold office in unions. Often too, temporary migrant workers and irregular migrant workers are denied their right to freedom of association.

Beyond legislative and regulatory restrictions, there are a number of additional barriers to organizing migrant workers, such as migrants workers' fear of reprisals from employers, cultural barriers, unclear employment relationships, work in private homes among others. These are discussed in more detail in the brief on Trade Unions.

● Migrant workers need to be able to form or join trade unions, regardless of their migration status

¹⁷ For more details see Resources section to access: ILO, 2008. In search of Decent Work-Migrant workers' rights: A manual for trade unionists



Female construction worker, Thailand.



Internal migrant worker, Beijing, China.

- A rights-based approach
- Promoting effective governance of migration
- Destination country initiatives
 - Bilateral and multilateral initiatives
 - Regularisation programmes
 - The reduction of administrative barriers
 - Regional integration schemes
- Protecting migrant workers
 - Effective legislation and enforcement
 - Labour inspection and enforcement
- The role of countries of origin
 - Making migration a genuine choice
 - The right to organise
 - Social inclusion and social protection

● A rights-based approach to migration policy opens up opportunities for migrant workers to enter and remain in the formal economy

■ **A rights based approach.** The ILO advocates for a rights-based approach to labour migration. A rights-based approach is one that draws on international instruments to develop coherent and comprehensive migration policies which take into account the specific needs and vulnerabilities of certain groups of migrant workers. Such an approach is not only necessary with respect to human rights and ethical treatment of all workers, but also makes economic sense, as it enables migrants to make a fuller contribution to their host societies, their countries of origin, and their own development. Importantly it opens up opportunities for migrant workers to enter and/or remain in the formal economy. The ILO Multilateral Framework on Labour Migration¹⁸, developed through tripartite consultation with experts from around the world and approved by the ILO Governing Body in 2006, is a comprehensive guide for a rights-based approach to labour migration. It contains principles and guidelines for developing and implementing migration policies and practices for improving the governance, promotion and protection of migrant rights and strengthening linkages between migration and development.

Within the framework of a rights-based approach, there are a number of emerging strategies and good practices for enabling migrant workers to move out informality: (i) promoting effective governance of labour migration; (ii) establishing protection frameworks to address the specific vulnerabilities of migrants based on international instruments (iii) promoting social inclusion and extending social protection to migrants.

■ **Promoting effective governance of migration.** For many migrant workers in the informal economy, the impossibility or near impossibility of obtaining and maintaining a valid work permit constitutes a major barrier to

¹⁸ Available online in Arabic, Chinese, English, French, Russian and Spanish, at http://www.ilo.org/public/english/protection/migrant/download/multilat_fwkw_en.pdf

entering the formal economy, even in countries where there is demand for foreign workers. Adjusting the rules for entry and delivery of work permits and ensuring responsiveness to actual labour market demand is also an important first step in providing migrants with access to decent working conditions. The persistent need for migrant workers in sectors such as construction, domestic care, and manufacturing, suggests a structural demand for low skilled workers, rather than a temporary gap that needs filling. Better governance of labour migration can be achieved by expanding avenues for migration in accordance with demand, and developing transparent and coherent policies for the admission, employment and residency of migrants. Social partners have a key role to play in identifying demand and developing long-term strategies for meeting it. Building consensus around migration and employment policies through social dialogue is also more likely to lead to compliance by employers, as such policies are for the most part implemented in the workplace.

● Policy development based on better analysis of labour market demand can reduce the growth of informality among the migrant population

■ Destination country initiatives.

- **Regularisation programmes.** Spain, which has become a major country of destination for migrant workers in recent decades, carried out its largest regularization program of migrant workers to date in February 2005. Over 700,000 migrant workers from Ecuador, Romania, Morocco and other countries employed in domestic work, construction, agriculture, and hotels benefitted from the regularization. During the development phase of the regularization programme, extensive consultations with social partners as well as migrant associations were undertaken, which contributed to building broad-based support for it. The regularization was based on clear and narrowly defined criteria designed to bring large sections of the informal economy into the formal sphere. Approximately 81% of the regularized migrant workers registered for social security.¹⁹ In comparison to past regularizations conducted by Spain, this program took on a broad, comprehensive approach to addressing irregular migration which included parallel initiatives for opening avenues to legal avenues for migration. These included creating a register of hard-to-fill jobs by province with a “fast track” mechanism for employing foreigners, and granting a limited number of three-month visas to allow migrants to seek jobs in the occupations in demand, such as domestic workers, transport workers, and restaurant staff.²⁰

In Spain a regularisation campaign was taken in consultation with social partners. It established clearly defined criteria for bringing large sections of the informal economy into the formal sphere

- **The reduction of administrative barriers** to registering foreign workers can remove strong incentive for undeclared work. A number of European Union Member States have recently introduced measures to simplify procedures for registering migrant workers, leading to significant formal sector job creation.²¹ One such measure is the use of service vouchers to facilitate formal contracting of domestic service providers. This system offer simplified procedures for calculating mandatory contributions and declaring workers rendering services occasionally or regularly for several different employers, such as cleaning, gardening, or child care. In France, the Cheque emploi service universel or Universal employment service check (CESU) was introduced in 2006. The scheme allows employers to pay and declare their employees by means of a service cheque for a wide range of domestic services. Employers can register for the scheme online. The

A number of EU member states such as France have simplified procedures for registering migrant workers, leading to significant formal sector job creation

19 For more details see Resources section to access: ILO, 2010. Good practices database - Labour migration policies and programmes.

20 For more details see : <http://www.migrationinformation.org/Feature/display.cfm?ID=331>

21 European Union (EU), 2007. EU Steps up the fight against undeclared work. Press Release MEMO/07/424, 24 October 2007, Brussels. <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/424>

● Bilateral agreements are most effective in curbing informality when they are based on international norms on migration

New Zealand has a Seasonal worker scheme which responds to labour market demands while protecting the rights of workers

social contributions are calculated by the national social security fund and deducted directly from the employers' bank account on a monthly basis. For employees working less than eight hours per week, the CESU replaces the need for the employer to establish a work contract. The employer is free to negotiate wages with the employee, provided it is not below the minimum wage. Similar service voucher schemes have been implemented in Austria, Belgium, and Spain as well as Geneva (Switzerland), and Canada.

- **Bilateral and multilateral initiatives.** Bilateral or multilateral agreements between sending and receiving countries can also be an effective method for providing access to legal migration and formal employment opportunities. Bilateral agreements, which were originally developed in the 1940s but fell out of favour during the global economic crisis of the 1970s, have experienced renewed popularity since the 1990s. Though they can take a variety of forms, the most effective agreements are those that are based on ILO and other international standards. The *ILO Migration for Employment Recommendation (Revised), 1949, (No. 86)* contains an Annex with a model agreement on temporary or permanent migrant workers, which sets out provisions for working and living conditions and social security. The Annex has been used widely as a model by States.

There are several examples of bilateral and multilateral agreements as well as less binding Memoranda of Understanding (MOUs) being used to meet demand in the agricultural sector. In New Zealand, the Recognized Seasonal Employer (RSE) Policy was developed in 2006 with neighbouring Pacific states to address demand for low-skilled workers in horticulture and viticulture. The scheme allows employers to hire foreign workers from the region to work for up to seven months per year. There are up to 8,000 places for overseas workers each year, though the cap can be modified according to industry labour needs. For employers to qualify, they must meet a series of conditions, which includes demonstrating the promotion of the welfare of workers and not having violated relevant employment or migration policy in the past. Employers must also provide adequate accommodation, healthcare and pay market rate wages. Workers must agree to return home after the employment period, after which they may be eligible for recruitment the following year. An Evaluation Advisory Group with representation by government of New Zealand and of origin countries as well as social partners and migrant organization regulates the process.

While such programs succeed in opening opportunities for formal employment to migrant workers in a sector notorious for informal employment, they do not close the door to abuse and exploitation. Seasonal agricultural programmes typically do not allow migrants to change employers, locations, or type of work for the duration of their stay in the country. Furthermore, the loss of employment generally means that they must return to their country of origin or risk falling into irregular status. This is in contravention of ILO Migrant Workers Convention No. 143, which states that migrant workers in a regular situation should not be regarded as in an illegal or irregular situation simply because they have lost their employment, and should not lose their work permit or residence permit because of it.

- **Regional integration schemes.** As the bulk of migratory movements occur within the same regions, regional integration schemes that allow for labour mobility or free movement have great potential for reducing irregular migration and opening a door to formal employment for migrant workers. The last two decades have seen an increase in regional integration schemes

around the world, including the East African Community (EAC), the South African Development Community (SADC), the Caribbean Community (CARICOM), and South America's Southern Common Market (MERCOSUR). These regional agreements typically focus on economic integration through the promotion of free trade, and include provisions to facilitate movement of people for work or residence, involving harmonization of labour legislation and adherence to the principle of equal treatment.

The members of MERCOSUR, Argentina, Brazil, Paraguay and Uruguay, together with Bolivia and Chile, signed the "Residence Agreement for Nationals of Member States of the MERCOSUR" in December 2002. The agreement allows nationals of the signatory states to obtain residence in any other signatory state²² Applicants need only be nationals of one of the signatory states to be eligible. Subject to presentation of their national identity documents, they and their legal dependents can obtain temporary residence valid for two years, which can subsequently become permanent. As the Agreement applies both to those wishing to enter a second signatory State and those already residing in one, regardless of the migration status under which they entered, it also serves to regularize migrant workers from the region. Furthermore, the temporary residence permit is not linked to a specific employer, giving migrant workers the freedom to change employers on an equal basis as nationals. The Agreement establishes the right to freedom of movement in the receiving country and equal civil, social cultural and economic rights, as well as equality of treatment under labour legislation, particularly in relation to conditions of employment and social security. Finally, it includes measures to prevent the illegal employment of migrants, with sanctions targeting employers rather than the workers themselves.

Such agreements have an immediate effect on the decent working conditions of migrant workers, as they provide access to legal channels for migration as well as a normative framework for addressing the rights of migrants. Regional economic integration can also lead to an evening out of disparate levels of development between members of a regional space, reducing the pressure to migrate as workers find more decent working opportunities at home.²³

■ **Protecting migrant workers.** Ensuring that national legislative and regulatory frameworks cover sectors and occupations where migrant workers are concentrated is a key step in providing migrants with protection from abuse and access to decent working conditions. This can involve enlarging the scope of legislation to sectors previously excluded or adopting legislation targeting specific sectors or types of workers.

- **Effective legislation and enforcement.** One approach is to facilitate the establishment of written employment contracts by developing standard contracts or model contracts which are legally enforceable. In Jordan, where domestic work is excluded from national labour legislation and reports of abuses of domestic workers are frequent, the 'Special Working Contract for Non-Jordanian Domestic Workers' was developed to provide substantive rights to migrants employed as domestic workers. The Contract, endorsed in 2003 by the Jordanian Ministry of Labour, was developed under the guidance of UNIFEM, ILO, relevant ministries of Jordan and the Embassies of Sri Lanka, the Philippines, and Indonesia.

● Seasonal worker schemes need to allow migrant workers to change their employers. Such a measure helps them to avoid falling into informality

● Regional integration schemes allow for freer labour mobility and have opened opportunities for formal employment of migrants

Jordan has introduced model contracts establishing the rights and responsibilities of migrant workers

²² For more details see the text of the Agreement (in Spanish) at <http://www.parlamento.gub.uy/htmlstat/pl/acuerdos/acue17927-1.htm>
²³ ILO, 2010.

It contains provisions for wages, insurance, adequate living standards, rest days, and repatriation, clearly outlining the responsibilities of the employer and the rights of the worker. The contract also contains provisions for a minimum wage, eliminating discriminatory payment of wages on the basis of the workers' nationality. Although the contract is regulated under civil law where sanctions are lighter, it is a first step in creating an enforceable protection framework for women domestic workers.

● Responsibilities for labour inspection should be kept separate from the enforcement of migration laws

- **Labour inspection and enforcement.** In order to be effective, regulations aimed at protecting migrant workers in the informal economy must be accompanied by effective labour inspection and other enforcement measures. Government bodies responsible for labour inspection should seek to target sectors where migrant workers are concentrated and be sensitive to language and communication difficulties. Although it is important for labour inspectors to work closely with migration authorities to ensure the respect of migrant workers' rights, responsibilities for labour inspection should be kept separate from the enforcement of migration laws. Furthermore, sanctions for the illegal employment of migrants should focus on punishing employers, not on migrant workers who are often victims of exploitation. One approach is to create a unit specialized in inspection of the labour conditions of migrant workers, which can consult with migration authorities on how to guarantee the protection of their rights. In Mauritius, the Special Migrant Workers' Unit of the Ministry of Labour is responsible for reviewing the employment conditions of migrants. The Unit ensures compliance of employment contracts, informs migrant workers of their rights, and conducts daytime and night-time inspections of workers' working and living conditions. A tripartite dispute resolution mechanism exists within the Ministry, which can apply legally enforceable sanctions to employers.

Special legislation can also be developed to extend protection to sectors and types of employment where migrant workers are concentrated. In the United Kingdom, the Gangmaster Licensing Act²⁴ of 2004 was passed after the death of 23 migrant cockle pickers working informally in Morecambe Bay brought to the public's attention the tragic consequences of turning a blind eye to the exploitation of migrants. The Act established the legal framework for the Gangmaster Licensing Authority (GLA), created in 2005 to protect workers in agriculture, shellfish gathering, horticulture, food processing and packaging, sectors where large numbers of migrant workers are employed, often temporarily and in exploitative conditions. Under the Act, gangmasters, defined as persons who supply, employ, or supervise workers in any of the occupations covered, including subcontractors, can only operate with a license granted by the GLA. Enforcement and compliance officers of the GLA are empowered to carry out inspections, including unannounced ones, and to arrest violators of the Act. To date, 125 licenses have been revoked and 10 criminal prosecutions have been obtained. In addition to eliminating abusive working conditions, the licensing scheme also seeks to draw gangmasters into the formal economy, thereby increasing tax revenues and promoting fair competition among labour providers. The Board of the GLA is comprised of representatives from trade unions, employers' organizations, and relevant government bodies.²⁵

In the UK, special legislation – the Gangmaster Licensing Act – was developed to extend protection to sectors where migrant workers are concentrated

²⁴ For details of the law see: http://www.opsi.gov.uk/acts/acts2004/pdf/ukpga_20040011_en.pdf

²⁵ For more details see the Resources section to access: ILO Good practice database http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=51

■ The role of countries of origin

- **Making migration a genuine choice.** Countries of origin also have a responsibility to protect their citizens abroad as well as to create decent working opportunities at home so that migration for employment is a choice and not a necessity. Sri Lanka, a country with an annual outflow of approximately 200,000 migrant workers per year, has in recent years positioned itself to take a more proactive stance on protecting its migrant workers. Almost half of Sri Lankan migrant workers are women, employed mainly for domestic work and other low-skilled occupations²⁶. Faced with increasing reports of abuse and exploitation of workers abroad as well as a dependency on remittances, in 2008, the Sri Lankan Ministry of Foreign Employment Promotion and Welfare developed a National Labour Migration Policy with support from the ILO to promote labour migration within a framework of good governance and decent employment. The policy was developed through a broad-based consultative process including social partners and NGOs. It takes into account gender considerations, recognising the specific vulnerabilities of women. The policy document commits the government to a range of interventions, including improving pre-departure trainings and reintegration programmes, fighting illegal recruitment and fraud, protecting the children of migrant workers, and promoting skilled migration.
- **The right to organise.** Allowing migrant workers to exercise their rights to join a trade union is an effective way to prevent exploitation, and opens the door to integration in the host society, a process which often starts in the workplace. Once wary of migrant workers in creating unfair competition, the majority of trade unions now take a position of solidarity with migrant workers, regardless of their migration status²⁷. Trade unions have increasingly begun to address migrant workers issues, targeting them in organizing drives, campaigning for their rights, and providing them with direct support. National labour confederations in Argentina, Belgium, Canada, France, Germany Ireland, Republic of Korea, South Africa, the United Kingdom and the United States, among others, have full time national staff dedicated to migrant worker issues and anti-discrimination. In all of these countries, the confederations actively advocate for the protection of rights and decent working conditions of migrants.²⁸

Sri Lanka has developed a migration policy in consultation with social partners, which commits to a number of government interventions to protect its migrants overseas

A number of national trade union confederations have dedicated full time staff to migrant worker issues

Trade unions have also become involved in policy debates on migration and international cooperation to secure migrant workers' rights. The International Trade Union Confederation (ITUC), has launched a plan of action on migrant workers. The plan is based on promoting solidarity with migrant workers, protection of their rights, awareness raising, and campaigning for the ratification and implementation of international labour standards. Protection is sought through the framework of collective negotiations, as well as by building partnerships with NGOs and civil society.

The establishment of unions specific to migrant workers, or sections of unions run by migrant workers linked to a well-established national union can also be effective in addressing the specific needs of migrants and getting around discriminatory legislation. In Hong Kong, migrants' unions are officially recognized, granting legal protection of migrants' right to unionize. Employers found guilty of terminating an employee's contract

26 National Labour Migration Policy for Sri Lanka, Ministry for Foreign Employment Promotion and Welfare, 2008.

27 ILO, 2008.

28 ILO, 2008.

Sri Lankan trade unions have developed bilateral agreements with unions in destination countries to protect the rights of migrant workers

due to union membership or activities can be fined by a court of law. There are a number of registered migrant unions in the country. The Indonesian Migrant Workers' Union (IMWU), established in Hong Kong in 2000 has 2,5000 migrant domestic workers members, and is affiliated to the Hong Kong Congress of Trade Unions (HKCTU)²⁹ (see brief on trade unions).

At the bilateral level, trade unions in countries of origin and destination can collaborate to strengthen the protection of migrant workers both at home and abroad. In 2009, Sri Lankan trade unions signed three bilateral cooperation agreements with unions in Bahrain, Jordan and Kuwait, to protect and promote the rights of Sri Lankan workers in these countries. The agreements recognize the principles laid out in the ILO Multilateral Framework on Labour Migration and commit the signatories to undertaking actions to secure Sri Lankan migrant workers all labour rights included in international instruments. This includes the development of model employment contracts for migrant workers and joint measures to denounce abuse, and to address specific needs of vulnerable categories of workers, including temporary, agricultural and domestic workers.

- **Social inclusion and social protection.** Social partners can also provide information and support services to migrant workers to facilitate their integration. In Spain, Pagesos Solidaris (Farmers Solidarity Foundation) founded in 2001 by the largest agricultural employers organization in Catalonia in the north east of Spain to recruit seasonal migrant workers³⁰. The programme offers additional support to migrant workers, mainly from Colombia, Romania and Morocco, to provide training and integration measures such as information on the Spanish health system, and supports migrants in developing projects in their home countries to provide them and their families with a sustainable source of income.

A number of sending countries such as the Philippines have set up welfare funds for their migrant workers covering old-age, invalidity, pensions, medical care and maternity benefits

Bilateral or multilateral agreements on social security between countries of origin and destination are usually considered the best option for providing migrant workers with social protection. However, such agreements typically do not extend to workers in the informal economy. A number of countries of origin have opted to set up welfare funds to provide their workers abroad with insurance in the case of death, disability, or emergency repatriation, regardless of their employment or migration status. The Philippines' legislation also offers its nationals abroad the right to join the national social security program on a voluntary basis by registering as 'self-employed.' This provides migrant workers access to old-age and invalidity pensions, medical care, and sickness and maternity benefits.³¹

Mexico has developed an innovative scheme for voluntary insurance for its migrants abroad. It integrates private non-profit health providers with and insurance agencies in the US with the public health system in Mexico

Mexico also provides voluntary insurance to its nationals abroad. The *Salud Migrante programme* established by the Mexican Institute of Public Health (INSP) is a pilot health insurance scheme for migrants that offers coverage in both the US and Mexico. The programme is based on collaboration between US and Mexican health providers, authorities and academics. The innovation lies in the integration of private non-profit health providers and insurance agencies in the US with the public health system in Mexico. The scheme is being piloted in two US and two Mexican states. Under the scheme, migrants are given universal access to a package of essential primary care services in the US, mainly through community health centres and insured through non-profit health plans. Migrants have

29 See ITUC website Interview with Sartiwen Binti Sanbardi <http://www.ituc-csi.org/spotlight-on-sartiwen-binti.html>

30 For more details see Annual Report (in Spanish)

http://www.pagesosolidaris.org/aplicacion/cms/documentos/doc1_1962009020038.pdf

31 Tamagno, 2008

access to secondary health care in Mexico through the national public health system.³² (see also brief on Social security).



Informal meeting place in Moscow for daily workers (mainly from Tajikistan) looking for work in the building sector.

32 González Block, M., 2008. Policies for innovation: evidence-based policy innovation – transforming constraints into opportunities, In: Global Forum Update on Research for Health, Volume 5, 2008, 72-74.

RESOURCES

This section provides a list of resources which can enable the reader to delve deeper into the issue. Details of the good practices cited above can be accessed here. The section comprises international instruments, International Labour Conference conclusions, relevant publications and training tools. A bibliography of references in the text is further below. There may be some overlap between the two.

ILO and UN Instruments and ILC Conference conclusions

<http://www.ilo.org/ilolex/english/convdisp1.htm>

Migration for Employment Convention (Revised), 1949 (No. 97)

Migration for Employment Recommendation (Revised), 1949 (No. 86)

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)

Migrant Workers Recommendation, 1975 (No. 151)

ILO 2006 Multilateral Framework on Labour Migration, Non-binding principles and guidelines for a rights-based approach to labour migration

http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf

UN Instruments

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

<http://www2.ohchr.org/english/law/cmw.htm>

Relevant Publications

CLANDESTINO, 2009. Workshop on Irregular Migration and Informal Economy. project coordinated by the Hellenic Foundation for European and Foreign Policy (EL IAMEP).

<http://clandestino.eliamep.gr/clandestino-research-project-workshop-on-irregular-migration-and-informal-economy/>

ILO 2004. Resolution concerning a fair deal for migrant workers in the global economy, adopted at the 92nd session of the International Labour Conference. Geneva, in: Report of the Committee on Migrant Workers, Provisional Record 22, International Labour Conference, Ninety-second Session, International Labour Office, pp.55-64.

http://www.ilo.org/public/english/protection/migrant/download/ilcmig_res-eng.pdf

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http://www.ilo.org/public/english/protection/migrant/download/multilat_fw_k_en.pdf

ILO 2009. Protecting the rights of migrant workers: A shared responsibility. Geneva, International Migration Programme, International Labour Office

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<http://www.imi.ox.ac.uk/publications/imi-working-papers/wp-13-2009-the-recession-and-migration-alternative-scenarios>

OECD 2008, International Migration Outlook: SOPEMI 2008. Paris

<http://www.oecd.org/dataoecd/30/13/41275373.pdf>

OECD, 2009. International Migration and the Economic Crisis: understanding the links and shaping policy responses. OECD Working Party on Migration, Paris.
<http://www.oecd.org/dataoecd/45/18/46292981.pdf>

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<http://ilo.org/public/english/protection/migrant/download/imp/imp41.pdf>

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<http://www.mmo.gr/pdf/library/Black%20economy/reyneri.pdf>

Taran, P. and Geronimi, E. (2003). Globalization, Labour and Migration: Protection is Paramount. Perspectives on Labour Migration 3E. Geneva, International Labour Office.
<http://www.ilo.org/public/english/protection/migrant/download/pom/pom3e.pdf>

Wickramasekara, P. (2006). Globalization, international labour migration and rights of migrant workers. Geneva, International Labour Office.
http://www.ilo.org/public/english/protection/migrant/download/pws_new_paper.pdf

Online tools

ILO Good practices database - Labour migration policies and programmes: ILO International Migration Programme
<http://www.ilo.org/dyn/migpractice>

ILO web portal on Promoting equality in diversity,
<http://www.ilo.org/public/english/protection/migrant/equality/index.htm>

Training tools

ILO 2003. An information guide: Preventing discrimination, exploitation and abuse of women migrant workers, Booklets 1-6. Geneva, Gender Promotion Programme, International Labour Office.
http://www.ilo.org/employment/Whatwedo/Instructionmaterials/WCMS_116358/lang-en/index.htm

OSCE, IOM, and ILO 2007 Handbook on establishing effective labour migration policies, Mediterranean edition. Geneva, Organization for Security and Co-operation in Europe, International Organization for Migration, and International Labour Office.
http://www.ilo.org/public/english/protection/migrant/download/osce_iom_ilo_medhandbook_en.pdf

ILO 2008. In search of Decent Work-Migrant workers' rights: A manual for trade unionists, Geneva, Bureau for Workers' Activities.
http://www.ilo.org/public/libdoc/ilo/2008/108B09_210_engl.pdf

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http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_184_en.pdf

ILO 2006. Equality in diversity: migration and integration - a handbook, Geneva, International Labour Office.
http://www.ilo.org/public/libdoc/ilo/2006/106B09_436_engl.pdf

For further information see the ILO's International Migration Branch website
<http://www.ilo.org/public/english/protection/migrant/>

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- IOM, EC, ILO 2008 Addressing the Irregular Employment of Immigrants in the European Union (Budapest)
- Martin, P., 2009. The recession and migration: Alternative scenarios. International Migration Institute Working Paper No. 13. University of Oxford.
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Domestic worker in Egypt.

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