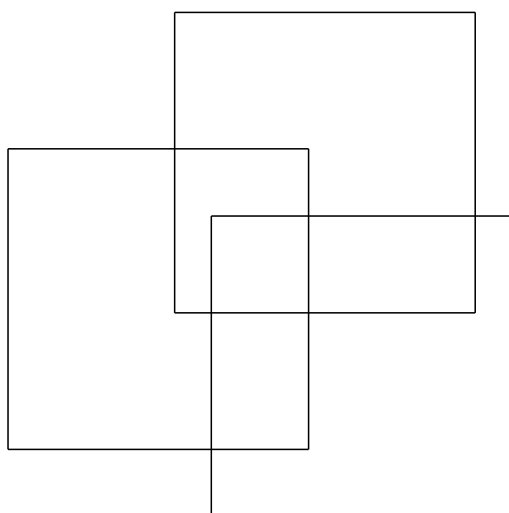




Labour migration and development: ILO moving forward

Background paper for discussion at the
ILO Tripartite Technical Meeting on Labour Migration
(Geneva, 4–8 November 2013)



TTMLM/2013

INTERNATIONAL LABOUR ORGANIZATION

International Migration Branch

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Geneva, 2013

INTERNATIONAL LABOUR OFFICE, GENEVA

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Abbreviations and acronyms

AIDS	acquired immunodeficiency syndrome
CARICOM	Caribbean Community
EU	European Union
GFMD	Global Forum on Migration and Development
GMG	Global Migration Group
HIV	human immunodeficiency virus
HLD	United Nations General Assembly High-level Dialogue on International Migration and Development
MFLM	ILO Multilateral Framework on Labour Migration
MOU	Memorandum of Understanding
NQF	national qualifications framework
OECD	Organisation for Economic Co-operation and Development
PES	public employment service
RCP	regional consultative process
SADC	Southern African Development Community
UN	United Nations

Introduction

This document has been prepared for the Tripartite Technical Meeting on Labour Migration, to be held in Geneva from 4 to 8 November 2013. The goal of the Meeting, as identified by the ILO Governing Body in March 2013, is to enable the Organization “to assess the outcome of the United Nations General Assembly High-level Dialogue on International Migration and Development ... and consider possible areas for ILO follow-up”.¹ This paper highlights the key challenges and opportunities in this regard, “bearing in mind the changing landscape of international labour migration and its implications for the world of work, and the findings of the assessment of the ILO’s response, including in respect of the Multilateral Framework”.² It draws on research carried out within the ILO and elsewhere, and earlier policy guidance provided by the ILO’s tripartite constituency.³

The Governing Body specified four topics for deliberation:

- (i) labour migration in the context of debates on international migration and development of the post-2015 development framework;
- (ii) the effective protection of migrant workers, with reference to the particular vulnerabilities of low-skilled and middle-skilled workers;
- (iii) sound labour market assessment needs, and skills recognition and certification; and
- (iv) international cooperation and social dialogue for well-governed national and international labour migration and regional mobility.

These pertain to the labour migration dimensions of the four thematic round tables of the High-level Dialogue on International Migration and Development (hereinafter referred to as HLD), namely: the effects of international migration on sustainable development and preparation of the post-2015 development framework; respect for, and protection of, the human rights of all migrants; the strengthening of partnerships and cooperation on international migration, and mechanisms to effectively integrate migration into development policies; and international and regional labour mobility and its impact on development.⁴

¹ ILO: *Reports of the Officers of the Governing Body, Second report: Arrangements for a tripartite meeting on labour migration*, Governing Body, 317th Session, Geneva, Mar. 2013, GB.317/INS/13/2, para. 1.

² *ibid.*, para. 6, in which reference is made to the *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration* (Geneva, 2006).

³ In particular, the *Plan of Action for Migrant Workers*, adopted by the International Labour Conference at its 92nd Session (2004). See: “Conclusions on a fair deal for migrant workers in the global economy”, in Report of the Committee on Migrant Workers, *Provisional Record* No. 22, International Labour Conference, 92nd Session, Geneva, 2004.

⁴ UN General Assembly Resolution 67/219 on international migration and development, 21 Dec. 2012 (A/RES/67/219, para. 3(c)(iv)).

The ILO has participated in the planning for the HLD, by providing expertise on labour migration, sharing good practices, and seeking to ensure that HLD outcomes include the promotion of decent work for all. The HLD and ongoing debates around the post-2015 development framework offer the ILO an opportunity to highlight the contributions of migrant workers to development and to raise the issue of migrant worker rights; to affirm the value of the link between migration, employment and labour protection policies and development; and to heighten recognition of the pivotal role that the ILO's constituents can play to improve the governance of international labour migration.

In setting priorities for the ILO in this context – within the four thematic areas identified by the Governing Body – the Meeting should take stock of the ILO's accomplishments and the current challenges it faces in improving its work and impact.

As a follow-up to the Governing Body decision of 8 November 2012,⁵ an independent evaluation was conducted to assess the ILO's response to the changing landscape of international labour migration. The evaluation acknowledged the ILO's large portfolio of activities and expertise on labour migration, but noted that the dissemination of its work did not match its achievements. The evaluation suggested regular reports on key successes, as reflected in programme implementation reports; a stronger online presence to highlight good practices – recognizing that this might warrant additional resources; and the need for more statistics on labour migration and standards.

The evaluation compared ILO activities between 2001–05 and 2006–10, and concluded that more recent activities reflected the changes that were occurring in international migration. While the Multilateral Framework on Labour Migration (MFLM) has not gained the international recognition some had anticipated, it has proven a useful tool for ILO staff to ensure that technical projects and policy advice align with the Plan of Action for Migrant Workers.⁶ External actors and constituents were generally aware of the MFLM and considered it to be a good reference guide.⁷

The evaluation also found that efforts to mainstream labour migration across the Office and to increase coordination and coherence had been successful. However, work on the employment–migration nexus and effectively operating labour markets had received less attention than warranted.

Bearing in mind these findings, this paper considers the four themes established by the Governing Body and identifies opportunities for the ILO to respond. It explores areas where the ILO could deepen its migration activities within the development debates, and concludes with suggested points for discussion at the Tripartite Technical Meeting.

⁵ ILO: *Decision on the first item of the agenda: Labour migration*, Governing Body, 316th Session, Geneva, Nov. 2012, at: http://www.ilo.org/gb/decisions/GB316-decision/WCMS_192865/lang-en/index.htm.

⁶ Op. cit., *Report of the Committee on Migrant Workers*.

⁷ The MFLM, for instance, is widely used by the ILO Regional Office for Asia and the Pacific.

1. Labour migration and development: Challenges and opportunities for the ILO in follow-up to the HLD and as a contribution to the post-2015 development debate

In his report to the Conference in 2013, the ILO Director-General noted that differentiated demographic and income trends were adding to migratory pressures, and that the ILO must be instrumental in upgrading the multilateral system's development framework to ensure it is truly respectful of the rights and interests of the working people involved. He indicated that environmental factors such as climate change were already a strong driver for migration within, and across, borders: 150–200 million people could be displaced by 2050 owing to rising sea levels, heavier floods and more intense droughts, which could reverse many of the achievements in poverty reduction.¹ During the discussion at the Conference, many delegates stressed the growing importance of labour migration.² The United Nations (UN) development debates present an important opportunity to better position the ILO in this field.

1.1. Labour migration trends and the development debates

International migration is growing in volume and complexity. Many countries are now both transit and destination countries for migrant workers. Twenty years ago, south-to-north migration predominated – but today south-to-south and south-to-north migration equally represent a third of the global migrant stock.

Migration is linked, directly or indirectly, to the world of work and decent employment opportunities. The ILO estimates that over 50 per cent of the 214 million³ international migrants today are economically active: together with their families, migrant workers comprise over 90 per cent of this total.⁴ Almost half of international migrants are women, who increasingly migrate to work on their own, and an eighth are youth between the ages of 15 and 24.⁵

Migrant workers who move seasonally and temporarily are not included in these stock estimates but can be significant for some countries. Temporary migrants are often low skilled, cross national borders with the help of private recruiters and contractors, and are vulnerable to exploitation.

¹ ILO: *Towards the ILO centenary: Realities, renewal and tripartite commitment*, Report of the Director-General, Report 1(A), International Labour Conference, 102nd Session, Geneva, 2013.

² ILO: Closing remarks of the Secretary-General of the Conference (ILO Director-General Guy Ryder) to the 102nd Session of the International Labour Conference, Geneva, 20 June 2013, *Provisional Record* No. 19(Rev.), 18th sitting.

³ The United Nations Department of Economic and Social Affairs (UNDESA) is expected to report this figure now at 232 million.

⁴ ILO: *International labour migration: A rights-based approach* (Geneva, 2010), p. 18.

⁵ UNDESA: *International migration in a globalizing world: The role of youth* (New York, 2011).

Table 1.1. International migration flows, 2010 (in millions)

Origin	Destination		Total
	Industrial	Developing	
Industrial	55	13	68
Developing	73	74	147
Total	128	87	215
Flows (in %)			
Industrial	26	6	32
Developing	34	34	68
Total	60	40	100

Source: United Nations Department of Economic and Social Affairs (UNDESA), Population Division: *International Migration 2009 Wallchart*.

The 2008–09 global recession sharply increased unemployment and slowed down international labour migration, especially to countries formerly attracting large numbers, including Ireland, Spain, and the United States. Governments began tightening restrictions on the entry of temporary migrant workers. When labour migration began rebounding in 2010, many temporary worker programmes with quotas were oversubscribed by 2012–13, reinforcing the prediction of the Organisation for Economic Co-operation and Development (OECD) that economic recovery would increase international labour migration flows.⁶

Most migrants move for higher wages, decent jobs and more opportunities. Many leave rural areas where low incomes – due to land degradation, water scarcity and lack of infrastructure – make traditional ways of living unsustainable. Sustainable development should incorporate the concept of decent work to match workers’ skills at all levels, providing for better wages and social protection.

Principle 15 of the MFLM observes: “The contribution of labour migration to employment, economic growth, development and the alleviation of poverty should be recognized and maximized for the benefit of both origin and destination countries.”⁷ Taking the ILO Declaration on Social Justice for a Fair Globalization (2008) as a premise, the goal of decent work should be mainstreamed into migration and development at the global, regional and national levels, recognizing migration is an important enabler of inclusive economic and social development.⁸

Since the 1994 International Conference on Population and Development held in Cairo, global debates on migration and development have largely focused on migrants’ remittances – the proportion of earnings that migrants send to families and households back home: US\$401 billion to developing countries in 2012.⁹ The ILO has advanced the

⁶ OECD: *International Migration Outlook 2009* (Paris, 2009), p. 9.

⁷ *MFLM*, op. cit., p. 29.

⁸ Global Forum on Migration and Development (GFMD): *Unlocking the potential of migration for inclusive development*, 2013–14 Concept paper (Geneva, 2013).

⁹ World Bank: *Migration and Development Brief* (Washington, DC), 19 Apr. 2013.

need to consider the rights, quality of work and living conditions of the migrant workers who send these remittances.

Improving the employment and working conditions of all workers will benefit migrant workers, and enable them to contribute positively to development.

Box 1.1
Migrants are more entrepreneurial

Data on the number of new entrepreneurs suggest that migrants tend to be more entrepreneurial than natives. During the period 1998–2008, the average annual number of new migrant entrepreneurs doubled in Germany (to over 100,000 per year), and in the United Kingdom (to almost 90,000 per year). In Spain and in Italy, the average increased by six times (to over 75,000 per year) and eight times (to 46,000), respectively. France experienced a smaller increase (to 35,000) in the same period.¹

In addition, migrants are more entrepreneurial in relative terms with respect to their population than natives. For example, in the United Kingdom, where migrants account for 8 per cent of the population, they own around 12 per cent of all small and medium-sized enterprises (SMEs).²

This finding is consistent with a recent United States study showing that the immigrant share of small business owners is 18 per cent, compared with their proportion of the overall population of 13 per cent, and of the labour force of 16 per cent.³

¹ European Economic and Social Committee: *The contribution of migrant entrepreneurs to the EU economy* (own-initiative opinion), SOC/449, Brussels, 18 Sep. 2012, para. 3.1.4.

² *ibid.*, para. 3.1.5.

³ Fiscal Policy Institute (FPI): *Immigration small business owners: A significant and growing part of the economy*, June 2012, at: <http://www.fiscalpolicy.org/immigrant-small-business-owners-FPI-20120614.pdf>.

Migrant workers play an important role in labour markets and contribute to the economies and societies of both their home and destination countries. They spur development through the creation of new enterprises (box 1.1), and strengthen ties between their countries of origin and destination via the transfer of technology and skills. Furthermore, their jobs and remittances improve migrant children's health and education (box 1.2).

Box 1.2
Australia and New Zealand Seasonal Worker Programs (SWPs)

The SWPs were developed to provide win-win-win outcomes for workers, employers and development, allowing Pacific Islanders to fill agricultural jobs, improve lives for workers and their families, and accelerate development.

Between 2008–09 and 2012–13, over 41,000 Pacific Islanders were employed in New Zealand under the Recognized SWP and 1,600 were employed in Australia under its SWP.

Evaluations of the SWPs found:

- migrants filled jobs in Australia and New Zealand with no adverse effects on local workers;
- incomes and assets of households rose relative to non-migrants;
- children in migrant households had more regular school attendance;
- community leaders praised it as positive for development.

Although SWPs are a fairly recent development, studies indicate that they may spur economic development in the Pacific Islands.¹

¹ J. Gibson and D. McKenzie: *The development Impact of New Zealand's RSE Seasonal Worker Policy* (Washington, DC, World Bank, 2013).

1.2. Recent ILO engagement in these debates

In response to the Governing Body's request in 2012, the ILO has increased its visibility in the HLD¹⁰ and post-2015 development framework processes, and continues to provide substantial input to the Global Forum on Migration and Development (GFMD).¹¹ The GFMD Chair-in-Office included labour migration on its agenda and organized a thematic meeting on labour migration to be held in September 2013.

In December 2012, the UN Secretary-General's Policy Committee endorsed key messages on international migration, which comprised ILO concerns on the need to: ensure equality of treatment of migrant and national workers; better align migration policies with actual and projected labour market needs; increase ratifications and implementation of relevant international migration instruments, including ILO Conventions; and enhance cooperation on migration and mobility among a broader range of stakeholders, including workers' and employers' organizations, at national, bilateral, regional and global levels. The Secretary-General was asked to emphasize these key messages in the lead-up to the 2013 HLD, the 2014 UN General Assembly Special Session on the follow-up to the Programme of Action of the International Conference on Population and Development, and the post-2015 development agenda.¹²

The Office continues to advise on the labour aspects of migration, the value of a rights-based approach to labour migration, and the importance of social dialogue through its participation in the Global Migration Group (GMG) – a consortium of 15 UN agencies and the International Organization for Migration (IOM) – and in the GMG review process (box 1.3).

Box 1.3
Global Migration Group (GMG) internal review 2013

The internal review introduced the following changes to GMG working methods:

- Chairing arrangements were extended to one-year terms.
- A small administrative support team was created.
- A multi-annual work plan with timeline for activities and outputs was adopted.
- Funding and accountability for working groups and task forces were identified.
- The ILO's proposed task force on migration and decent work was adopted.

Following the request of the Governing Body, the ILO will chair the GMG in 2014. This will facilitate ILO leadership in GMG work on labour migration and the post-2015 development agenda.

¹⁰ For instance, the ILO participated in the high-level panel (25 June 2013), informal interactive hearings (15 July 2013) and regional preparatory meetings.

¹¹ See information on GFMD, a state-led consultative process, at: <http://www.gfmdcivilsociety.org/downloads/GFMD%20CS%20Fact%20Sheet.pdf>.

¹² UN: Secretary-General's Decision No. 2012/19 on international migration, Annex 1 (New York, 2012).

1.3. Labour migration in the post-2015 development framework

The current UN development framework centres on eight Millennium Development Goals (MDGs), to be achieved by 2015. None of these mention migration. However, since migration can distinctly impact MDGs – by, for instance, eliminating extreme poverty and hunger, increasing education, improving child and maternal health, and promoting global partnerships for development – international migration is being discussed under the theme of population dynamics within the post-2015 UN development framework. The ILO seeks to ensure that the post-2015 development agenda includes productive employment and decent work for all as explicit objectives.¹³

Some issues facing migrant workers and labour mobility are systemic, and likely to persist beyond 2015. The ILO has expertise on the synergies between the world of work (particularly employment and social protection-related issues) and population dynamics, including ageing, population growth, internal and international migration, and urbanization. It has provided input to discussions on: (a) demographic changes affecting labour and skill shortages and surpluses; (b) sustainability of social security systems; (c) ways to increase women's labour force participation; (d) policies on family reunification and regularization; and (e) growth of the informal economy in urban areas due to inflows of migrants in an irregular situation.

The findings from the post-2015 global conversation, presented in March 2013, referred to the implications of migration for work in terms of working conditions and the impact on families. The consultations highlighted “the need for harmonization of national migration laws with international norms, as well as between origin and receiving countries, to guarantee the fundamental human rights of migrants and their families”.¹⁴

The High-Level Panel of Eminent Persons on the Post-2015 Development Agenda asserted that: “[t]he universal human rights and fundamental freedoms of migrants must be respected. These migrants make a positive economic contribution to their host countries, by building up their labour force”¹⁵ The report calls for a commitment to jobs with inclusive and equitable growth, “not growth at any cost or just short-term spurts in growth, but sustained, long-term, inclusive growth that can overcome the challenges of unemployment (especially youth unemployment) ... The first priority must be to create opportunities for good and decent jobs and secure livelihoods ... and ensure that it reduces poverty and inequality.” The Panel recommended a new target of jobs with a specific indicator for youth employment, and integration of gender equality in all goals.¹⁶

The ILO's agenda is well-equipped to respond to these calls for decent work and equality for all workers, including migrant workers. Job creation is the central issue of

¹³ ILO: *Jobs and livelihoods in the post-2015 development agenda: Meaningful ways to set targets and monitor progress*, Concept Note No. 2, at: http://www.ilo.org/global/topics/post-2015/documents/WCMS_213209/lang--en/index.htm.

¹⁴ United Nations Development Group: *The global conversation begins: Emerging views for a new development agenda* (New York, 2013), p. 40.

¹⁵ UN: *A new global partnership: Eradicate poverty and transform economies through sustainable development*, Report of the High-level Panel of Eminent Persons on the Post-2015 Development Agenda (New York, 2013), p. 18.

¹⁶ See also: *Dhaka Declaration*, adopted at the Global Leadership Meeting on Population Dynamics in the context of the Post-2015 Development Agenda, 13 Mar. 2013.

development and economic growth, in the same way that decent work is the central issue for most migrant workers. Nonetheless, there is a lack of understanding of the importance of harmonizing employment and labour migration policies in both origin and destination countries – and particularly a failure to consider the role of labour market institutions and policies on labour matching, job creation, enterprise and local economic development, skills and employability, and access to microfinance services. The MFLM underscores the importance of ensuring “coherence between labour migration, employment and other national policies, in recognition of the wide social and economic implications of labour migration and in order to promote decent work for all and full, productive and freely chosen employment”.¹⁷

The Office has begun helping some countries coordinate better their migration and employment policies by, for instance, evaluating more closely labour market needs in countries of origin and destination (e.g. in Jordan).¹⁸ The ILO could invest more in developing improved tools for assisting countries in harmonizing employment and labour migration policies, and in promoting good practices.

¹⁷ ILO: *MFLM*, op. cit., guideline 4.2.

¹⁸ S. Taghdisi-Rad: *Macroeconomic policies and employment in Jordan: Tackling the paradox of job-poor growth* (Geneva, ILO, 2012), p. 41.

2. Effective protection of migrant workers

“All international labour standards apply to migrant workers, unless otherwise stated.”¹ These legally binding standards, complemented by the non-binding MFLM, provide a comprehensive framework of protection for men and women migrant workers.

Low- and middle-skilled migrant workers are particularly vulnerable to abuse and exploitation. They are often poorly informed or misinformed about working and living conditions at destination, and may fall prey to fraudulent recruitment agents and contract substitution in the host country. In the worst cases they may become victims of forced labour; in a global estimate of the victims of forced labour, it was revealed that 9.1 million had moved internally or internationally (out of a total of 20.9 million).² Many migrant children are especially vulnerable to exploitation through child labour.

In destination countries, migrant workers are often over-represented in the informal economy. They are often not covered by national labour laws and can be subject to poor and unsafe working conditions, low wages, inadequate health care and unsuitable accommodation. Social protection may be denied in law or practice, increasing the risk of poverty on their return home, especially if they suffer employment injuries.

Moreover, migrant workers, especially those in an irregular situation, can face discrimination at all stages of the migration process. Discrimination in the form of a denial of basic services, particularly children’s access to health and education, is a growing problem for migrant workers and their families. The ILO has helped test for discrimination in access to employment and worked with partners to reduce discrimination via education campaigns and technical assistance.³ The ILO is examining how labour market institutions, including minimum wages, can contribute towards ensuring a level playing field for all workers.

Some governments preclude female migrants from travelling abroad for employment on the basis of age, which can engrain existing structural gender inequality rather than promote equal opportunities for women workers, as prescribed by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Others exclude migrant workers with HIV: 44 countries have such restrictions, despite the fact that the ILO HIV and AIDS Recommendation, 2010 (No. 200), stipulates that migrant workers should not be subject to HIV testing.⁴

2.1. Protection gaps in recruitment

During the “guest worker” era of the 1960s, government agencies in origin and destination countries recruited most migrant workers under bilateral agreements. Today, while bilateral agreements or Memorandums of Understanding (MOUs) still provide the

¹ ILO: *MFLM*, op. cit, principle 9(a).

² ILO: *Global estimate of forced labour* (2012), p. 17.

³ For example, the ILO’s survey on the public perception of migrant workers in Malaysia, the Republic of Korea, Singapore and Thailand found wide public recognition of the need for migrant workers but negative attitudes towards equal treatment for them.

⁴ UNAIDS: *HIV-related restrictions on entry, stay and residence*, UNAIDS Human Rights and Law Team, updated Jan. 2013.

framework for low-skilled labour migration in some migration corridors, such as East and South-East Asia, private recruiters and other intermediaries play a significant role in international job matching. High recruitment costs, overstaying and unauthorized work are examples of migration governance failures. Global debates on migration and development have recognized that the excessive fees paid by migrant workers to recruiters result in significant additional costs to workers and reduce migration's development gains.⁵

The ILO Private Employment Agencies Convention, 1997 (No. 181), ratified by 27 member States, calls on employers to pay all recruitment costs and encourages governments to operate no-fee labour exchanges. The ILO has supported the implementation of Convention No. 181, including the registration and licensing of private recruiters, monitoring of recruitment practices and industry self-regulation (e.g. in Bangladesh, Cambodia, Philippines and Viet Nam). Some governments, such as Ethiopia and the Philippines, make recruiting agents jointly liable with foreign employers for violations of migrant worker contracts, allowing aggrieved workers to file a complaint against the recruiter after returning home. The ILO can facilitate good recruitment practices by evaluating the effectiveness of these and other mechanisms to increase migrant worker protections, as well as through knowledge sharing.

The ILO is considering developing more detailed guidance on ethical recruitment, with multi-stakeholder consultation spearheaded by social partners and based on Convention No. 181. It also promotes the adoption and enforcement of model employment contracts in agriculture, construction, domestic work and the garment industry – sectors in which low- and middle-skilled migrants are particularly vulnerable to exploitative working conditions (the model garment worker contract proposed in Jordan is a case in point). By establishing a database of typical recruitment costs for various types of workers, the ILO can facilitate the identification and sharing of good practices among constituents, and can compare private recruitment with government-to-government arrangements (such as the Republic of Korea's employment permit system).

Abusive recruitment practices could be reduced if governments, trade unions, employers' organizations and others adopted mechanisms to provide accurate information on the labour migration process and working and living conditions in destination countries. The ILO supports the establishment of "migrant information and resource centres" to provide information and services to migrant workers.

2.2. Other salient protection gaps

Equal treatment for temporary migrant workers: The growth in temporary labour migration schemes raises human rights issues, such as freedom of association and collective bargaining, and equality of treatment in employment and occupation. The OECD and others have warned that using temporary migrant workers to address structural labour shortages might increase precariousness and impose costs on employers. Labour rights are threatened if migrant workers are tied to one employer – if dismissed, they may be deemed

⁵ ILO estimates the "opportunity cost" of forced labour for lost earnings and inflated recruitment fees is US\$21 billion annually. See: *The cost of coercion*, Global Report, Report I(B), International Labour Conference, 98th Session, Geneva, 2009, para. 150.

irregular – prompting some governments to make it easier for workers to change employers.⁶

Migrant workers should have the same recourse to protecting their rights as national workers.⁷ The ILO is examining the obstacles to migrants' equal access to judicial (e.g. courts) and non-judicial remedies for rights violations. The ILO constituents have an important role to play in educating migrant workers about their rights and fostering protection, by supporting migrant workers to file complaints and ensuring that whistle-blowers are protected from retaliation.⁸

Social dialogue can influence national legislation; for instance, when employers and unions agree on plans to admit migrant workers in the future, this strengthens the likelihood that their agreements will be enacted into law (box 2.1).

Box 2.1
Migrant rights in United States immigration reform

Over a quarter of migrants in the United States – some 11 million – are irregular and three-fourths are in the labour force.

Comprehensive immigration reform is being considered to reduce irregular migration, regularize migrants in irregular status, and admit specified migrant workers. In March 2013, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the US Chamber of Commerce negotiated an agreement to allow employers to request particular migrant workers (W-visa holders) to work for them. These workers would have the right to change employers under specific conditions, apply for regular immigrant status after several years, and receive additional due-process and judicial protections. Farm workers' unions and employers have negotiated a similar agreement on the Agricultural Job Opportunities, Benefits and Security Act (AgJOBS).

The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 (S 744), approved by the United States Senate in June 2013, includes the protections agreed upon by workers and employers.

Protection of migrants in an irregular situation: While ILO member States have the sovereign prerogative to determine the conditions of admission and residence of foreigners, all workers, irrespective of status, should enjoy their fundamental rights, in keeping with the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. The ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), obliges parties “to respect the basic human rights of *all* migrant workers” and provides that when irregular migrants cannot be regularized they should have access to “rights arising out of past employment as regards remuneration, social security and other benefits”.⁹

⁶ Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), Art. 14(a). The ILO Committee of Experts found the *Kafala* system, which ties migrant workers to sponsors, may be conducive to the exaction of forced labour and raises issues of discrimination. ILO: *Giving globalization a human face*, Report III (Part 1B), International Labour Conference, 101st Session, Geneva, 2012, paras 295 and 779.

⁷ As stipulated in the Migration for Employment (Revised) Convention, 1949 (No. 97), Art. 6(1)(d).

⁸ The MOU between the General Federation of Nepalese Trade Unions (GEFONT) and the Korean Confederation of Trade Unions (KCTU) enables the KCTU to represent Nepalese migrant workers in grievance procedures or labour dispute settlements.

⁹ Convention No. 143, Arts 1 and 9(1).

The ILO recommends a “firewall” between labour law and immigration enforcement, and urges governments to allow anonymous representation of undocumented migrant workers by trade unions before labour tribunals.¹⁰ Many countries regularize such migrant workers (e.g. Argentina, Brazil, Italy, Panama, South Africa, Spain, Thailand, United States), which promotes their social inclusion. In 2004, the Office argued for “earned adjustment”, under which migrant workers in an irregular situation might eventually acquire regular status by being “gainfully employed” and meeting other conditions.¹¹

A continuing challenge is the role of labour inspectors vis-à-vis migrant workers in an irregular situation. The ILO Committee of Experts has emphasized that the primary duty of labour inspectors under the ILO Labour Inspection Convention, 1947 (No. 81), is to protect workers.¹² Some countries require labour inspectors to report undocumented migrant workers to immigration authorities, which can result in deportation. Finding the best approach to enforcing both labour and immigration laws is important, especially since such workers are often concentrated in the same sectors where labour law violations are more frequent, including agriculture, construction and fisheries.

Social protection: The Social Security (Minimum Standards) Convention, 1952 (No. 102), calls for the equal treatment of national and non-national residents.¹³ Additional ILO instruments establish a framework and internationally agreed principles and rules for the protection of migrant workers’ social security rights – including the portability of entitlements and benefits, and the maintenance (and totalization) of rights in course of acquisition – through the coordination of social security.¹⁴ Ensuring social security rights for migrant workers can optimize the benefits of migration for economic, social and human development.

In the absence of social security portability, ILO member States have an obligation to provide basic social security guarantees to “at least all residents and children”,¹⁵ as outlined in the Social Protection Floors Recommendation, 2012 (No. 202), which complements the existing ILO legal framework. The ILO can increase its support to member States and regions to extend social security coverage for migrant workers and

¹⁰ See European Union Agency for Fundamental Rights: *Fundamental rights of migrants in an irregular situation in the European Union* (Vienna, 2011); and European Union: *Directive 2009/52/CE of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*, Art. 13.

¹¹ ILO: *Towards a fair deal for migrant workers in the global economy*, Report VI, International Labour Conference, 92nd Session, Geneva, 2004, para. 399.

¹² ILO: *Labour inspection*, General Survey, Report III (Part 1B), International Labour Conference, 95th Session, Geneva, 2006, para. 78.

¹³ Convention No. 102, Art. 68.

¹⁴ Equality of Treatment (Social Security) Convention, 1962 (No. 118), Maintenance of Social Security Rights Convention, 1982 (No. 157), and its accompanying Recommendation, 1983 (No. 167), which contain model provisions for social security agreements. See also Convention No. 97, Art. 6(1)(ii), and Convention No. 143, Art. 10.

¹⁵ Recommendation No. 202, Paras 5 and 6. The basic guarantees comprise: essential health care; basic income security for children and for persons in active age unable to earn sufficient income, in particular in cases of sickness, unemployment, maternity and disability; and basic income security for older persons.

establish national social protection floors, and promote the coordination and portability of social security through bilateral and multilateral agreements.

Many of the abovementioned protection gaps can be addressed by the ratification and implementation of international labour standards, including Conventions Nos 97 and 143 and their corresponding Recommendations Nos 86 and 151, as supplemented by the non-binding MFLM.

Box 2.2

**A sectoral approach to improving migrant worker protection
Domestic Workers Convention, 2011 (No. 189)**

Agriculture, construction, hospitality, manufacturing, fisheries¹ and domestic work are sectors that employ a large number of migrant workers. The ILO could adopt a sectoral approach with a view to improving migrant worker protection – on the same lines as its recent work addressing the vulnerabilities of domestic workers, many of whom are migrants.

Since its adoption in 2011, eight countries have ratified Convention No. 189, which enters into force on 5 September 2013. It applies to all domestic workers, with specific provisions for migrant domestic workers (Articles 8 and 15), and has already had an impact. A greater number of national laws now cover domestic work, and practices and attitudes towards domestic work are changing – including in countries that have not ratified the Convention.² Social partners and civil society have embarked on campaigns to promote the protection of domestic workers and Convention No. 189 – such as the International Trade Union Confederation's (ITUC's) "12 by 12" campaign and the European Commission-funded Global action programme on migrant domestic workers and their families. Convention No. 189 features prominently in regional and global debates on international migration, and is supported by the UN Secretary-General's Special Representative on Migration and Development.

¹ The Work in Fishing Convention, 2007 (No. 188), addresses the exploitation of migrant workers in the fishing sector.

² ILO: *Domestic workers across the world: Global and regional statistics and the extent of legal protection* (Geneva, 2013), p. 97 (footnote 137).

The ILO has extensive experience in facilitating social dialogue in specific employment sectors, and its work could be enhanced with the aim of improving protections for migrant workers in those sectors where they are at particular risk of exploitation.

3. Sound labour market needs assessment and skills recognition

The demand for, and supply of, labour is becoming more international as employers reach out beyond their borders for workers, and workers no longer rely solely on their national labour market for jobs. Labour market institutions – which include freedom of association and collective bargaining, social security, employment protection legislation and minimum wages – usually reflect national concerns. The ILO could develop tools to deal with the increasing internationalization of labour markets, including the role of labour migration in the segmentation of labour markets.

The ILO could further improve the harmonization of employment and migration policies by assisting constituents in developing labour market information systems (LMIS) that are sufficiently responsive to labour migration issues in both origin and destination countries, and mechanisms to better assess and recognize migrant worker skills.

3.1. Methodologies and strategies for assessing labour market needs

Governments respond to employers' requests for migrant workers in several ways. Most governments have "local workers first" policies, which require employers seeking certification to employ migrants to post their job vacancies at public employment service (PES) offices so that local workers are aware of them; others establish quotas on the number of migrant workers that can be admitted. During the 1960s, when many European countries allowed their employers to recruit migrant workers, PES data and decisions on whether a particular employer needed migrant workers were often definitive – i.e. if the PES considered the job offer substandard, or concluded that local workers were available, it denied the employer's request for migrant workers.

Today, the PES plays a smaller role in job matching in many countries, which may be attributed to: the rise of the Internet; the greater number of labour brokers; and the shift in some countries for the PES to focus less on job placement and more on workers' training and the provision of unemployment insurance benefits. However, alternatives to the use of private employment agencies are beginning to reappear, including the PES, other government agencies, or government-accredited employers for direct recruitment – particularly in Asia – to improve the protection of migrant workers.

Other governments have moved towards two extremes along the "response to employers seeking migrants" spectrum: they allow employers to attest that they are abiding by regulations in order to receive permission to recruit migrant workers at one end of the spectrum, and supervise "employer searches for local workers" before certifying their need for migrant workers at the other end. There are many labour market testing systems between these extremes of attestation and certification. Government certification is more common in the case of low-skilled workers, since governments often aim to protect local low-skilled workers. Some countries have agencies or commissions to study labour markets and determine which occupations have labour shortages – a case in point is the United Kingdom's Migration Advisory Committee (MAC).¹

¹ See: www.ukba.homeoffice.gov.uk/aboutus/workingwithus/indbodies/mac/.

To address deficits in labour market analysis, the ILO and its constituents could develop labour market tests; these could reflect the overall state of the labour market, particular industry and occupation characteristics, as well as unique geographical factors resulting in vacant jobs that employers wish to fill with migrant workers. By assessing top-down and bottom-up labour market data in a variety of countries, and involving stakeholders in the development of best practice recommendations to interpret the evidence, the ILO could increase labour market efficiency while also improving worker protections.²

Labour market analysis is also important for migrants' countries of origin, including with respect to their reintegration when they return. The ILO has helped many countries of origin develop and conduct labour force surveys, and these could be modified to collect information on workers employed at home who have been employed abroad. This would provide a profile of returned workers that could improve skills recognition systems and provide insights into the effects of migration on development.

When assisting ILO member States to formulate and implement national employment policies, the Office emphasizes the need to include labour migration considerations in these policies. For example, the Office has helped the Government of the Lao People's Democratic Republic to establish job centres in areas where Migrant Worker Resource Centres (MRCs) are located, so that workers can obtain information on jobs available locally and abroad. The ILO can also assist governments in developing regional or subregional LMIS.

Furthermore, the ILO is able to harness its expertise in employment and migration policy to provide guidance and training for constituents.³ For example, the ILO has developed Guidelines on skills recognition for returning migrant workers and conducted workshops in Cambodia and Sri Lanka to determine the feasibility of such a system, and is implementing a technical cooperation project funded by the European Union (EU) in the Republic of Moldova and Ukraine.⁴

3.2. Skills assessment and recognition

Workers are increasingly employed in countries where they have not earned credentials, raising the question of how to evaluate and recognize credentials and skills earned outside the country of employment.

There are two key issues. Students can combine studies in several countries to earn a degree, raising the question of how courses earned away from the institution granting the degree are credited, and how the degree is recognized. Professionals usually have licenses or certificates that allow them to work in regulated professions, as with doctors who need licenses. There are also non-regulated professions in which qualifications are assessed by employers, as with information technology professionals. Governments and social partners have important roles to play in working with both universities and credentialing bodies to improve the recognition of qualifications.

² P. Martin and M. Ruhs: "Labor shortages and U.S. immigration reform: Promises and perils of an independent commission", in *International Migration Review* (2011, Vol. 45, No. 1), pp. 179–192.

³ ILO: *Guide for the formulation of national employment policies* (Geneva, 2012).

⁴ ILO: *Effective governance of labour migration and its skills dimensions* (project carried out in the Republic of Moldova and Ukraine – 2011–13), see: http://www.ilo.org/budapest/what-we-do/projects/WCMS_168106/lang--en/index.htm.

The most recent version of the ILO's International Standard Classification of Occupations (ISCO-08) aims to facilitate the reporting of labour market data and improve job matching within countries and across borders.⁵ Developing standard job descriptions, including specifying the skills and training required to perform them, can facilitate job matching, protect workers and prevent deskilling or "brain waste" – for instance, when the skills of professionals educated in one country are not recognized in another, thus forcing workers into lower-level jobs. Deskilling is estimated to cost the Canadian economy 2 billion Canada dollars (CAD) a year; in other words, immigrants' earnings would have been CAD2 billion higher in 2004 if they worked in the occupations for which they had been educated.⁶

Professionals often earn certificates and other credentials that can be presented to employers, government agencies and accrediting bodies. Many countries are developing mechanisms to assess foreign credentials, sometimes before the migrant arrives. Together with its constituents, the ILO can help to standardize job descriptions for occupations that frequently involve migrant workers.

Other migrant workers may possess or learn skills on the job rather than have certificates or formal records to provide to a recruiter or employer. Some countries, acknowledging the difficulties of dealing with mid-level skills, have adopted national qualifications frameworks (NQFs) – top-down initiatives to list the skills a person has mastered⁷ that are credited with standardized skill requirements in occupations such as social care and customer service.⁸ However, an ILO review of NQFs in 16 countries noted that they did not provide "quick-fix or simple solutions to the complex problems facing countries in relation to education, skills development, and employment". Furthermore, the research found "little evidence that NQFs have substantially improved communication between education and training systems and labour markets".⁹

NQFs are often not comparable across countries. A Greater Mekong Subregional Project of the Asian Development Bank (ADB) has adapted the ILO's Regional Model Competency Standards to benchmark the skills of welders and automotive mechanics in Cambodia, the Lao People's Democratic Republic, Thailand and Viet Nam. The Caribbean Community's (CARICOM) Single Market and Economy project has a Caribbean Vocational Qualification (CVQ) framework to facilitate the movement of professionals between CARICOM Member States. National training agencies offer learning assessments and certificates to skilled workers, accounting for the full range of an individual's knowledge, skills and attitudes related to an occupation, so that workers gain credit toward national or CVQ certifications.

⁵ See: www.ilo.org/public/english/bureau/stat/isco/.

⁶ Canada has sought to speed up recognition of immigrants' credentials. "Canada: Brain Waste", in *Migration News* (2005, Vol. 12, No. 3, July), at: http://migration.ucdavis.edu/mn/more.php?id=3115_0_2_0.

⁷ The European Qualifications Framework (EQF) for lifelong learning, adopted in 2008, prompted most EU countries to adopt NQFs linking education and the labour market more closely.

⁸ M. Young: *National qualifications frameworks: Their feasibility for effective implementation in developing countries*, InFocus Programme on Skills, Knowledge and Employability, Skills Working Paper No. 22 (Geneva, ILO, 2005), p. 10.

⁹ S. Allais: *The implementation and impact of National Qualifications Frameworks: Report of a study in 16 countries* (Geneva, ILO, 2010), p. 2.

Some have suggested that lifelong learning passports, based on the model of seafarers' skills passports, could facilitate skills recognition for migrant workers who acquire skills in other countries. A number of employers provide letters of recommendation to migrant workers before they return home, which include a summary of skills acquired. Lifelong learning passports could formalize such practices and empower workers who maintain a record of their skills.

4. Cooperation and social dialogue for well-governed labour migration and mobility

International migration is a multilateral concern, involving the interests of a variety of actors within, and between, countries. The 2004 report to the International Labour Conference, *Towards a fair deal for migrant workers in the global economy*, as well as the Plan of Action For Migrant Workers adopted at the same session, argued for more policy coherence and multilateral approaches to improve migration governance. Informed policy debate and social dialogue within and across countries is the best way to reconcile labour and social rights' objectives with national security, border management and counter-trafficking concerns. The ILO creates and facilitates dialogue among its constituents to achieve consensus on effective labour migration governance.

The MFLM, guideline 2.3, calls for the promotion of “bilateral and multilateral agreements between destination and origin countries addressing different aspects of labour migration, such as admission procedures, flows, family reunification possibilities, integration policies and return, including in particular gender-specific trends”. The MFLM emphasizes the need for active participation of the social partners in the design, monitoring and implementation of such cooperation agreements, calling for “mechanisms for tripartite consultation at regional, international and multilateral levels” (guideline 2.5).

Far too often, the social partners, and even ministries of labour, are not consulted with respect to the development of migration policies. There are few examples of ILO constituents engaged in mechanisms to formulate, implement and monitor national policies and bilateral and multilateral labour migration agreements. The social partners may also lack the resources and technical capacities to participate effectively in the process, particularly regarding labour market information systems, the recognition of skills and diplomas, social security coverage and portability, and rights-based agreements for labour mobility. The ILO aims to further document and disseminate best practices, and to foster new initiatives for regional integration and international cooperation through knowledge-sharing opportunities and capacity building with practical tools to assist constituents.

The ILO has worked with its tripartite partners to develop labour migration policies built on social dialogue. For example, the Office assisted the Sri Lankan Government's development of a National Labour Migration Policy based on the MFLM, which is linked to its National Human Resources and Employment Policy. The policy aims to improve the governance and regulation of migration via social dialogue, as well as to more effectively protect migrant workers and enhance the development impacts of migration and remittances.

Successful social dialogue at the international and regional levels is strongly connected to the establishment of robust mechanisms and processes at the national level. The ILO can provide technical assistance to facilitate tripartite dialogue among its stakeholders to improve national and regional migration policies, and develop criteria to evaluate their effectiveness.

Labour migration and inclusive processes are a priority in ILO Regional Meetings, as in Africa and Latin America.¹ Regional integration processes or regional economic communities (RECs), as well as free trade areas, have facilitated regional labour mobility. These processes are usually motivated by economic factors such as lowering barriers to trade in goods, services and capital between member countries. Most expedite the admission of business persons, investors, and intra-company transfers (e.g. the North American Free Trade Agreement – NAFTA). Many include labour mobility provisions that provide for the free movement of professionals and others with certified skills, as with the CARICOM. The Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC) allow freedom of movement for all categories of workers, but they have been slow to operationalize these principles or adopt implementing regulations.

Regional and subregional integration processes are receiving increased attention, with a particular focus on labour migration with the ILO's technical support (box 4.1).

Box 4.1

The ILO and regional and subregional integration processes

ASEAN

The ILO supports the Association of Southeast Asian Nations (ASEAN) Forum on Migrant Labour, which brings together national-level representatives from the tripartite constituents and civil society organizations to advance implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007).

SADC

With the support of the ILO, the SADC has included labour migration as a key priority in its regional programmes, based on discussions in its Employment and Labour Sector Tripartite Technical Sub-Committee. The SADC Decent Work Programme, as agreed by the ministers and social partners, prioritizes labour migration for increased regional collaboration. Labour migration is also incorporated in the Protocol on Employment and Labour, which calls for, inter alia, the effective protection of fundamental rights of migrant workers and the portability of social security benefits. To implement the priorities on labour migration identified in the Decent Work Programme and the Protocol, a plan of action on labour migration has been adopted. The plan promotes policy and legal frameworks to improve the protection of migrant worker rights, data collection and information, and the portability of benefits and remittances.

MERCOSUR

The Common Market of the South (MERCOSUR) has also requested ILO support so that it can progress with work on the Public Employment Services and Skills Certification to improve labour migration schemes.

There are also over 20 major regional consultative processes (RCPs) that bring governments together periodically to discuss migration issues. Most involve foreign, interior, home affairs and justice ministries. The discussions at these meetings range from data on migration flows to the return of rejected asylum seekers, as well as migrants in an irregular situation. Few RCPs involve labour ministries, even though many of the issues discussed by RCPs are linked to international labour migration. Exceptions such as the Colombo Process (an RCP on the management of overseas employment and contractual labour for countries of origin in Asia) involve labour ministries and address migrant worker protection issues. The ILO can work to ensure that tripartite constituents are more involved in RCPs, and expand the exchange of good practices between regions.

¹ The 12th African Regional Meeting (2011), endorsing the Decent Work Agenda adopted in 2007, recognized that national and regional policies should be based on ILO migrant worker Conventions and the MFLM. The 17th American Regional Meeting (2010) encouraged countries to adopt strategies to better protect migrant workers.

Bilateral arrangements relating to labour migration: Bilateral labour migration agreements and MOUs concluded between countries of origin and destination have existed for some time, but their number has proliferated in recent decades.

Table 4.1. Examples of bilateral labour migration agreements/MOUs

Types and scope of agreements	Regions and countries
Migration of low- and middle-skilled workers covering the following areas (not exhaustive):	<ul style="list-style-type: none"> ■ South Asia and Middle East (e.g. Sri Lanka–Jordan, India–Qatar) ■ South-East Asia (e.g. Thailand with Cambodia, Lao People’s Democratic Republic and Viet Nam) ■ Republic of Korea with 15 Asian countries under Employment Permit System ■ EU countries with Latin America, Africa, and Central and Eastern Europe (e.g. Spain with Ecuador, Colombia, Dominican Republic, Morocco; Portugal–Ukraine)
<ul style="list-style-type: none"> ■ Recruitment ■ Transportation ■ Working conditions ■ Provision of accommodation ■ Return 	
Covering specific sectors	<ul style="list-style-type: none"> ■ Agriculture (e.g. Canada with Mexico and Caribbean countries) ■ Domestic work (e.g. Indonesia–Malaysia, Philippines–Saudi Arabia) ■ Construction (e.g. Israel–Republic of Moldova)
Covering labour migration and other areas (i.e. development, irregular migration)	<ul style="list-style-type: none"> ■ EU Mobility Partnerships with Armenia, Cape Verde, Georgia, Republic of Moldova and Morocco ■ Spain with West African countries (e.g. Mali, Senegal)
Mobility of young professionals	<ul style="list-style-type: none"> ■ France with African (e.g. Benin, Cape Verde, Congo, Gabon, Mauritius, Morocco, Senegal, Tunisia) and other countries (e.g. Argentina, Montenegro, Romania, Russian Federation, Serbia)
Between trade unions in origin and destination countries on migrant worker protection	<ul style="list-style-type: none"> ■ Trade unions in the Russian Federation with unions in Armenia and Georgia ■ Sri Lanka with Bahrain, Jordan and Kuwait ■ Italy with Republic of Moldova and Ukraine ■ Lao People’s Democratic Republic–Thailand

Bilateral agreements governing labour migration are most effective if they are based on consultations with the social partners and conform to international human rights and labour standards. Recommendation No. 86, Annex, widely used by member States, provides a model bilateral agreement regulating temporary or permanent migrant workers. However, there are few studies documenting how bilateral agreements operate in practice – and particularly specifying whether they ensure good labour migration governance and protect rights. The ILO can help to close this knowledge gap by undertaking a systematic mapping, analysis and assessment of bilateral agreements/MOUs, creating a repository for knowledge sharing.

5. Moving forward: Suggested points for discussion

The ILO's goal of decent work for all can be achieved with better-governed labour migration and the harmonization of migration and employment policies. Furthermore, policies that implement ILO standards through tripartite processes lead to better worker protection in countries of origin and destination. The ILO aims to expand its exchange of good practices to provide migrants with decent work at home and abroad.

The following questions should guide the discussion aimed at achieving a framework for action:

1. Labour migration in the context of debates on international migration and development and the post-2015 development framework

What specific steps should the ILO take, including through its participation in the Global Migration Group, to ensure: (a) that labour migration, the protection of migrant workers and labour market issues are fully integrated into global debates on migration and development; and (b) that constituents (labour ministries and the social partners) are appropriately engaged?

How can rights-based labour migration and the role of constituents be encompassed in follow-up activities to the United Nations High-level Dialogue on International Migration and Development and in discussions on the post-2015 development framework?

2. The effective protection of migrant workers, with reference to vulnerabilities of low- and medium-skilled workers

Through what actions, including the promotion of existing international labour standards, can the ILO better ensure that the rights of migrant workers, especially those in an irregular situation or in temporary migration programmes, are protected more effectively throughout the labour migration process?

Should the ILO seek to support focused activities in specific sectors (such as agriculture, construction, domestic work, fishing and manufacturing) in order to ensure decent work for migrant workers in these sectors?

3. Improved assessment of labour market needs, skills recognition and certification

How can the ILO assist its constituents in harmonizing national employment policies with labour migration policies to improve migrant worker protections, economic growth and development outcomes?

How can the Office work with its constituents to improve data and knowledge on labour migration, including through labour market information systems, labour market analytical tools and flagship publications?

How can the ILO assist in enhancing recognition and certification of migrant workers' skills?

4. International cooperation and social dialogue for well-governed national and international labour migration and regional mobility

How can the ILO help to ensure that labour ministries and social partners are fully engaged in issues related to labour migration at national level?

How can the Office work with its constituents to improve mechanisms for social dialogue on labour migration at regional level, and ensure that labour market institutions and mechanisms give due consideration to migrant workers and their protection in regional labour markets?

How can the ILO better promote its rights-based mandate in national, regional and international forums on migration?