



International
Labour
Organization

► **Protecting the rights of migrant workers in irregular situations and addressing irregular labour migration: A compendium**



Executive summary

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- **Irregular migration has gained increased relevance over the past few decades.** Tackling it has become a matter of urgency, as reflected in the Global Compact on Safe, Orderly and Regular Migration (2018) through which the international community committed to minimize the adverse drivers and structural factors that compel people to leave their country of origin, and to address and reduce situations of vulnerability in migration. There is no universally accepted definition of irregular labour migration. However, international human rights law defines a migrant worker who is undocumented or in an irregular situation as someone who is not authorized to enter, to stay or to work in the country of destination (ICRMW, Article 5). Providing a statistical picture of irregular migration is challenging, but a cautious estimate points to about 58 million migrants who are in an irregular situation (IOM, 2018). The ILO addresses this phenomenon from the perspective of the world of work. International labour standards, principles and guidelines on fair recruitment, and universal values of equal treatment and non-discrimination are central to ILO's approach.
- **Context of irregular migration for employment.** International migration has become an integral part of the global economy, affecting nearly all countries. Together with their families, migrant workers represent most of the international migrants living outside their country of origin today. Migration can bring positive and empowering experiences to migrant workers and their families, and to communities in origin and destination countries. Yet, many people continue to move without access to regular migration options. The ways through which migrants may end up in irregular situation are many. They may cross borders through regular channels but overstay their visas and thus become irregular and end up in illegal employment in the formal or informal economy. They may enter without valid documentation or may lose their regular migrant status due to unemployment or non-compliance with permit requirements. Their requests for asylum may be rejected, or they may find themselves in an irregular situation due to bureaucratic failure to process visa applications or permits in a timely manner. Irregular labour migration varies among regions, and in some countries, populations of migrant workers in an irregular situation are more significant than others. Border closures and movement restrictions due to the COVID-19 pandemic may have affected irregular migration stocks and flows.
- **Drivers of irregular labour migration are complex and multifaceted.** Labour market dynamics and asymmetries in the demand for labour and the supply in countries of destination and origin, respectively, are among them. When options for safe and regular pathways are lacking, some people may be forced to leave for reasons of health or survival. The adverse effects of climate change and environmental degradation; unequal access to economic and social rights, including health care and decent work, food, land, or water; unequal opportunities, as well as gender inequality and gender-based violence, can all be compelling reasons for people to move through irregular migration channels. Other drivers or structural factors include gender-based migration bans, recruitment costs and dishonest labour recruiters, misleading or false information, or lack of understanding of complex immigration rules.
- **A contentious issue.** The debate on irregular migration, including for employment, is often highly contentious and polarized. Opinions on how to address it vary considerably, reflecting contrasting social and economic interests and public perceptions. While there is some evidence that irregular migration is significant, data are scarce and incomplete, and data collection relies on indirect methods and proxies. Collecting evidence in a more systematic manner is therefore crucial. Not only for designing and implementing sound and rights-based labour migration policies, but also for countering perceptions that migrant workers in irregular situations are criminals and unfair competitors for jobs or social benefits. Such perceptions fuel anti-immigration discourses, discrimination, and xenophobia.
- **The present Compendium.** The ILO's Governing Body has asked the Office to develop a compendium of practices on reducing irregular labour migration and promoting the rights of migrant workers in an irregular situation, as part of a broader five-year ILO plan of action to follow-up to the Conference resolution concerning fair and effective labour migration governance (2018-2022) (ILO 2017b). The

Compendium presents situations that can lead migrant workers into irregularity, the rights of migrant workers in irregular situations, and the relevant international standards, good practice and guidance. It also highlights State laws and policies, as well as practices within and among countries, often adopted in consultation with workers' and employer's organizations, that can help prevent irregular labour migration in abusive conditions, and facilitate respect and promotion of the human rights of all migrant workers, regardless of status. The practices that feature in this compendium are all in line with ILO instruments and other relevant international norms. The Compendium is not intended to be exhaustive but is instead a living document that will be regularly updated with new examples and experiences. It seeks to encourage the sharing of good practices by states, social partners, and other actors concerned and to contribute to the attainment of the objectives of the Global Compact for Safe, Orderly and Regular migration.

- **Irregularity increases vulnerability to violations of human rights, including labour rights.** Reports on migrant workers in irregular situations who die or injure themselves during their journey, or while at work, tend to attract most public attention. However, other factors or situations of irregularity, such as exclusion from access to the labour market, detention, or risk of deportation, combined often with personal characteristics, can also give rise to vulnerability of migrant workers in irregular situations. Factors may intersect, exacerbate each other, or change over time (UNMN 2021). Irregularity tends to increase vulnerability to trafficking and exploitation, discrimination, and other violations of human rights, including labour rights. It can undercut wages for all workers and disrupt labour markets. Irregularity may push migrant workers into informal employment where they face higher risk of exploitation, lack of social protection, and suffer from a deficit of skills and jobs matching. Those who are in low-skilled or in insecure forms of work face additional barriers and are particularly vulnerable to non-respect of labour rights. Some sectors are also highly gendered, reflecting and reinforcing existing gender stereotypes and gender inequalities in the labour market. Women migrants in an irregular situation may be more exposed to exploitative working conditions or gender-based violence and harassment, or intersecting forms of discrimination. The COVID-19 pandemic that is continuing to strike the world at the time of finalizing this report has only exacerbated these vulnerable and insecure conditions of migrant workers in irregular situations.
- **Irregularity does not mean that migrant workers have no rights or that these rights should not be respected.** All migrants retain their human rights regardless of migration status. Respect of their human rights, including labour rights, is critical to tackling irregular labour migration and must be the basis for effective management and cooperation at all levels. A range of international human rights and labour standards and instruments are relevant to this end (see also Annex II). Together with the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), the ILO Centenary Declaration on the Future of Work (2019) and the ILO Global call to action for a human-centred recovery from the COVID-19 crisis that is inclusive, sustainable, and resilient (2021) provide critical guidance for policy makers and workers', and employers' organizations. Exemplary practices facilitate respect and promotion of the human rights of all migrant workers in an irregular situation, with special attention to equality of access to rights for migrant women and members of disadvantaged groups in irregular situations. They include action to respect and realize the fundamental principles and rights at work and the rights recognized in the core UN human rights instruments, while ensuring equality of treatment in respect of remuneration and certain social security benefits arising from past employment. To mitigate the impact of the COVID 19 pandemic, several countries have adopted ad hoc or temporary measures to regularize migrant workers in irregular situations and grant them access to certain basic rights, including health care. Countries are also seeking durable solutions that promote permanent mechanisms for admission and stay and grant in-country regular status, to migrant workers in vulnerable situations. Such mechanisms can bring economic and labour market benefits to countries of destination as well as stability and security for migrant workers in an irregular situation.
- **Effective access to justice is key.** Rights are without meaning if migrant workers cannot enjoy them. The right to effective remedies applies to all persons, whether nationals or migrants, irrespective of migrant status. Due process to claim rights needs to be afforded to all, without fear of the enforcement of immigration law. Labour inspection has a key role to play in this respect but institutional "firewalls"

between immigration law enforcement and labour inspection are to be set to protect migrant workers' rights in practice. Similar arrangements are pursued by state and local governments to ensure access to public services necessary for health care and other basic needs. Specific measures are needed to encourage equal access to justice for members of vulnerable groups of migrant workers in an irregular situation. They may lack awareness of their rights or the means for claiming them. They may face linguistic barriers or live or work in remote or closed environments. Women migrants often find themselves in informal or isolated types of employment, making it even more difficult to voice their grievances. Governments collaborating with social partners and migrant workers' organizations and other civil society organizations can ensure greater protection and can help address the urgent need of migrant workers in irregular situations to claim their rights, both in countries of origin and abroad.

► **Strategies that help prevent irregular labour migration in abusive conditions.** Drawing on international standards and guidance, governments have begun to develop effective strategies and policies to protect migrant workers' rights and address irregular labour migration. A variety of actions and practices already exist. These include:

- *Practices to enhance data collection and exchange of information* on irregular labour migration and related abusive conditions, including in collaboration with the social partners. Such practices demonstrate the potential for better alignment of admissions policies with labour market needs and migration flows to bring socio-economic benefits to sectors, communities, and national and migrant workers. They also help counter prejudice and stereotyped perceptions of migrant workers in irregular situations.
- *Steps to provide accurate information and assistance to migrant workers in irregular situation:* States, social partners and civil society organizations have developed a wide range of measures and programs to provide these migrant workers with the knowledge, and legal and other assistance and protection to pursue their claims. Practices involve legislative and regulatory tools, institutional partnerships, and direct services before departure and upon arrival. Organizing migrant workers in countries of destination, including through cross-border coordination among existing trade unions, brings collective support mechanisms.
- *Practices within and between states to ensure fair recruitment* in line with internationally recognized human rights and ILO guidance on fair recruitment can also help prevent irregular migration pathways. Such action also includes establishing national, bilateral, and cross border-mechanisms for regulating fair recruitment, prosecuting, and eliminating exploitative and abusive practices, such as forced labour and trafficking in persons, and sanctioning employers for unauthorized employment. Workers' and employers' organizations are key actors to combat unfair recruitment and its linkages with forced labour and trafficking.
- *Cooperation and social dialogue.* Social partners play an essential role in consultation and voluntary coordination with governments, within and across States, on measures relating to prevention of irregular migration for employment and remedies for associated abusive conditions. Policy coherence and whole of government-approach that respects human rights is critical to rights-based governance of irregular labour migration at national level. It is also an indispensable basis for effectiveness in related cooperation at international, regional, and bilateral levels.
- *Safeguards to prevent irregularity upon loss of employment.* Measures, aimed at preventing migrant workers from falling into irregular status upon loss of employment and allowing flexibility for them to change employment, are crucial to prevent irregular labour migration. In the context of the COVID 19 pandemic, measures to facilitate extension of visas, amnesties, or the renewal of work or residence permits have ensured migrant workers continued access to both essential services and regular work, while avoiding an increase in irregularity.

A set of good practices is emerging, but they must be scaled up and duplicated, where appropriate. It is hoped that this Compendium will not only help inform appropriate responses and rights-based strategies, but also encourage the identification and dissemination of further good practices that may emerge including through dialogue and cross-border cooperation.