

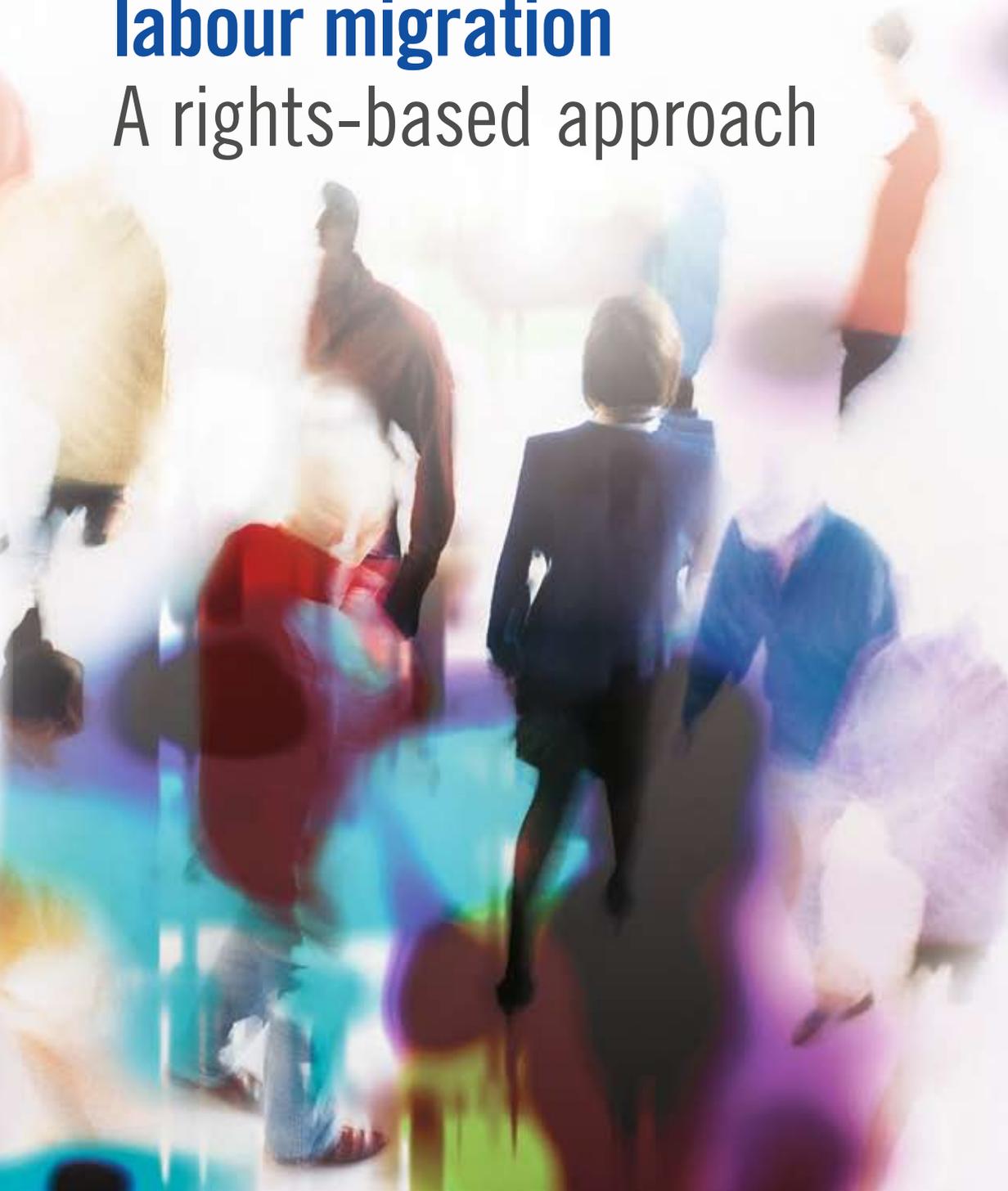


International
Labour
Office

Geneva

International labour migration

A rights-based approach



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International labour migration. A rights-based approach

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Preface

International labour migration has emerged as a major global issue that affects most nations in the world and ranks high on the international, regional and national policy agendas. On the one hand, there are many positive aspects to cross-border migration. Through their labour, migrant workers contribute to growth and development in their countries of employment. Their countries of origin greatly benefit from these workers' remittances and the skills they acquire during their migration experience. Yet the migration process also poses serious challenges. Many migrant workers, especially low-skilled workers, face exploitative working conditions and enjoy only limited human and labour rights. Women, increasingly migrating on their own and now accounting for almost half of all international migrants, face specific protection problems. With rising barriers to cross-border labour mobility, the growth of irregular migration and the trafficking and smuggling of human beings constitute major challenges to the protection of human and labour rights.

Migration for employment is very much a part of the global agenda of the International Labour Organization (ILO), which is based on the vision of Decent Work for All and expressed in its 2008 Declaration on Social Justice for a Fair Globalization. With the expansion and mounting complexity of labour migration, the ILO has an obligation and a unique role to play in developing principles and guidelines for governments, social partners and other stakeholders in labour migration policy and practice in the overarching framework of decent work and social justice for a fair globalization. The ILO's comparative strengths in the labour migration area lie in its tripartite structure. These involve the stakeholders concerned (governments, employers and workers), its proven social dialogue process,

its competence in standard-setting and supervision, its expertise in employment and social protection, and its long-standing experience in promoting social justice in the world of work.

It is in this context that the ILO has promoted wide-ranging tripartite dialogue on labour migration in recent years. For example, the World Commission on the Social Dimension of Globalization – convened by the ILO and composed of eminent figures from diverse backgrounds – noted that the absence of a multi-lateral framework to govern cross-border movements had given rise to a number of collateral problems, including the exploitation of migrant workers, growth in irregular migration, a rise in human trafficking and brain drain from developing countries. In 2004, the 92nd Session of the International Labour Conference (ILC) undertook a General Discussion on Migrant Workers, adopting by consensus a resolution concerning a fair deal for migrant workers in a global economy. This called for an ILO action plan for migrant workers. A tripartite group of experts developed the ILO Multilateral Framework on Labour Migration in November 2005, the first international collection of principles, guidelines and good practices on migration policy and practice. The framework is firmly grounded in international instruments. The current study builds upon the highly acclaimed report prepared for the 2004 general discussion, *Towards a fair deal for migrant workers in the global economy*.

The 2004 ILC General Discussion on Migrant Workers was the precursor to an international process in the area of migration. In October 2005, the Global Commission on International Migration (GCIM) presented its report to the UN Secretary-General, which included a recommendation to establish a high-level inter-institutional body representing the agencies involved in migration-related activities. In response, the Global Migration Group was formed by the UN Secretary-General in early 2006. There has also been unprecedented interest in the links between international migration and development. The United Nations convened a High-Level Dialogue on International Migration and Development in September 2006. The Global Forum on Migration and Development (GFMD) – the main outcome of the UN High-Level Dialogue – convened its first meeting in Brussels in 2007, followed by the second meeting in Manila in 2008.

The current monograph is a contribution to this process. It is a comprehensive discussion of issues of labour migration in a globalizing world, and highlights ILO perspectives on labour migration, the connections between migration and development, decent work for migrant workers, the normative framework for protection of migrant rights, the governance of international labour migration, and the role of social dialogue and international cooperation. In so doing, it brings

together the elements of a rights-based approach to labour migration as identified by its constituents.

It is my hope that this monograph will stimulate further discussion and debate among policy-makers, social partners, civil society, academics and the media about the role of international labour migration as a powerful force for social and economic development in the twenty-first century.

ASSANE DIOP

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Acknowledgements are also due to the authors of *Towards a fair deal for migrant workers in a global economy*, a report which served as the basis for the current volume. This report was prepared for the General Discussion on Migrant Workers at the 92nd International Labour Conference in June 2004. Manolo Abella acted as overall coordinator, with principal contributions coming from Manolo Abella, Piyasiri Wickramasekara, Patrick Taran, Peter Stalker and Phil Martin. Katherine Hansell, Monique Zarka-Martres, Gloria Moreno-Fontes, Michael Cichon, Stephen Pursey, Monique Guichard-Kelly, Eduardo Geronimi and Otoa Yoda also contributed.

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Abbreviations

ACTRAV	Bureau for Workers' Activities (ILO)
AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
AI	Amnesty International
AMC	Asian Migrant Centre
AMCPSDA	Asian MetaCentre for Population and Sustainable Development Analysis
ANZCERTA	Australia–New Zealand Closer Economic Relations Trade Agreement
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAEMC	Central African Economic and Monetary Community
CARAM Asia	Coordination of Action Research on AIDS and Mobility
CARICOM	Caribbean Community
CARIM	Consortium for Applied Research on International Migration
CEACR	Committee of Experts on the Application of Conventions and Recommendations (ILO)
CEPR	Centre for Economic Policy Research
CFA	Committee on Freedom of Association (ILO)
CIC	Citizenship and Immigration Canada
CIS	Commonwealth of Independent States
CSI	Computer Security Institute
DESA	Department of Economic and Social Affairs, United Nations Population Division
DFID	(UK) Department for International Development
DWCP	Decent Work Country Programme
EAC	East African Community

Abbreviations

ECOWAS	Economic Community of West African States
ELIAMEP	Hellenic Foundation for European and Foreign Policy
ETUF:TCL	European Trade Union Federation of Textiles, Clothing and Leather
EU	European Union
EUI	European University Institute
Eurofound	European Foundation for the Improvement of Working and Living Conditions
FDI	foreign direct investment
GATS	General Agreement on Trade in Services
GCIM	Global Commission on International Migration
GDP	gross domestic product
GET	<i>Global Employment Trends</i> (ILO)
GFMD	Global Forum on Migration and Development
GMG	Global Migration Group
GNI	gross national income
GOSI	General Organisation for Social Insurance
HCT	hotel, catering and tourism
IAMM	International Agenda for Migration Management
ICATU	International Confederation of Arab Trade Unions
ICFTU	International Confederation of Free Trade Unions
ICFTU–APRO	International Confederation of Free Trade Unions–Asian and Pacific Regional Organisation
ICPD	International Conference on Population and Development
ICSU	International Council for Science
ICT	information and communications technology
IFBWW	International Federation of Building and Wood Workers
IGB	Institute of Genomic Biology
ILC	International Labour Conference
ILM (Survey)	International Labour Migration (Survey)
ILO	International Labour Organization
IMI	International Migration Institute, University of Oxford
IOE	International Organization of Employers
IOM	International Organization for Migration
ISSA	International Social Security Association
ITUC	International Trade Union Confederation
IUF	International Union of Food and Agricultural Workers
IZA	Institute for the Study of Labour, Bonn
JILPT	Japan Institute for Labour Policy and Training

MERCOSUR	Mercado Común del Sur (Southern Common Market)
MOU	memorandum of understanding
MRA	mutual recognition agreement
NAFTA	North American Free Trade Agreement
NGO	non-governmental organization
NHS	National Health Service (UK)
ODA	official development assistance
OECD	Organisation for Economic Co-operation and Development
OHCHR	<i>see</i> UNOHCHR
ORISE	Oak Ridge Institute for Science and Education
OSCE	Organization for Security and Cooperation in Europe
PICUM	Platform for International Cooperation on Undocumented Migrants
PISA	Programme for International Student Assessment
POEA	Philippines Overseas Employment Administration
PRSP	Poverty Reduction Strategy Paper
PSI	Public Services International
RSA	Royal Society for the Encouragement of Arts, Manufactures and Commerce [“Royal Society of Arts”] (London)
SAARC	South Asian Association for Regional Cooperation
SADC	Southern African Development Community
SEM	Southern and Eastern Mediterranean (countries)
SOPEMI	Système d’observation permanente des migrations (continuous reporting system on migration of the OECD)
TCF	textiles, clothing, footwear [and leather]
TUC	Trades Union Congress (UK)
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECE	United Nations Economic Commission for Europe
UNFPA	United Nations Population Fund
UN-HABITAT	United Nations Human Settlement Programme
UNOHCHR	United Nations Office of the High Commissioner for Human Rights
UNPD	United Nations Population Division
WCSDG	World Commission on the Social Dimension of Globalization
WHO	World Health Organization
WTO	World Trade Organization

Introduction

Each year millions of women and men leave their homes and cross national borders in search of greater security for themselves and their families. “Throughout human history, migration has been a courageous expression of the individual’s will to overcome adversity and to live a better life” (UN, 2006, p. 5). Many migrants are motivated by the quest for higher wages and better opportunities, responding to the demand for their skills abroad, but many others are forced to migrate because of famine, natural disasters, violent conflict, persecution or simply a lack of decent work in their home country. The Global Commission on International Migration (GCIM) describes the driving forces in international migration in terms of “3Ds”: development, demography and democracy (GCIM, 2005).

Widening disparities in income, wealth, human rights and security across countries serve as push factors towards migration. Migration in search of work has increasingly become a livelihood strategy for both women and men because of the lack of opportunities for full employment and decent work in many developing countries. At the same time, the proliferation of skill-intensive economic sectors, increased demand for skilled workers, reluctance of local workers to accept certain low-skilled jobs, and demographic trends such as population decline and population ageing in major destination countries act as strong pull factors.

A growing number of nations are involved with migration as countries of origin, destination or transit, or all three. The majority of migrants move in search of employment, taking their families with them; it is estimated that there will be 214 million international migrants in the world in 2010 (UNPD, 2009). Almost half of international migrants are women, most of whom are now migrating on their own, rather than primarily as family members of other migrants. The

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International Labour Office estimates that economically active migrants will number some 105.4 million in 2010; these and family members accompanying them will account for almost 90 per cent of total international migrants. Only about 7–8 per cent of migrants are refugees or asylum-seekers, and some of these persons are employed. The International Labour Organization (ILO)¹ approaches migration from a labour market and decent work perspective within the overarching framework of its Decent Work for All agenda (ILO, 2007a).

While international migration can be a positive experience for migrant workers, many suffer poor working and living conditions, including low wages, unsafe working environments, a virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia. Migrant integration policies in many destination countries leave much to be desired. Despite a demonstrated demand for workers, numerous immigration barriers persist in destination countries. As a result, an increasing proportion of migrants are now migrating through irregular channels, which has understandably been a cause of concern for the international community. As large numbers of workers – particularly young people – migrate to more developed countries where legal avenues for immigration are limited, many fall prey to criminal syndicates of smugglers and traffickers in human beings, leading to gross violations of human rights. Despite international standards to protect migrants, their rights as workers are too often undermined, especially if their status is irregular.

The ILO, as the UN specialized agency on labour issues, has been dealing with labour migration since its foundation in 1919. It is the only UN agency with a constitutional mandate for the “protection of the interests of workers when employed in countries other than their own”². Since the 1930s, it has pioneered international Conventions to protect migrant workers and guide migration policy. The 1944 Declaration of Philadelphia (incorporated into the ILO Constitution in 1946) confirmed the constitutional mandate of the ILO on labour migration. The 1998 Declaration on Fundamental Principles and Rights at Work reaffirmed the ILO's mandate on labour migration and migrant workers.

International labour migration is a multidisciplinary issue that cuts across all major sectors of the ILO's work: labour standards, employment, social protection and social dialogue. The ILO is unique in being a tripartite organization consisting of the three main partners – governments, employers and workers – with major stakes in employment issues, including labour migration. Governments

¹ The abbreviation ILO is used in this work to mean the International Labour Organization, i.e. the entire organization, including the tripartite partners (Governments, Employers and Workers); “International Labour Office” refers to the secretariat, including ILO headquarters and field offices.

² Preamble to ILO Constitution.

administer migration and admission policies, employers hire migrant workers, and trade unions are concerned with the working conditions and welfare of both native and foreign workers. The ILO's mandate across the entire gamut of labour issues, its focus on vulnerable workers (including migrant workers), its unique tripartite constituency, its long-standing experience in promoting social justice in the world of work, and its competence in standard-setting confer on it – indeed, oblige it to play – a unique role in developing principles and guidelines for governments, social partners, and other stakeholders in international labour migration policy and practice.³

The context of international labour migration has changed substantially since the ILO migrant worker instruments were developed in the 1940s and 1970s. The Migration for Employment Convention (Revised), 1949 (No. 97), was developed in a context when there was a need for large-scale transfers of labour for post-war reconstruction. The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), was adopted in a context of rising irregular migration movements and irregular employment (ILO, 1999a). These instruments were drafted with state-organized migration in mind, rather than spontaneous migration or market-driven migration. The growth of the large private recruitment industry that exists today was not foreseen. However, the Private Employment Agencies Convention, 1997 (No. 181), addresses the growth in the private recruitment industry and is applicable to all workers including migrant workers. Similarly, at the time the first two Conventions were developed, women migrants were mostly found in the context of family reunification. This is no longer the case: “Times have changed, and today more and more women migrate not to join their partner, but in search of employment in places where they will be better paid than in their home country” (ILO, 1999a, p. 244). Whereas the 1949 and 1975 Conventions were originally conceived with a view to covering migration for either immediate or gradual settlement, there has since been a proliferation of temporary worker programmes under which individuals migrate for a specific period of time to work and then return home. Since 1975 irregular and clandestine migration and irregular employment have increased to such an extent that many destination countries have chosen to give priority to controlling migration flows. Another important change since the two migrant worker Conventions were developed is the recent emphasis on the linkages between migration and development, which

³ See resolution concerning a fair deal for migrant workers in a global economy, adopted by the ILO at the 92nd Session of the International Labour Conference, Geneva, 2004. The text of the resolution appears in Appendix III. The full report of the Committee on Migrant Workers from that session of the Conference, which contains the resolution, is available (in English) at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/pr-22.pdf> (accessed 4 Jan. 2010).

Introduction

highlights the positive aspects of international migration for both origin and destination countries.

The challenge now confronting the global community is to govern and regulate migration in such a way that it can serve as a force for growth and development in both origin and destination countries, while protecting the rights of migrant workers. Global issues need global and multilateral responses, not unilateral ones. While various initiatives in pursuit of a global consensus on the principles and rules to govern migration were undertaken soon after the demise of bilaterally arranged migration in the mid-1970s, success has been elusive.

In 1994, the International Conference on Population and Development (ICPD) held in Cairo considered the need for a new migration regime. The programme of action it adopted called on origin and destination countries to cooperate to protect the rights of migrants, reduce clandestine or irregular migration, and combat racism and xenophobia (UN, 1995). Hopes were raised for action at national and multilateral levels to establish a more orderly migration regime in which migration would be beneficial to countries on both sides. However, subsequent developments appear to have weakened the ability and resolve of both origin and destination countries to establish cooperative agreements to manage migration. Growing refugee flows and irregular migration, the dilemmas posed by the nexus between asylum and migration, and the failure of existing legal systems to protect the basic rights of certain migrants combined to move migration beyond the “comfort zone” for many policy-makers in origin and destination countries alike. Difficulties with the social integration of some migrant groups and the complex dilemmas raised by integration in many receiving states suggest that the international community needs a much better understanding of contemporary migration if it is to fashion tools and instruments to regulate it better.

In the period since the ICPD meeting in Cairo, migration issues have taken centre stage in national and international public policy debates. Thus, migration was addressed at the World Summit for Social Development in Copenhagen in 1995, at the Fourth World Conference on Women in Beijing in 1995, at the Second United Nations (UN) Conference on Human Settlements in Istanbul in 1996, and at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001. As a follow-up to the 1994 ICPD, a Technical Symposium on Migration and Development was organized in 1998 in The Hague, followed by similar technical meetings at regional levels organized by the UN Economic Commissions for Africa, Asia and Latin America. New mechanisms for temporary movement of service providers under Mode 4 (Movement of Natural Persons) of the General Agreement on Trade in Services (GATS) were launched. The Government of Switzerland promoted the

Berne Initiative, a state-owned consultative process with the goal of obtaining better management of migration at the regional and global levels through cooperation between States. The GCIM was set up in 2003 with the approval of the UN and given the mandate to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration. Its October 2005 report led to the establishment of the Global Migration Group (GMG), an inter-agency group which meets at head-of-agency level. The GMG aims to provide stronger and more coherent leadership to improve the overall effectiveness of the UN policy and operational response to the opportunities and challenges presented by international migration.

A more recent focus at the global level has been on the linkages between international migration and development. Thus, the UN General Assembly hosted the UN High-level Dialogue on International Migration and Development in 2006 in New York. As a follow up to the High-level Dialogue, the first Global Forum on Migration and Development (GFMD) was convened by the Government of Belgium in Brussels in 2007. The second was held in Manila in 2008, and the third in Athens in 2009. Within the European Union (EU), the European Commission has been reviewing experiences with the harmonization of policies on migration and social integration and various approaches to de-linking refugee and migration outcomes. It has also issued several Communications relating to migration and development.

In view of its mandate on labour migration and this changing global context, the ILO has been reviewing its approaches to international labour migration. It must continue to influence the global debate, and work in close collaboration with its constituents and other international organizations. For many years the ILO has been attempting to forge an international consensus on labour migration as a positive force for development, and thereby to shift the emphasis in the global migration debate from refugee, asylum-seeker and security issues to those of development and the protection of migrant workers. In recent years, the ILO has promoted an intensive international tripartite debate on the issue of labour migration. The concerns addressed include the implications of recent developments for national and international migration policies and the protection of migrant workers; whether the ILO's approach and directions in the field of international labour migration should be reoriented; how the ILO should respond to new challenges to the protection of workers and social justice in a globalized world; and what principles and guidelines can be developed to govern labour migration.

The ILO carried out a General Survey on the status of the ratification of the two migrant worker Conventions in 1996 and generated a report based on this survey which was reviewed by the International Labour Conference (ILC) in

Introduction

1999. The ILO also established the World Commission on the Social Dimension of Globalization (WCSDG) in February 2002, which devoted particular attention to the issue of migration and noted that the absence of a multilateral framework to govern cross-border movements of workers had created or exacerbated a number of problems, including the exploitation of migrant workers, growth in irregular migration and a rise in trafficking of human beings (WCSDG, 2004).

The emergence of migration at the top of the international policy agenda also formed the backdrop of the General Discussion on Migrant Workers in the 92nd Session of the ILC in June 2004, where participants deliberated on the issues and challenges currently surrounding labour migration with a view to guiding ILO action. This was the first major discussion on migration at the international level since the 1994 ICPD in Cairo. It was attended by 177 member States at the ministerial level as well as representatives of trade unions and employer federations from the same countries. The main outcome of the discussion was the adoption by consensus of the resolution concerning a fair deal for migrant workers in the global economy. The resolution recognized the unique position of the ILO in the field of labour migration:

The rising mobility of people in search of opportunities and decent work and human security has been commanding the attention of policy-makers and prompting dialogue for multilateral cooperation in practically every region of the world. The ILO's mandate in the world of work as well as its competencies and unique tripartite structure entrust it with special responsibilities regarding migrant workers. Decent work is at the heart of this. The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration. (ILO, 2004a, p. 1)

To address these challenges, the Conference called upon the ILO and its constituents to carry out a plan of action, in partnership with other international organizations. The components of this plan of action are:

- development of a non-binding multilateral framework for a rights-based approach to labour migration, which takes into account labour market needs, and proposes guidelines and principles for policies based on best practices and international standards;
- wider application of international labour standards and other relevant instruments;
- support for implementation of the ILO Global Employment Agenda at national level;

- capacity building, awareness raising and technical assistance;
- strengthening social dialogue;
- improving the information and knowledge base.

The centrepiece of this Action Plan is the ILO's Multilateral Framework on Labour Migration, subtitled *Non-binding principles and guidelines for a rights-based approach to labour migration*, adopted by a tripartite meeting of experts in 2005 and endorsed by the Governing Body in 2006.

The ILO Multilateral Framework addresses the major issues faced by migration policy-makers at national and international levels and responds to demands from constituents for guidance and assistance. It is a comprehensive collection of principles, guidelines and best practices on labour migration policy which provides practical guidance on the development and improvement of labour migration policies. The ILO Multilateral Framework focuses on decent work for all, good governance of labour migration, migrant workers' rights, development linkages and international cooperation, while respecting the sovereign right of all nations to determine their own migration policies. It recognizes the crucial role of social partners, social dialogue and tripartism in migration policy and advocates gender-sensitive policies that address the special problems faced by female migrant workers.

ILO perspectives and approaches on labour migration broadly converge with other recent global initiatives, including the report of the GCIM, the report of the UN Secretary-General on International Migration and Development, the outcomes of the UN High-level Dialogue on International Migration and Development, the conclusions of the GFMD (2007 and 2008), and the International Agenda for Migration Management of the Berne Initiative. All recognize the need to promote multilateral approaches and international cooperation, to expand legal opportunities for migration (especially for low-skilled workers), to protect migrant rights, to develop gender-sensitive migration policies, and to create decent work opportunities in home countries to reduce migration pressures.

The origin of this book was the background report prepared by the International Labour Office for the General Discussion on Migrant Workers at the 92nd Session of the ILC in June 2004. That report highlighted the need for a rights-based approach to labour migration, recognizing that the key to the effective protection of migrants' rights lies in effective governance and regulation of migration. This rights-based approach to labour migration was also central to the resolution on a fair deal for migrant workers adopted by the 2004 session of

the ILC. The human and labour rights of migrant workers are contained in a number of international instruments, developed by both the UN and the ILO. A rights-based approach to labour migration is one that draws on these internationally recognized rights and standards and ensures that they have a tangible impact on the lives of migrant workers.

All major sectors of the ILO – standards, employment, social protection and social dialogue – work on labour migration within the ILO’s overarching framework of “decent work for all”. One of the four strategic objectives of the ILO is to promote and realize standards and fundamental principles and rights at work. In order effectively to promote a rights-based approach to labour migration, the ILO must go beyond the solemn declaration of rights. It must work to ensure that these rights are protected by the legislation, policies and practices of member States. The development of the ILO Multilateral Framework was a major step by the ILO in giving practical meaning and effect to the rights of migrant workers. Its contents, significance and impact will be highlighted throughout this book.

The promotion of a rights-based approach to labour migration is a common thread running through each of the following chapters. Chapter 1 reviews the main trends in current and expected future migration flows. Chapter 2 analyses in greater depth the linkages between migration and development, and the impact of international migration on society, economy and the labour market in countries of origin and destination. Chapter 3 examines the working conditions of migrant workers in various sectors and occupations, paying particular attention to vulnerable groups such as women domestic workers, migrants in irregular status, and smuggled or trafficked persons. These chapters, which consider contemporary issues in labour migration and reveal the vulnerability of a number of migrant workers to exploitation, abuse and rights violations, confirm the need for a rights-based approach. The discussion seeks to draw the attention of policy-makers and planners, social partners, migrants’ associations, civil society groups, the research community and the media to the issues involved in implementing a rights-based approach. However, shedding light on these issues and discussing them only goes halfway towards putting the rights-based approach into practice.

The second part of the book accordingly sets out and discusses in detail the relevant international instruments and explores how these standards can be used in the formulation and implementation of migration policies and practices. Chapter 4 discusses how workers’ rights can be protected and promoted by international standards, particularly those developed by the ILO. Chapters 5 and 6 provide policy orientation for governing migration at the national and international levels and achieving greater coherence and cooperation on migration matters. Important policy areas for the ILO’s tripartite constituents include the

regulation of labour migration flows, the control of recruitment processes, the recognition of migrant workers' skills, the portability of their social security benefits, protection against occupational hazards, the improvement of conditions of work and the reinforcement of linkages between migration and development.

The ILO's supervisory mechanism assists member States in implementing the rights-based approach to labour migration by assessing whether national laws and practices are consistent with the provisions of ratified Conventions, and reviewing enforcement of relevant legislation and regulations. The ILO works closely with social partners and encourages their participation in policy formulation, to ensure the effective promotion and protection of the rights of migrant workers. Chapter 7 draws upon the conclusions of the thematic discussions in the preceding chapters in the light of the ILO's rights-based approach, and makes suggestions as to the way forward for the ILO and other stakeholders involved in the migration process. The longer-term agenda of forging an international consensus on a rights-based approach through social dialogue, and promoting migration by choice rather than by need, is central to the ILO's constitutional mandate for the protection of migrant workers.

PART I

**International labour migration:
Overview and analysis**

Labour migration in a globalizing world

1

1.1 Introduction

The world is being transformed by the globalization process. States, societies, economies and cultures in different regions of the world are becoming increasingly integrated and interdependent. New technologies make it possible for capital, goods, services, information and ideas to move quickly from one country and continent to another. Moreover, owing to the expansion of the global economy, millions of women and men and their children can now access better opportunities in life.

Although globalization trends have facilitated the movement of goods, services and capital across borders, their impact on the cross-border movement of people and labour remains much more restricted, regulated by a complex web of immigration laws and policies that uphold the principle of state sovereignty (WCSDG, 2004). Economic indicators of globalization – exports, foreign direct investment (FDI) and financial integration – have expanded rapidly since the mid-1980s. For example, world exports have expanded from 20 per cent of global gross domestic product (GDP) in 1990 to 30.8 per cent in 2006 (UNCTAD, 2008). FDI has likewise increased from 7 per cent to 22 per cent of global GDP between 1980 and 2003 (Wickramasekara, 2006a). In contrast, the proportion of the world's population who migrate across international borders each year has remained around 3 per cent.

Yet globalization has had important implications for international labour migration, acting as both a “push” and a “pull” factor. It has facilitated linkages between international labour markets through vast improvements in information

and communications technology (ICT). The demand for high technical skills has expanded opportunities for the mobility of skilled labour. Concurrently, expanded trade reduces some need for migration by creating jobs in home countries. Virtual mobility enabled by ICT has similarly promoted outsourcing and more jobs in other regions.

It is also clear, however, that globalization has led to widening disparities in employment opportunities, incomes and living standards, and human security across the globe (ILO, 2004b; Wickramasekara, 2006a). Expanded trade has benefited only a limited group of countries. In some countries, globalization has adversely affected jobs and livelihoods in traditional sectors. The failure of globalization to create new jobs where people live is a prime factor in increasing migration pressures. “When people cannot find work at home in their communities and societies they look elsewhere” (Somavia, 2006a, p. 1).

The current global economic crisis has exacerbated these disparities, hitting the world of work hard. According to the ILO’s 2009 *Global Employment Trends (GET)* update, there could be a dramatic increase in the number of people joining the ranks of the unemployed, the working poor and those in vulnerable employment. The *GET* forecast that global unemployment could reach levels between 29 million and 59 million in 2009 (ILO, 2009a). This bleak labour market situation has a disproportionately pronounced effect on certain groups, in particular women, migrant workers and youth (ILO, 2009b). However, the depth and extent of the crisis vary across regions, some of which are better insulated from the global downturn than others. The impact on migrant workers depends upon both the destination country and the sector of employment. In Ireland, Spain and the United States, migrant workers have been particularly badly affected in construction, which is the sector hardest hit by the crisis, while in Japan, Malaysia and the Republic of Korea they have felt the effects most acutely in manufacturing, which has witnessed the largest job losses. In contrast, a number of sectors (e.g. health care, domestic service and education), in some countries, have witnessed growth in employment. This is the case in Ireland and the United States, where increased numbers of jobs became available in health care and education, both sectors with high rates of migrant employment (Awad, 2009).

International migration is a widespread phenomenon, involving flows of more than 100 million people per year and a growing number of countries (WCSDG, 2004). In some cases this movement has been temporary, while in other cases it has led to permanent settlement. What was once predominantly a migration flow from the South to the North has now acquired a significant intra-developing world dimension. International migration, including increasing irregular migration, has occurred despite a tightening of immigration controls in

industrialized countries, and – in contrast to the cross-border movement of goods, services and capital – without any concerted effort to promote it.

The remainder of this chapter will examine some of the main trends in international migration that have developed over the past few years and will look at what future trends can be expected. It will also attempt to explain some of the main driving forces behind these movements.

1.2 Trends in international migration

The United Nations Population Division (UNPD) estimates that the world's stock of migrants, defined as persons residing outside their country of birth or citizenship, will be 214 million in 2010. Thus, even though the percentage of the global population who migrate internationally is small (as noted above, about 3 per cent per year), the total number is large – and it has more than doubled since 1980, when it stood at 102 million. The UN figures show the largest increase for 1990, reflecting the break-up of the USSR into a number of independent countries, which added about 27 million people to the total international migrant stock. It should be noted, however, that many of those in the former USSR did not actually move, and some part of the statistical increase is accounted for by the fact that they were within newly defined national borders. This contributed to the growing share of migrants in the world population from 2.3 per cent in 1975 to 3.1 per cent in 2010 (UNPD, 2009). Out of the total number, 60 per cent were estimated to live in developed regions. International migrants represent between 7 per cent and 20 per cent of the population in most Organisation for Economic Co-operation and Development (OECD) countries, while the share is much higher in the Gulf States (see figure 1.1). The large majority of these people are migrants for employment and their families.

It is interesting to note that the distribution of migrants by origin is more or less equally divided between three types of movement. Contrary to popular belief, international migration from poor, developing countries (“the South”) to rich, developed countries (“the North”) represents little more than a third of the global total. South–South migration between developing countries represents almost the same proportion, and North–North migration between developed countries represents a little less than a third (see table 1.1) (UNPD, 2009).

Most South–North migration is headed for Europe and the United States, while North–North migration mainly takes place within Europe and across the Atlantic. As noted, however, considerable migration for employment is also taking

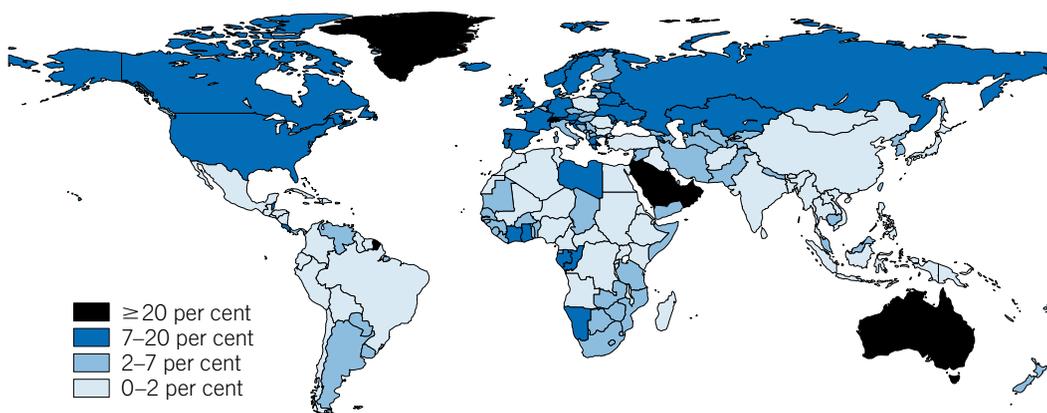


Figure 1.1 Migrants as percentage of population, 2005

Source: UNPD, 2006.

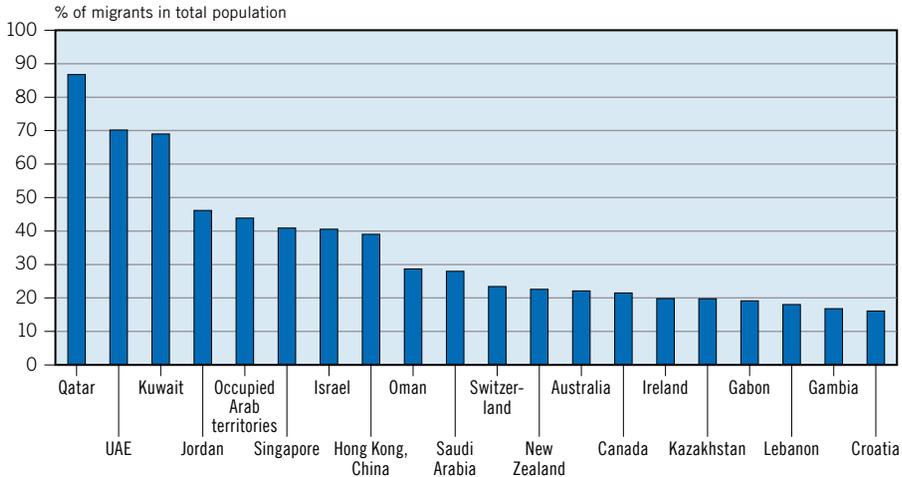
place between developing countries. According to a recent World Bank estimate, about half of all migrants from developing countries reside in other developing countries, and almost 80 per cent of South–South migration takes place between contiguous countries (Ratha and Shaw, 2007). For example, there have been large movements of workers from Burkina Faso to Côte d’Ivoire, from Egypt to Jordan, from Haiti to the Dominican Republic, from Indonesia to Malaysia, and from neighbouring countries to Argentina. Many countries are both sources of and destinations for migrants. Canada, for example, is a traditional destination for migrants, but Canada also sends significant numbers of people, particularly the highly skilled, to the United States. Similar phenomena have emerged in Asia. For example, Thailand receives many low-skilled immigrants from Cambodia, the Lao People’s Democratic Republic and Myanmar, and also sends its own workers to other countries, including Israel, the Republic of Korea and Taiwan (China). For a summary of the countries projected to have the highest proportions of international migrants in 2010, see figure 1.2.

Table 1.1 Direction of international migration, 2005

Type	No. (millions)	Share (%)
South–South	61	32
South–North	63	33
North–North	53	28
North–South	14	7
<i>Total</i>	<i>191</i>	<i>100</i>

Source: Based on UNPD, 2006.

Figure 1.2 Countries projected to have highest proportions of international migrants in 2010



Note: Countries with at least 1 million inhabitants.

Source: UNPD, 2009.

Table 1.2 Estimates of total migrant workers, by region, 2000 and 2010

Region ^a	Migrants				Migrant workers			
	2000 ^b		2010 ^c		2000 ^d		2010 ^e	
	Millions	%	Millions	%	Millions	%	Millions	%
Africa	16.3	9.3	19.3	9.0	7.1	8.0	8.4	8.0
Asia	49.9	28.5	61.3	28.7	25.0	29.0	30.7	29.0
Europe	56.1	32.1	69.8	32.6	28.2	33.0	35.1	33.0
Latin America and the Caribbean	5.9	3.4	7.5	3.5	2.5	3.0	3.2	3.0
North America	40.8	23.3	50.0	23.4	20.5	24.0	25.1	24.0
Oceania	5.8	3.3	6.0	2.8	2.9	3.0	3.0	3.0
<i>Total</i>	<i>174.8</i>	<i>100</i>	<i>213.9</i>	<i>100</i>	<i>86.2</i>	<i>100</i>	<i>105.5</i>	<i>100</i>

^a Regions as defined by the UN Statistics Division.

^b UN Population Division estimates of stock of migrants (UNPD, 2002). The 2005 Revision indicates minor differences from the earlier estimate for the year 2000, but we have reported the earlier figures for consistency with the estimate of migrant workers.

^c Source: UNPD, 2009.

^d Source: ILO estimates based on UN estimates of migrant stocks (2000) and country-specific economic activity rates (ILO, 1996b) and available country data on economically active foreigners and/or foreign-born persons.

^e Provisional estimate based on extrapolation from the 2000 estimates.

The full global magnitude of labour migration is difficult to ascertain, because not all countries monitor their labour migration flows, and fewer still report on these flows. It is unquestionable, however, that the phenomenon is significant and growing. The ILO estimates that in 2010 there are about 105.4 million economically active migrants (including refugees) across the world, representing 44 per cent of the total migrant population. These economically active migrants and their families comprise 90 per cent of the migrant population, as noted earlier. Around 39.1 million of them are in Africa and Asia, as shown in table 1.2; somewhat more (around 60.2 million) are in Europe and North America.

1.3 Driving forces: Past and future

The forces driving migration are varied and complex, and global explanations may not apply to all individual situations. Poverty, wars, famine and repression are certainly among the major causes of migration, but there are other factors as well. Some of the reasons for crossing national borders include population pressures on scarce natural resources; income inequality between poor and rich countries; growing urbanization; reduction in the cost of transport and communications, resulting in increasing interactions among societies; the absence of respect for human rights in some countries; and establishment of migration networks by earlier migrants. In the future, climate change may raise migration pressures. Contemporary international migration can essentially be explained, however, by the increasing differences between countries, the lack of gainful employment, decent work and human security in certain parts of the world, the growing demand for both high- and low-skilled workers in destination countries, and the geographical proximity and historical linkages between origin and destination countries (Martin and Widgren, 2002).

1.3.1 Decent work deficits

The world's population, calculated at 6.7 billion in 2008, is growing by about 75 million every year, with most of this increase taking place in developing countries. The ILO report *Global Employment Trends 2009* estimates the world's labour force in 2008 at around 3 billion people (ILO, 2009a). The global drop in economic activity since 2008 has resulted in hiring freezes and workers being dismissed in considerable numbers. Revised predictions for 2009 estimate that

global unemployment could rise by between 29 million and 59 million, with the middle case being 39 million (ILO, 2009a). The number of “working poor”, defined as persons living on the equivalent of US\$2 per day or less, has continued to grow, reaching an estimated total of more than 1.4 billion in 2009, an increase of more than 200 million since 2007 (ILO, 2009a).

The plight of farmers in developing countries is a powerful economic factor behind international migration and will continue to be so in the future. Many industrial countries had a “great migration” off the land in the 1950s and 1960s, and similar movements are evident today in many major origin countries, including China, Mexico and Turkey. In 2008 about 33.5 per cent of the world’s workers were employed in agriculture, a decline from previous years (ILO, 2009c). In poorer countries, these workers are usually worse off than urban dwellers. This is partly because public policy in many countries has been shaped by structural adjustment packages that have required “modernization” of agricultural production to make it more export-oriented; this trend, along with the increasing liberalization of trade, has undermined the position of small farmers, many of whom have been pushed out of farming into chronic underemployment or rural out-migration. Indeed, the world’s urban population has grown very rapidly, from 220 million to 2.8 billion, over the twentieth century, and the next few decades will see an unprecedented scale of urban growth, particularly in the developing world. According to UN estimates, by 2008, for the first time in history, more than half the world’s population, 3.3 billion people, were living in urban areas. This shift will be particularly notable in Africa and Asia, where the urban population is expected to double between 2000 and 2030 (UNFPA, 2007).

This trend has several implications for international labour migration. First, former farmers or rural migrants everywhere are likely to become employed in low-skilled jobs with poor terms and conditions of work in urban areas. This is already happening within China, where internal rural–urban migrants fill many such jobs in the coastal cities. Second, many rural migrants, who must make both physical and cultural transitions when they arrive in cities, may believe it is not much more difficult to emigrate overseas than to relocate to urban areas of their own country, if there is a recruitment or migration infrastructure to help them. Once a rural resident has moved to a city, it is usually far easier to obtain visas and documents for legal migration, or to make arrangements for migration under irregular circumstances.

In a number of countries, freer trade has replaced or undercut domestic industrial and agricultural production, resulting in the displacement of workers; at the same time, constraints on public expenditure programmes have restricted government spending that could cushion unemployment. Job creation in some

countries has lagged behind the increased numbers of unemployed. A net result of these job losses due to trade and structural change has been large numbers of people without opportunities for decent work in their homelands (Taran and Geronimi, 2003). Some low-income countries which depend on a few agricultural exports, such as cotton and maize, have suffered from increased competition with subsidized exports of the same commodities from more developed countries. One general equilibrium analysis of trade policies for low-income countries such as those in sub-Saharan Africa shows that trade liberalization by a low-income country will generate increased emigration, because liberalization will lead to a sharp fall in the real exchange rate (Faini et al., 1999).

The failure of the global economic system to generate jobs where people live has put the onus of adjustment on the family unit. In poor countries, families often make the difficult decision to send a member abroad to increase their economic security. Many individuals migrate so that they can send most of their earnings home to their families, often knowing that working in another country will involve great personal sacrifice, difficult working conditions, and spending very little of their earnings on themselves. Young people are often particularly subject to these migration pressures, as shown by the risky attempts of young people from West Africa to migrate to Europe through irregular channels (Wickramasekara, 2007a).

As a result, for a variety of demographic, political and other reasons, the economic gains from the progressive integration of the global economy have yet to materialize for many of the world's poor countries. This has led ILO Director-General Juan Somavia to conclude: "If you look at the global economy from the perspective of people, its biggest structural failure [has been] the inability to create enough jobs where people live" (ILO, 2004c, p. 3). If their situation does not improve in their homelands, they will look for greener pastures elsewhere.

1.3.2 Economic disparities

Despite the progress made by the more populous developing countries, such as China and India, in raising incomes over the past two decades, the gap in per capita incomes between rich and the poor countries has remained large. Average annual per capita gross national income (GNI) across the world in 2008 was about US\$8,580. At the country level, however, per capita GNI ranged from US\$140 in Burundi to US\$65,330 in Switzerland. Moreover, the gaps between countries appear to have widened up to 2000 and remained wide thereafter, as shown in table 1.3. In 1975, incomes in the high-income countries were 41 times greater than those in low-income countries and eight times greater than those in

Table 1.3 Global migration, population and incomes, 1975–2005

Year	Migrants (millions) ^a	World population (billions)	Migrants as proportion of world population (%)	Average annual increase in no. of migrants (millions)	Per capita income by income group (US\$)			Ratios	
					Low	Middle	High	High: low	High: middle
1975	85	4.1	2.1	n.a.	150	750	6200	41	8
1985	105	4.8	2.3	2	270	1290	11810	44	9
1990	154 ^b	5.3	2.9	10	350	2220	19590	56	9
1995	164	5.7	2.9	2	430	2390	24930	58	10
2000	175	6.1	2.9	2	420	1970	27510	66	14
2005	191	6.5	3.0	3	580 ^c	2640 ^c	35131 ^c	61	13

n.a. = not applicable.

^a Migrants are defined as persons outside their country of birth or citizenship for 12 months or more.

^b The estimate for 1990 was raised from 120 million to 154 million, largely to reflect the break-up of the USSR, though many of these additional migrants did not move: they included, for example, Russians newly considered foreigners in Estonia.

^c Income group data for 2005 are based on GNI (gross national income, in US\$): GNI comprises gross domestic product (GDP) plus net receipts of primary income from foreign sources. The 2005 GNI data are not strictly comparable with the GDP data for previous years.

Sources: UN Population Division and World Bank Development Indicators (1975 income data are those for 1976); UNPD, 2006; for per capita income: World Bank, 2007, table 1, “Key indicators of development”, pp. 288–89.

middle-income countries. By 2005, these differences had increased to 61 times and 13 times, respectively. Meanwhile, very few low- and middle-income countries have entered the high-income ranks.

1.3.3 *The demographic deficit and consequent demand for migrant labour in destination countries*

Just as the nineteenth century was marked by migration from densely populated Europe to more lightly populated America and Oceania, another change in population density may be expected in the first half of the twenty-first century. The population of the world’s less developed regions is increasing much more rapidly (at an annual rate of 1.5 per cent) than that of the more developed regions (which is rising by just 0.25 per cent annually). This difference is expected to continue until around 2050 (UNPD, 2003).

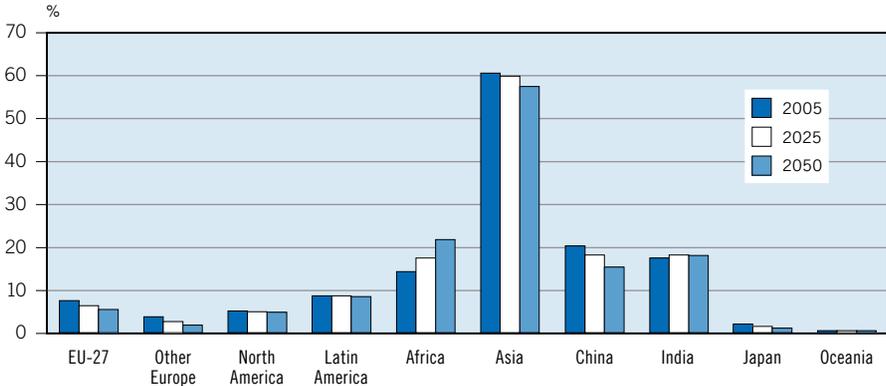
There is also a difference between the average age of the population in more developed countries and less developed countries, with the former having ageing populations and the latter more youthful ones. Although life expectancies are increasing and populations are ageing to some extent almost everywhere, the process has gone much further in Europe and Japan, where fertility is so low that deaths exceed births. Figure 1.3 shows predicted world population trends by region up to 2050. The populations of Africa and Asia (excluding China and Japan) are expected to rise.

If present trends continue, the population of Italy, for example, is projected to drop by 22 per cent between 2000 and 2050, that of Latvia by 44 per cent and that of Estonia by 52 per cent (UNPD, 2003). The combination of low fertility and rising life expectancy means that the proportion of the population above 65 years of age will rise from 15 to 28 per cent between 2000 and 2050 in Europe as a whole and from 17 to 36 per cent in Japan.

A Communication from the European Commission, *Confronting demographic change*, highlights the following trends for the EU: continued increase in life expectancy; continued growth in numbers above age 60; continuing low birth rates; fertility below replacement level; more older workers (aged 55–64), elderly people (65–79) and very elderly people (80+); and a rising demographic dependency ratio (European Commission, 2005c). The dependency ratio is predicted to double, reaching 51 per cent by 2050, which means that the EU will change from having four persons of working age for each citizen aged 65 and above to only two persons (European Commission, 2006).

A UNPD study on replacement migration concluded that, if immigration were the only means of maintaining current labour forces, immigration rates would need to be much higher (UNPD, 2000, table 1, p. 2). The big four EU countries – France, Germany, Italy and the United Kingdom – account for two-thirds of the total EU population and 88 per cent of immigrants in the EU. To maintain these countries' populations constant at 1995 levels in 2050, given current fertility rates, immigration levels would have to triple, from 237,000 to 677,000 a year. However, to maintain their 1995 workforces up to 2050, these countries combined would have to accept 1.1 million immigrants a year. Finally, to “save” social security systems by keeping stable the ratio between people of working age (18–64 years) and people of retirement age (65 and older), these four countries would have to increase annual immigration to almost 9 million people (UNPD, 2000). Such conclusions have given rise to much controversy. First, immigration on this scale is very unlikely to be politically acceptable. Second, new immigrants may eventually acquire similar demographic patterns (low fertility, ageing) to the current EU population. Third, destination countries are hardly in a

Figure 1.3 Share of regions in the world's total population, 2005, 2025 and 2050



Source: Created from data in European Commission, 2009, table 3.3; European Commission, 2005c.

position to meet the challenges of integrating such large inflows within a relatively short period of time. While critics of large-scale immigration have pointed out a number of other options to meet the demographic challenge, there is no doubt that immigration at some level will have to make an important contribution. This has been recognized in the European Commission's policy plan on legal migration (European Commission, 2005a).

There is therefore a strong demand for migrant workers in many destination countries, a fact which has often been neglected in discussions of the driving forces behind international migration. However, in Europe at least, this demand is gaining some recognition. As the European Commission policy plan on legal migration clearly expressed it:

With regard to economic immigration, the current situation and prospects of EU labour markets can be broadly described as a "need" scenario. Some Member States already experience substantial labour and skills shortages in certain sectors of the economy, which cannot be filled within the national labour markets. This phenomenon concerns the full range of qualifications – from unskilled workers to top academic professionals. (European Commission, 2005a, p. 4)

At the same time, as incomes and living standards rise in their countries, native workers may avoid certain jobs, making these jobs immigrant dependent. There are many jobs going begging in immigrant-dependent sectors, which include agriculture, construction, cleaning, catering, hospitality services, tourism, care work, domestic service and entertainment. Globalization and increasing

competition have led to the segmentation of labour markets in many destination countries. In other words, while highly skilled jobs in the primary labour market are dependent upon knowledge and skilled workers, low-skilled jobs in secondary labour markets in informal and small enterprise sectors become dependent on low-skilled migrants, often those in irregular status. Small and medium-sized enterprises and some labour-intensive economic sectors do not have the option of relocating operations abroad to reduce costs, and resort instead to downgrading manufacturing processes, deregulation and flexibilizing employment, with increased emphasis on cost-cutting measures and subcontracting – and on employing migrant workers.

Demographic trends resulting in an older workforce and an increase in dependency ratios in Europe and elsewhere are significantly adding to the demand for low-skilled individual services, including domestic services, nursing, and home and hospital caregiving to the elderly, the disabled and others. Given the increasing reluctance of native workers to take on these generally labour-intensive and low-paid jobs, the increased demand can only be filled by turning to migrant workers.

1.4 Diversity of migration

There are many ways of distinguishing different groups of migrant workers, based on motivation for migrating, skills, age, sector, occupation and distance from origin. The distinctions most commonly used are based on anticipated duration of stay, reflecting the fact that control over who enters a country and how long they stay is a core aspect of national sovereignty. On this basis, the admission of migrant workers falls into two broad categories:

- *Permanent migration*, referring to admission of workers falling under different immigration categories (i.e. family reunification, highly skilled) for an indefinite period of stay, that is, a stay without a time limit imposed by the destination country.
- *Temporary migration*, referring to admission of workers (sometimes referred to as “guest workers”) for a specified time period, either to fill year-round, seasonal or project-tied jobs, or as trainees and service providers under Mode 4 (Movement of Natural Persons) of the GATS.

Migrant workers may also be classified according to skill levels. Although migrants from developing countries work in almost every job type, they tend to be

concentrated at the bottom and top of the employment ladder. The majority are at the bottom of the ladder in low-wage and low-skilled jobs that tend to remain migrant jobs. They work in agriculture, mining, construction and a variety of service areas, such as hotels and catering, restaurants and domestic work. Women are strongly represented in these low-paid service jobs, and many women now migrate on their own to take on such work.

At the other end of the scale are millions of professional workers, both women and men, who travel to other countries in search of higher wages or greater opportunities. An important part of this flow consists of professionals and managers who move within the internal labour markets of transnational corporations in the course of expanding trade or FDI. These so-called “intra-company transferees” have become a ubiquitous presence in the more dynamic regions of the world, where they are the purveyors of new production techniques and managerial know-how. Three out of every four transferees move from one rich country to another, especially across the Atlantic, while most of the remainder move among the more successful newly industrializing countries in East Asia and South America. In addition to movements within these internal markets, there are larger movements of highly skilled labour in various occupations, including ICT, medicine, teaching, sea and air navigation, journalism and communications, and entertainment.

Unlike their lower-skilled counterparts, highly skilled immigrants are welcomed by many high-income countries. Australia and Canada, for example, have points systems that make it easier for professionals from developing countries to enter for purposes of employment. The United States also makes it relatively easy for professionals to enter with temporary visas if an employer requests them. During the 1990s, many developed countries recruited foreign health professionals. Consequently, nearly one-third of doctors and 13 per cent of nurses now in the United Kingdom are foreign born, and half of the additional staff employed by its National Health Service (NHS) over the past decade qualified abroad (WCSDG, 2004). Although the proportion of migrants in the populations of developed countries steadily increased from 1960 to 2005, the proportion of the highly educated workforce represented by migrants grew even more. Thus, the average annual rate of growth of the stock of migrants was 2.4 per cent in 1965, 2.2 per cent in 1975, 2.3 per cent in 1985, 2.9 per cent in 1995 and 3.0 per cent in 2005 (UNPD, 2009). The number of highly educated emigrants from developing countries residing in OECD countries doubled from 1990 to 2000, whereas the number of developing country emigrants with only a primary education increased by only about 50 per cent (Docquier and Marfouk, 2005). As will be shown in the next section, women are over-represented in this “brain drain”.

Despite this upward trend in skilled migration, contemporary migration flows remain dominated by workers moving to fill low-skilled jobs in segments of the labour market vacated by native workers who move on to better jobs. It should be pointed out, however, that this phenomenon is not uniform across regions; in the OECD countries in particular, there has recently been an increase in skilled migrant workers. Labour and immigration policies influence the absorption of migrant workers in different economic sectors, so that, for example, migrant farm workers are more important in the United States than in Western Europe. Both the UN Secretary-General's report for the High-level Dialogue and the GCIM have pointed out the necessity of both low- and highly skilled workers in destination countries. The GCIM used the term "essential workers" to refer to both, and an OECD study pointed out that "as shortages and mismatches across the skills spectrum intensify, recognizing the human capital of all immigrants so as to employ it more smartly, even strategically, must become a priority" (Dayton-Johnson et al., 2007, p. 22).

1.4.1 Migration of women

According to the UNPD, global migration rates for women have remained high since the 1960s, both in terms of the total number of women migrants and in terms of their share of the world's migrant stock (Zlotnik, 2002). As shown in table 1.4, in developed regions women migrants, estimated at 51.6 per cent of all migrants in 2010, outnumber their male counterparts. Latin America and the Caribbean, and the countries of the former USSR, have shown much higher increases in the proportion of women among their migrant populations than other regions. There has been a slight decline in the developing world, however, from 45.4 per cent women in 1960 to an estimated 44.6 per cent in 2010.

While the proportion of women in the migrant stock has remained high throughout the last few decades, these statistics do not capture the changing nature and circumstances of their migration. Whereas in the past most women migrated as family members, an increasing number are now migrating independently from male relatives. Thus, for example, in Germany the labour market participation rate of women migrants has significantly risen.

Table 1.5 contains information on the proportion of women migrants in the total foreign labour force and foreign population for selected countries.

There are a number of reasons why the gender composition of migration has shifted in this way. For one thing, ageing populations in the more developed destination countries have increased demand for care work, most of which continues to

Table 1.4 Proportion of female migrants among total international migrants, by region, 1960–2010

Area or region	Female migrants as % of all international migrants				
	1960	1980	1995	2005	2010
World	47.0	47.7	49.3	49.2	49.0
More developed regions	49.1	50.4	52.0	51.8	51.6
Less developed regions	45.4	50.5	45.2	44.7	44.6
Africa	42.8	44.6	47.1	46.7	46.8
Asia	46.5	44.9	43.5	43.6	43.5
Europe	48.7	49.2	49.8	50.3	50.3
Latin America and the Caribbean	44.2	45.2	49.9	50.1	50.1
North America	50.5	52.0	50.8	50.4	50.1
Oceania	44.4	48.1	49.7	50.7	51.2
(Former) USSR	47.9	48.2	56.5	57.0	57.0

Source: Based on UNPD, 2009.

Table 1.5 Proportion of women migrants in total labour force, migrant labour force and migrant population, 2003

	Percentage of women in the total labour force	Percentage of foreign women in the foreign labour force	Percentage of women in the total foreign population
Belgium	43.1	34.9	48.6
Denmark	46.4	44.1	50.9
Netherlands	44.1	41.3	49.3
Rep. of Korea	41.0	29.4	40.9
Spain	40.5	35.5	44.9
Sweden	47.7	46.6	50.4
Switzerland	45.2	39.9	47.0
United Kingdom	45.8	45.6	52.5
		Percentage of immigrant women in the foreign-born labour force	Percentage of immigrant women in the foreign-born population
Australia	44.7	43.3	50.3
Canada	46.5	46.5	51.9 ^a
New Zealand	46.0	46.3 ^a	51.5 ^a
United States	46.6	41.2	49.9

^a Data refer to 2001.

Source: Compiled from Oso-Casas and Garson, 2005, table 2, p. 6, and table 3, p. 7.

be carried out by women. The rising prosperity of some of the more rapidly developing countries is a second contributing factor. In countries such as Chile and Malaysia, for example, families increasingly can afford to employ foreign domestic workers, and the great majority of these are women.

This trend of increasing proportions of women migrants is most evident in Asia, where hundreds of thousands of women in both low-skilled and skilled occupations emigrate each year. Recent statistics show that the main origin countries are Indonesia, the Philippines, Sri Lanka and Thailand, and the main destination countries and regions are Hong Kong (China), Malaysia, the Middle East and Singapore. In the Philippines in 2006 women received over 60 per cent of all overseas work contracts (POEA, 2006). Although in the following years women have received slightly less than 50 per cent of all overseas work contracts, they still make up a sizeable proportion of new appointments: for 2007 and 2008, women received 48 per cent of all overseas work contracts (POEA, 2008). Similarly, in 2008 provisional data revealed that women formed 48.9 per cent of the total Sri Lankan migrant population (Sri Lanka Bureau of Foreign Employment, 2008).

Moreover, women are over-represented in the “brain drain” trends described in the previous section. The average emigration rate of university-educated women is 17.6 per cent, as compared to 13.1 per cent for men, in spite of the fact that women still face unequal access to university education in many less developed countries (Dumont et al., 2007). In almost all OECD countries, the share of women in the skilled migrant population increased between 1990 and 2000. The growth rates for skilled women migrants are larger than the growth rates for either low-skilled women or skilled men for the vast majority of source regions. This is particularly true in least developed countries. The primary factor in the feminization of the South–North brain drain is the supply of education for girls and women (Docquier et al., 2007). In short, not only are there greater proportions of women migrants than before, there are greater proportions of highly skilled women migrants than before.

1.4.2 Temporary migration

The increasing proliferation of temporary migration programmes, in contrast to the settler migrations observed in earlier decades, is another recent development. The difference between permanent and temporary migrant admission schemes has been noted above. Thus, a rough distinction can be made between relatively open government policies, which allow for the possibility of settlement in the destination country, perhaps after a certain period of temporary work, and more closed

temporary labour migration schemes, which have the clear objective of return to the origin country after the specified period (OSCE, IOM and ILO, 2006). Seasonal labour migration, the most common form of temporary labour migration, is usually handled through the latter approach. A seasonal worker is commonly understood as “a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year”,¹ typically for between three and nine months. The ILO International Labour Migration (ILM) Survey, conducted in 2003 among the member States of the ILO (see ILO, 2004d), reveals that it is mostly higher-income countries that operate seasonal worker programmes (Abella, 2006).

Temporary migration programmes have taken a variety of different forms, according to the modalities of entry and the selection and skills of eligible applicants; these range from mechanisms for the supply of seasonal workers and contract workers in low-skilled occupations to temporary skilled migration schemes, trainee programmes, working holidays for young people and intra-company transfers.

The number of workers admitted under temporary schemes has risen markedly, with countries such as Australia, Canada and the United States – traditionally settler countries – increasing admissions under temporary schemes. For example, 295,000 temporary workers entered the United States in 2006 (OECD, 2009a), compared to 208,100 in 1997 (OECD, 2007a).

There are several other reasons why temporary and circular labour migration programmes have become more popular.² They are believed to be beneficial for all parties involved, that is, for countries of both destination and origin, as well as for migrant workers themselves (Vertovec, 2007; Wickramasekara, 2003). This is because temporary labour migration can enable destination countries to meet labour shortages and thereby increase their capacity to compete in the globalized economy, while avoiding some of the difficulties arising out of permanent migration. In addition, the temporary admission of migrant workers tends to be more readily accepted by citizens in developed countries, who may feel threatened by rising migration inflows. At the same time, origin countries can benefit from the transfer of remittances and from the knowledge and skills gained from returning migrants. Migrant workers themselves can counterbalance periods of unemployment, adverse working conditions and low income in their home countries. They can further benefit from training and professional advancement

¹ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 2.2(b).

² On circular migration, see section 2.3.4 below.

gained in the destination country. Thus, the first Global Forum on Migration and Development held in 2007 claims in its conclusions to have “enabled a shift of the migration and development paradigm by promoting legal migration as an opportunity for development of both origin and destination countries, rather than as a threat”. It further stated: “*Temporary labor migration* can be a flexible way of meeting labor surplus and shortage across countries. Assuring legal access to a varied labor market, protecting the basic rights of migrants, especially women, and assuring temporariness of the migration are key to maximizing the mutual benefits of such migration” (GFMD, 2007, p. 6, emphasis in original).

Some destination countries have limited access for temporary migrant workers to specific origin countries with which they have entered into bilateral agreements, such as Canada in the case of Mexican workers, Commonwealth Caribbean States in the case of Guatemalan workers, and Germany in the case of workers from Central and Eastern Europe (OSCE, IOM and ILO, 2006). For example, in 2003 Germany admitted 318,549 temporary workers from Central and Eastern Europe to work in agriculture and forestry and in the hotel and restaurant industry for periods of up to four months (German Federal Ministry of the Interior, 2005).

Apart from such seasonal work schemes, some countries have established temporary labour migration programmes to channel migrant workers into specific sectors. For example, the United Kingdom’s former Sectors Based Scheme, introduced in 2003, reserved a quota of 3,500 places for migrant workers in the food manufacturing sector in 2005–06 (OSCE, IOM and ILO, 2006). In Canada, Germany, the Netherlands, Norway and Spain, among other countries, the construction industry is an important sector that operates specific temporary labour migration schemes. These often set restrictions, similar to those established for seasonal workers, that prohibit switching to a different work permit scheme and bringing family members to the country. The United Kingdom’s Sectors Based Scheme stipulated an obligatory return after fulfilment of the temporary work contract, as well as the application of labour market tests.

From the point of view of migrant workers, there are real disadvantages associated with these circular or temporary migration programmes. In practice, their potential benefits are often eroded by insufficient regard to the protection of migrant workers’ rights, resulting in their exploitation. Temporary migrant workers often find it difficult to change their employers or jobs; this makes them overly dependent on their initial employers and places them in a vulnerable position (Ruhs, 2006). These disadvantages have been emphasized by some policies implemented by destination countries in response to the current economic crisis. Some countries encouraged employers to dismiss migrant workers first, while

others implemented voluntary return programmes which did not allow future return for employment. For example, the Republic of Korea's ministry of labour stopped issuing visas through its Employment Permit System, and announced a reduction in the quota for work permits to be issued to ethnic Koreans and foreign nationals for 2009 (Si-soo, 2009). The Republic of Korea's Government also offered wage subsidies to companies which replaced migrant workers with native workers (ILO, 2009d). The challenges of temporary migration will be discussed in Chapters 2 and 3 below.

1.4.3 Irregular migration

The ILO has not formally defined irregular migration, or migrant workers in irregular status, in its migrant worker instruments. The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – the first international instrument to deal with the issue of migration in abusive conditions – uses the terms “clandestine” to refer to irregular migratory movements and “illegal” to refer to undocumented employment. Significantly, however, it does not use the term “illegal” to refer to migrant workers themselves.³ Similarly, the UN instrument pertaining to migrant workers and their families, the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, considers migrant workers as documented or in a regular situation if they are authorized to enter, stay and work pursuant to the law of the destination country and international agreements to which it is a party. It considers migrant workers as undocumented or in an irregular situation if they do not comply with those conditions.

The terms “irregular migration” and “migrant workers in irregular status” are the preferred terms increasingly accepted by the ILO and other international organizations. Other terms commonly used to describe irregular migration either are not comprehensive enough to capture different aspects of irregular movements or have overly negative implications (Wickramasekara, 2002). For example, “undocumented” does not cover all cases of irregularity, because some migrants may enter a country with valid documentation, but later become irregular by violating the conditions under which they entered. “Clandestine migration” has undertones of suspicious, covert or secret movement, and should be avoided because it could seem to be associated with criminality. “Illegal” is a negative term,

³ This section draws upon Wickramasekara (2007a).

in that it ignores both the contributions made by the migrant workers to the destination country's economy and the illegal conduct of others, such as employers who may knowingly employ migrants in irregular status, traffickers, corrupt bureaucrats, and fraudulent recruitment agencies and labour brokers. Irregularity may not always be a matter of choice for migrant workers. Indeed, they may have been forced into irregular situations by traffickers and recruitment agents.

Irregularities in migration can occur at every stage of the migration process – pre-departure, transit, destination and return. Irregular migration can range from simple unauthorized border crossings for work to forced labour through trafficking and smuggling of human beings. Its very nature makes it extremely difficult, if not impossible, to find accurate data on irregular migration. The enormous range of figures produced by those who have attempted to estimate the numbers involved itself indicates the unreliability of these figures. In Europe, for example, estimates of the migrant population in irregular status vary from 3 million to 8 million (Lupini, 2006). At a global level, the same degree of inaccuracy exists. Therefore, all estimates in this area must be considered with extreme caution.

With this caution in mind, some statistical estimates will be mentioned here nevertheless. For example, regularization programmes and other international sources have produced estimates suggesting that 10–15 per cent of all migrants around the world may be in irregular status (Hatton and Williamson, 2002). Recent estimates by the EU indicate a number of migrants in irregular status between 2.8 million and 6 million, constituting between 11 per cent and (at most) 23 per cent of total migrant worker stocks (CLANDESTINO, 2007–09). The International Organization for Migration (IOM) recorded that more than 27,000 migrants in irregular status arrived in the Canary Islands in Spain between January and October 2006 alone. During the same period, Lampedusa in Italy received more than 17,000 migrants in irregular status. It is estimated that the United Kingdom is host to about 500,000 migrants in irregular status (CLANDESTINO, 2007–09). There are high estimates for regions outside Europe as well. The interior ministry of the Russian Federation, for instance, estimated that in September 2003 there were 5 million foreigners in the country whose legal status was unclear, of whom 1.5 million were “clearly unauthorized” (*Migration News*, 2003). In the United States, the population of unauthorized migrants in March 2006 has been estimated at between 1.5 million and 12 million – a huge range. Unauthorized migrants have also been estimated to account for 7.2 million workers or about 4.9 per cent of the civilian labour force there (Passel, 2006). For estimates of the number of migrants in irregular status in some OECD countries, see table 1.6.

Table 1.6 Estimates of irregular migration in selected OECD countries, 2004–07^a

Country	No.	% of population	Year
Australia	46 500	0.2	2006
Greece	200 000	2.7	2005
Italy	500 000	1.2	2006
Japan	200 800	0.2	2007
Netherlands	74 300	0.8	2005
Portugal	93 000	1.0	2004
Rep. of Korea	210 492	0.4	2007
Spain	412 500	0.9	2007
Switzerland	80 000	1.2	2004
United States	11 500 000	3.9	2007

^a Figures show estimates or lower limit of estimated range.

Source: OECD, 2009a, table II.10 (from various sources).

Irregular migration is not just confined to developed countries. Many parts of Africa, Asia and Latin America have long and porous borders that people commonly cross without going through immigration posts. Examples are, in Africa, the border between South Africa and Zimbabwe, and in Asia, the border between Myanmar and Thailand. Indeed, in many regions most migratory flows might be better considered as “informal” rather than “irregular”, since the authorities are frequently aware of them but tolerate them for a variety of reasons, including long-established historical patterns of mobility, the usefulness of migrants for certain interest groups and communities, the evolution of often still poorly defined regional free movement regimes and the incapacity to police borders adequately. Asia is thought to have several million migrants in irregular status, with the largest numbers likely to be Afghans in the Islamic Republic of Iran and Pakistan, Filipinos and Indonesians in Malaysia, and Burmese in Thailand. Both the Republic of Korea and Japan have a substantial number of over-stayers, with an estimated 210,500 in irregular status in 2007 in the Republic of Korea and an estimated 200,800 in 2007 in Japan.

Recent research undertaken by the Consortium for Applied Research on International Migration (CARIM) provides evidence of rising irregular migration flows to Southern and Eastern Mediterranean (SEM) countries. According to the 2008–09 CARIM Report, of the 5.6 million migrants received in these countries during the period covered, about 3.6 million or 64 per cent were in an irregular situation (Fargues, 2009). In five countries – Jordan, Lebanon, Libyan

Overview and analysis

Arab Jamahiriya, Syrian Arab Republic and Turkey – they make up the majority of migrants (Fargues, 2009; and see table 1.7).

Irregular migrants in SEM countries encompass three types: (1) migrant workers in unrecognized and informal jobs that do not provide the right of residence; (2) refugees and asylum-seekers who cannot obtain residency and are waiting either to be resettled in a third country or to return to their country of origin when conditions allow; and (3) transit migrants, such as those seeking to enter Europe, who for various reasons become stuck in an SEM country (Fargues, 2009). Irregular migration flows between neighbouring countries, such as Lebanon and Syrian Arab Republic, often occur to fill temporary or seasonal jobs in the informal economy. Additionally, large refugee populations with no residence or employment rights exist in many SEM countries, such as Sudanese refugees in Egypt and Iraqi refugees in Jordan, Lebanon and Syrian Arab Republic.

While there may be large numbers of migrants in irregular status – and by the very nature of irregular migration it is impossible to know – it should be kept in mind that they still represent only a very small proportion of the total number

Table 1.7 Estimates of immigrants in regular and irregular status in SEM countries, early 2000s^a

	Regular	Irregular (minimum)	Ratio irregular:regular
Algeria	80 238	10 000	0.1
Egypt	115 589	100 000	0.9
Israel	189 000	100 000	0.5
Jordan	392 273	600 000	1.5
Lebanon	302 315	400 000	1.3
Libyan Arab Jamahiriya	449 065	1 000 000	2.2
Mauritania	48 000	10 000	0.2
Morocco	62 348	10 000	0.2
Occupied Arab territories	n.a.	42 000	n.a.
Syrian Arab Republic	55 000	700 000	12.7
Tunisia	35 192	10 000	0.3
Turkey	272 943	300 000	1.1
Total SEM	2 001 963	3 282 000	1.6

n.a. = not available.

^a Estimates refer to non-citizens or foreign-born residents according to the most recent official records (census, survey or residency statistics).

Source: Adapted from CARIM, 2009, table 4.

of migrants. Thus, with regard to Europe, it has been noted that the estimated 4–7 million migrants in irregular status should be seen in the context of 83 million in regular status. These migrants in irregular status therefore represent only a tiny share of the total stock of migrants (Düvell, 2006). Hein de Haas has convincingly challenged the myth of the recent invasion of Europe by uncontrollable waves of West African migrants and boat people (de Haas, 2007). Nevertheless, these misconceptions endure, and most immigration policies in the West are driven by the spectre of irregular migration on a huge scale.⁴ In fact, the share of migrants in irregular status in the total population is estimated to be only 3.6 per cent in the United States and less than 2 per cent in most other countries (OECD, 2006a).

Even though the estimates are unreliable, and even though migrant workers in irregular status are only a small proportion of all migrant workers, the fact that the estimates are large is a strong indication that the demand for migrant workers is not matched by the supply allowed to enter through regular channels. While most destination countries have liberalized admissions for skilled workers to some extent, regular doors remain closed for low-skilled and semi-skilled workers, the vast majority of whom come from developing countries. Restrictive policies, coupled with the continuing demand for low-skilled workers, often lead to inflows of migrant labour in irregular status. Research conducted by the ILO and others shows that the absence of regular and legal opportunities for labour migration is a prime factor in the growth of irregular migration, trafficking and the smuggling of human beings. The Royal Society of Arts Migration Commission Report clearly stated that “Irregular migration is the growth within each country of the global labour market” (RSA Migration Commission, 2005, p. 22). Many governments tacitly tolerate the presence of migrant workers in irregular status to sustain large informal economies, while officially they wish to be seen as “combating” or “fighting” irregular migration.

According to the UN Special Rapporteur on the Human Rights of Migrants, “Denial of demand is an important issue as it is one of the main factors that leads to irregular migration, a situation at the core of much of the abuse and numerous human rights violations suffered by migrants” (UNCHR, 2005, p. 2). Migrant workers in irregular status are thus serving as the buffer between the political demands for closed borders and the economic realities existing in destination countries. Whereas much of the political discussion to date has focused on curbing the influx of migrants in irregular status, it is important that the debate be

⁴ For elaboration of these issues, see Wickramasekara (2008a).

refocused on providing more opportunities for regular migration to meet labour demand and on protecting the rights of migrants, instead of criminalizing them (Jandl, 2004a).

Migrants in irregular status are often extremely vulnerable individuals who incur great risks to get to their destination, often travelling long distances. Many must pay smugglers, who might conceal them to cross borders, supply false documents or bribe immigration officials (Taran and Moreno-Fontes Chammartin, 2002). Smugglers provide various services to voluntary customers, in effect acting as extra-legal travel agents. They may charge as much as US\$30,000 to transport migrants from East Asia to North America or Europe, less to convey migrants across land borders.⁵ Traffickers, on the other hand, use violence, coercion and deception to exploit workers, essentially treating them as commodities rather than human beings. Trafficked migrants are victims, not criminals, and should not be liable to criminal prosecution (Geronimi, 2003a).

1.5 Conclusions

Migration has occurred throughout history, and current trends certainly indicate that it will continue to increase in the future. While the forces of globalization have created opportunities for greater integration of labour markets, a complex web of national immigration laws and border controls has restricted the mobility of people across borders. Yet growing disparities in wealth, incomes, human security, human rights and demographic trends across countries are all exerting upward pressure on migration. Every year, many millions of young men and women enter the labour force in developing countries where jobs are not created fast enough to absorb them. The impact of demographic trends in the form of population decline and ageing is being felt most profoundly in advanced destination countries, where scarcities of labour are emerging in many sectors. The shrinking of the labour force in these countries has generated a demand for workers in many sectors of the economy, particularly in services, which has been met to a significant extent by migrants. New technologies also allow more people to acquire the information they need to access the global labour market.

History has shown that the movement of goods, rather than the movement of people, has been the key factor in the success of some developing countries in

⁵ Information on typical smuggling fees from the country of origin to a Schengen country can be found in Jandl (2004b).

catching up with more advanced ones. The so-called East Asian “economic miracle” was based on a comparative advantage in low-cost labour for the manufacture of goods for export. This has since spread to China, where per capita incomes have doubled in less than a decade. However, there are questions over the degree to which this model can be replicated, particularly in developing countries that have weaker capacities to produce manufactured goods or lack other conditions for successful management of the development process.

The increased importance of migration of women seeking employment, the rise in temporary migration schemes, and the growth in numbers of migrants in irregular status pose challenges for the international community with important implications for the governance and regulation of labour migration and the protection of migrant workers’ rights.

An encouraging international trend is an increasing recognition of the positive contributions of labour migration to countries of origin and destination, as well as to migrants themselves. This issue is discussed in detail in the next chapter.

Migration: Growth and development impacts in countries of origin and destination

2

2.1 Introduction

Since human beings first emerged from the African continent many thousands of years ago, every part of the world has been subject to overlapping waves of migration. Migration has been a central part of human history, shaping and reshaping societies, cultures and economies. The twenty-first century is certainly no exception. The millions of migrants who circulate within continents or travel from developing to developed countries today are the latest embodiment of an age-old tradition.

Nevertheless, migration, and particularly immigration, has often been controversial. Indeed, many of those who are themselves the descendants of previous generations of immigrants look askance at the arrival of new immigrants, whom they consider a threat to their jobs and their culture. Even countries populated almost entirely by immigrants, such as the United States, at times raise barriers to immigration higher, typically on the ground that a current generation of would-be immigrants is in some way inferior to those who arrived earlier. Thus, for example, there were objections in the United States at various times to the arrivals of Irish, Chinese and East European immigrants, among others.

Emigration rarely presents such problems. Relatively few governments today object to the departure of their citizens, and when they do it is typically on political rather than economic or social grounds. This contrasts with the recent past. For example, before 1911 China treated emigrants as traitors; the United Kingdom used to ban the emigration of skilled workers sought by employers in France, Germany and the United States; and Soviet bloc countries prohibited citizens from leaving (Castles and Miller, 2003). More often, however, countries

have viewed emigration as a safety valve and have allowed and even sometimes encouraged discontented or disadvantaged people to seek their fortunes elsewhere.

There are a number of potential advantages and disadvantages to immigration and emigration. Each country must decide the significance of these advantages and disadvantages within its own development strategy. This chapter will review some key aspects of the socio-economic impact of migration on countries of origin and destination.

2.2 The migration–development nexus: An emerging consensus

A number of global initiatives by the ILO and other institutions have identified and explored the positive links between migration and development in both destination and origin countries. In its conclusions concerning a fair deal for migrant workers in a global economy, the ILO states: “Promotion of policies that maximize the contribution of migration to development is another essential component of a comprehensive policy to address the global context of migration” (ILO, 2004a, para. 17). The ILO Multilateral Framework on Labour Migration also highlighted this link in its principle 15: “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” (ILO, 2006a).

One of the six principles of action listed by the GCIM is “reinforcing [the] economic and developmental impact” of migration. This is elaborated as follows: “the role that migrants play in promoting development and poverty reduction in countries of origin, as well as the contribution they make towards the prosperity of destination countries, should be recognized and reinforced. International migration should become an integral part of national, regional and global strategies for economic growth, in both the developing and developed world” (GCIM, 2005). The UN High-level Dialogue on International Migration and Development held in 2006 in New York and the first Global Forum on Migration and Development held in 2007 in Brussels can be considered further milestones in promoting this issue at the global level.¹ There is a broad consensus that labour migration issues should be integrated into the mainstream of national employment, labour market, poverty alleviation and development policies.

¹ The second Global Forum on Migration and Development took place in Manila in October 2008, and the third in Athens in November 2009.

Labour migration has the potential to serve as an engine of growth and development for all parties involved – destination countries, origin countries and migrant workers themselves. In destination countries, migration has rejuvenated workforces, rendered many traditional sectors like agriculture and services economically viable, promoted entrepreneurship, supported social security and welfare schemes, and satisfied the demand for skills in emerging high-tech industries. In the developing regions from which most migrants come, the positive contributions of migration are reflected in high remittance flows and the transfer of investment, technology and critical skills through return migration and connections with transnational communities or diasporas (GCIM, 2005; ILO, 2004b; IOM, 2005a).

The UN Secretary-General's report on international migration and development for the UN High-level Dialogue in 2006 stated: "We are only beginning to learn how to make migration work more consistently for development. Each of us holds a piece of the migration puzzle, but none has the whole picture. It is time to start putting it together" (UN, 2006, p. 6). Whether or not migration contributes to development depends on a number of different factors, including the forms of migration taking place, whether countries are introducing policies to manage migration and how well they are doing so – for example, adjusting for adverse consequences or taking advantage of big windfalls. Migration can contribute positively to development where a country is already poised to develop; it cannot, however, create such a condition.

2.3 Development implications for origin countries

There is a great deal of interest among policy-makers in most developing countries in the development benefits of migration. Migration can to some extent relieve local unemployment and underemployment pressures by enabling a considerable number of people to find jobs overseas, while also generating large flows of remittances. Set against these advantages is the chief drawback of losing some of the brightest people, creating situations of "brain drain".

2.3.1 *Migrant remittance flows*

There is an international consensus that migrant remittances are the most tangible benefit of migration to developing countries. Migrant remittances usually go towards improved housing, nutrition, schooling and health care. Remittances

therefore create human capital by financing education of children and health for all age groups, and improving food security for poor households.

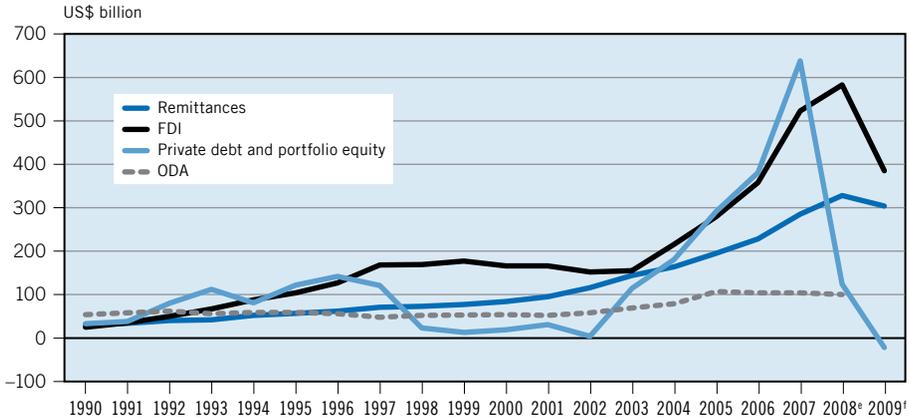
The volume of migrant remittances to developing countries has greatly increased in recent years – from US\$60 billion in recorded remittances in 1990 to US\$285 billion in 2007 (Ratha and Xu, 2008). Remittances reached US\$328 billion in 2008, but may drop by as much as 10 per cent in 2009 as a result of the global economic crisis (Ratha, Mohapatra and Silwal, 2009). Flows to Latin America, in particular, have fallen. Despite this decline in the growth of these flows, remittances remain resilient in relation to other forms of financial transfers – official development assistance (ODA) and foreign direct investment (FDI). Recorded remittances are now over twice the level of ODA, which in 2007 was US\$105 billion, and about two-thirds that of FDI, which was US\$325 billion the same year. For some countries, in fact, remittances constitute the main source of foreign exchange. The World Bank has therefore described remittances as “an important and stable source of development finance” (World Bank, 2003, p. 157).

Yet it must also be stressed that remittances are private household transfers and should not be viewed as a substitute for ODA, FDI or investments in public services. This was recognized in the conclusions of the first GFMD, which emphasized that “Remittances do not diminish the need for ODA and they are not an alternative to national development efforts by concerned governments” (GFMD, 2007, p. 9).

An important advantage of remittances is that they are better distributed than FDI, which is largely concentrated in a few developing countries. They are also a more reliable and stable source of income, tending to fluctuate less with economic cycles and thus to be less volatile than capital flows. Thus, for example, remittances continued to rise during the Asian financial crisis at the end of the 1990s, even when flows of FDI fell (figure 2.1). In fact, remittances tend to increase in times of economic hardship, because families depend on them as a principal source of income and because more people are likely to emigrate in search of work during such times. The better-off migrants who invest in their home countries are also less likely to be discouraged by adverse economic conditions than foreign investors. In the current economic crisis, remittances are expected to decline by 7–10 per cent in 2009, but they will become more important as a source of external financing in many developing countries (Ratha, Mohapatra and Silwal, 2009).

The World Bank has noted that remittances improve the access of developing countries to international capital markets on favourable terms (Ratha, 2005). However, remittances may make exports less competitive and investments in import-substituting industries less attractive, since they tend to push up the external value of a country’s currency or its exchange rate. But most authorities in

Figure 2.1 Recorded remittances and capital flows to developing countries, 1990–2009



e = estimated, f = forecast

Source: Based on data provided by the World Bank.

origin countries seem convinced that the impact has been positive on the whole, especially given the need for foreign exchange to finance large trade deficits and service external debts.

The leading recipients of remittances in 2008 were India (US\$52 billion), China (US\$41 billion) and Mexico (US\$26 billion). At the same time, remittances as a share of GDP were much higher in some smaller countries, including Tajikistan (45.5 per cent), Tonga (39.4 per cent), the Republic of Moldova (34.1 per cent), Lesotho (27.7 per cent) and Guyana (25.8 per cent) (World Bank, 2009). ILO case studies show that in 2003 remittances in Bangladesh accounted for more than half of recipient household income, and in Senegal the figure was as high as 90 per cent (Sander and Barro, 2003; Siddiqui and Abrar, 2003). In Nepal in 2003–07, migrant remittances were the top contributor to foreign exchange earnings (Nepal Rastra Bank, 2007). It was found during a 2002 ILO mission to Nepal that remittances probably contributed more to that country's foreign exchange than manufacturing exports, tourism, foreign aid and other sources combined. Other sources of data have suggested that the resilience of the Nepalese economy, despite adverse macroeconomic indicators, must be due to the large inflow of remittances, estimated at more than 1 billion rupees each year (ILO, 2002a). With regard to Africa, a review of remittances there concluded: "For many African households and nations remittances are a tremendously important source of finance and foreign exchange, helping to stabilize irregular incomes and to build human and social capital. Remittance receivers are typically better off

than their peers who lack this source of income. At the national level, remittances have a substantial effect on the balance of payments and on foreign exchange” (Sander and Maimbo, 2003, p. i).

Most remittance data refer to official transfers. It must be stressed that official transfers make up only a portion of the total remittances transferred. It is thought that in some countries only about half the remittances received go through official banking channels. This is because migrant workers are discouraged from using official channels by cumbersome procedures, high fees and poor rates of exchange. In some areas, the systems of informal transfer known as *hawala* or *hundi* are popular, because they make it much easier for people not accustomed to using banks to receive money. These are informal systems primarily used in the Middle East, Africa and Asia, whereby funds are transferred through the services of a large network of money brokers (El-Qorchi, 2002). If funds that do not travel through formal banking channels are taken into account in estimating remittance flows, the global annual flow to origin countries can be estimated at about US\$300 billion in 2007, a substantially greater figure than the US\$285 billion for recorded remittances stated above.²

The World Bank’s analysis of remittance flows among developing countries, that is, South–South remittances (Ratha and Shaw, 2007), found that in 2005 South–South remittances ranged from 9 per cent to 30 per cent of developing countries’ remittance receipts. The study concluded that income benefits from South–South migration are more limited than those from South–North migration; that the costs of South–South remittances are even higher than the costs of North–South remittances; and that developing country migrants who travel to other developing countries are generally poor, are more likely to be in irregular status, and are thus subject to greater risks of exploitation and deportation than those travelling to countries in the North, so that their remittance amounts are lower. Nevertheless, even small increases in income can have very substantial welfare benefits for people in such circumstances. For these reasons, as the World Bank recommends, policy-makers should pay attention to the complex challenges developing countries face, not just as countries of origin, but as countries of destination as well.

It is difficult to generalize about the ways in which increased remittances by migrants have affected economic development and poverty in origin countries. Members of relatively well-to-do families are usually the first to migrate, thereby initially resulting in remittances tending to go to those in origin countries who

² World Bank studies suggest that unrecorded flows through informal channels may add 50 per cent or more to recorded flows. See World Bank (2006a).

are already fairly well off. Later, with the migration of low-skilled workers from poor families, remittances reach lower-income segments of the population and thus can alleviate poverty to some extent. World Bank household surveys have confirmed this effect, finding that a 10 per cent increase in per capita remittances leads to a 3.5 per cent decline in the proportion of poor people in the population (Ratha, 2006a).

In a study on Latin America, it was found that “Remittances put large sums of money into circulation in countries in Latin America for the purchase of goods and services that boost the economy. In this way, remittance flows have a positive impact on economic development” (Rhyne, 2007). In another study on Latin America, these observations were confirmed:

Remittances obviously are improving the lives of poor families and communities in most recipient countries – particularly those in which migrant senders come from the poorest groups. Low-income rural areas receive a large share of remittances in a majority of countries. And remittances mostly go to poor families; over half of all recipient households in Latin America earn less than \$200 per month. In Guatemala, 60 percent of household income for the poorest 10 percent of the population is from remittances. In short, remittances are – in most places – helping improve Latin America’s skewed income distribution. This is particularly important in countries with low per capita incomes and large inequalities between rich and poor. (Inter-American Dialogue, 2007, p. 15)

Because remittances go directly to migrants’ households, which have a high propensity to consume, their multiplier effects on a country’s national income are considerable. As the ILC 2004 resolution on migrant workers points out, “Many of these activities have a significant multiplier effect, with the potential to reduce poverty and expand decent work” (ILO, 2004a, para. 9). A study in Bangladesh, for example, indicates that remittances in that country have a multiplier effect of 3.3 on GNP, 2.8 on consumption and 0.4 on investment (Van Doorn, 2002). A study looking at the relationship between poverty, migration and remittances for 74 low- and middle-income developing countries found that both international migration and remittances have a strong, statistically significant impact on reducing poverty in the developing world: “On average, a ten per cent increase in the share of international migrants in a country’s population will lead to a 1.6 per cent decline in the poverty headcount” (Adams and Page, 2003, p. 1). Further, international remittances viewed as a proportion of country GDP have a statistically significant effect on poverty indicators. On average, the poverty headcount measure indicates that a 10 per cent increase in the share of

remittances in country GDP leads to a 1.2 per cent decline in the share of people living in extreme poverty (less than US\$1 per person per day). Other poverty measures show a slightly larger impact on poverty reduction, with a 2 per cent decline in the depth and/or severity of poverty in the countries studied. The impact of international migration and remittances on poverty was found to have varied from one region to another, possibly as a result of difficulties in factoring in irregular migration.

A major policy issue in improving the value of remittances to developing countries is lowering remittance transfer costs. Remittance fees are generally high and regressive. Western Union, a money transfer company, charges close to 4 per cent to remit US\$500, but about 15 per cent to remit US\$100. Thus those who remit small amounts are penalized (Ratha, 2006b). Latin America has been more successful than other regions in lowering the costs of remittance transfers, mainly through competition between different suppliers. The charge for sending US\$200 to Latin America from the United States averaged 15 per cent (about US\$30) in the mid-1990s; by 2005 this cost had dropped to about 6 per cent (US\$12). The amount saved in transfer fees in 2005 alone has been estimated at US\$5 billion, far exceeding total foreign aid to the region within that year (Inter-American Dialogue, 2007). This shows what an enormous difference reducing money transfer fees can make. For this reason, efforts to reduce remittance costs are being made in Mexico and, to some extent, in the Philippines. Efforts to reduce the costs of sending remittances have also been made in some destination countries. For example, Send Money Home, an initiative originally launched by the UK Department for International Development (DFID) in 2005, is an online service that provides diaspora communities in the United Kingdom with free price comparisons of money transfer services.³

As awareness increases of the size, magnitude and development impact of remittances, authorities in many developing countries are now actively trying to attract them. Pakistan's central bank governor recently advised banks to increase their level of commitment and interest in the provision of remittance-related services to overseas Pakistanis. The central banks and governments of Bangladesh, India, the Philippines and Sri Lanka have also put in place measures to increase remittance inflows by, for example, creating special departments within central banks or ministries for diaspora-related issues, implementing special schemes such as low-interest housing loans and insurance, facilitating local and foreign cur-

³ See ILO database on good practices on labour migration. Available at: http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=31 (accessed 4 Jan. 2010).

rency deposits, and even (in some but not all cases) granting dual nationality to permanent migrants (Adams, 2003).

With regard to making the best use of remittances, there is a consensus that sound macroeconomic policies, political stability and improvements in the investment climate in destination countries are prerequisites. Formalizing money transfers by channelling them through the recognized banking system is also believed to be central to enhancing the long-term development impact of remittances (World Bank, 2006a). The Roundtable on Remittances and Other Diaspora Options at the 2007 GFMD agreed that improving the formalization of remittance transfers offers opportunities to leverage their development impact by providing options for individual savings and investments and by supporting local development projects (GFMD, 2007).

Clearly, as shown here, remittances from migrant workers have a great impact on development in origin countries. This impact should not be undermined by low wages, delayed wage payments, non-payment of wages or the exploitation of workers in irregular status, as is too frequently the case. These issues will be discussed more fully in Chapter 3.

2.3.2 Employment and wages

While there are many motivations behind individual decisions to migrate, a major force driving contemporary migration is a lack of decent work opportunities at home. In developing countries, decent jobs are not being created fast enough to absorb the growing numbers of people ready to join the labour force every year. Migration can thus be seen as a means to increase economic security.

Although emigration may be perceived as helping to ease population pressures, for most countries it can have only a modest impact at best. Even for the main countries of origin, the proportion of the population leaving is relatively small. The largest transfer is from Mexico to the United States. Of the 108 million people alive today who were born in Mexico, about 8 million now live in the United States, effectively reducing Mexico's annual population growth rate from 1.8 to 1.5 per cent (Martin and Teitelbaum, 2000). For most other origin countries, such as China and India, the proportions are much lower.

In very populous countries of origin, even high levels of emigration may have minimal effects on unemployment and wages (UN, 1998a). However, because migration is selective, it may induce upward pressure on wages in specific sectors. In Pakistan, for instance, emigration to the Gulf countries resulted in increased wages for skilled construction workers and possibly also for low-skilled

construction and agricultural workers (UN, 1998a). Similarly, real wages in the Philippines seem to have risen in line with migration, especially for workers in manufacturing (Lucas, 2005). In India, there are indications that the huge migration from the State of Kerala to the Gulf region has helped raise wages in that state (Zachariah, Mathews and Irudaya Rajan, 1999). Some countries with high net emigration rates also have intractable unemployment problems. In small countries with large expatriate populations, the reduction of unemployment or underemployment related to emigration may be substantial.

Certainly, serious problems would arise in many countries if most migrants suddenly returned home. This, in fact, happened after the first Gulf War in 1990, when about 2 million foreign workers were driven out of Kuwait and Iraq and went back home, seeking work in their own countries.

2.3.3 Skilled migration and the “brain drain”

In considering the development impact of international migration, it is important to assess the impact of skilled migration from developing countries. Since the early 1990s the international mobility of highly skilled workers has been increasing (Docquier and Marfouk, 2005; Dumont and Lemaître, 2005; Lowell, 2008), reflecting globalization trends, rising global demand for skills, selective admission policies in developed countries, and the phenomenal growth in ICT. The impact of this “brain drain” from origin countries varies according to the characteristics of those countries (size and level of development), the type of sector or occupation concerned, the mode of financing education (public or private) and the type of migration (temporary, permanent or circular) (Docquier and Marfouk, 2005; Kapur and McHale, 2005; Lowell and Findlay, 2002; OECD, 2002a; World Bank, 2006b).

Skilled people move for many reasons, including higher wages, better facilities and more opportunities for advancement. Destination countries sometimes promote the immigration of professionals through recruitment drives and selection systems that facilitate entry.⁴ These selection systems can amount to what has been called “cherry picking”, in the sense of attracting the “best and brightest” from poor countries and depriving these countries of their most qualified individuals – individuals in whom they have made heavy investments in education and human capital, often at public expense. Many migrants from developing countries in the United States in 1990 had twice as much education as their compatriots

⁴ For a description of such policies in OECD countries, see Dumont and Lemaître (2005).

at home (Adams, 2003). This trend has continued for almost all developing countries since the 1990s. Thus, for example, in 2000 there were 3.7 times more Jamaicans with a university education in the United States than in Jamaica; and for every ten Salvadorian university graduates at home, there were four in the United States (Adams, 2003).

A World Bank study found that 77 countries experienced a loss amounting to 10 per cent or more of their university-educated citizens in 2000, while 28 countries lost 30 per cent or more (Docquier and Marfouk, 2005). It has been estimated that 56 per cent of highly educated migrants in OECD countries come from developing countries. One estimate suggests that there are at least 400,000 scientists and engineers from developing countries working in research and development in the industrialized world, compared with around 1.2 million still working at home (Meyer and Brown, 1999). In addition, according to the World Bank, smaller Caribbean countries have lost more than 60 per cent of their skilled citizens to migration (Adams, 2003).

Brain drain is a real concern, for it can have dire consequences for sustainable development in developing countries, especially the least developed. The departure of skilled migrants reduces a country's capacity for long-term economic growth.⁵ Countries that lose a significant part of their skilled labour force can suffer lower returns to capital. Local firms that invest in training people will find it hard to recoup their investments if these trained workers regularly leave. Because it tends to have cumulative effects, the emigration of highly trained people may make it very difficult to create the critical mass of know-how necessary for product development and for adapting imported production technologies to local conditions. Moreover, the emigration of highly skilled workers trained at public institutions means a loss of return to the society on its investment in higher education, as well as a loss of potential fiscal revenue. "Highly educated citizens may also help to improve governance, encourage education of children and help train or guide other workers, all of which may be reduced as a result of high-skilled emigration" (World Bank, 2006b, p. 58).

The problem is best illustrated in the case of the migration of health workers (Wickramasekara, 2008b). According to the World Health Organization (WHO), 57 countries have severe shortages of health workers; 36 of those countries are in sub-Saharan Africa (WHO, 2006a). Countries such as Ghana and Jamaica have more of their locally trained doctors abroad than at home. Many countries, especially in Africa, can no longer maintain adequate public health services because of the exodus of health workers attracted by much better prospects

⁵ For an illustrative balance sheet of positive and negative impacts, see Wickramasekara (2003).

abroad. Moreover, the emigration of African doctors and nurses is taking place at a time when there is a greater need for health-care staff because of the impact of HIV/AIDS and the need to improve immunization rates. The fact that Africa's share of global diseases is 25 per cent, while its share of the global health workforce is only 3 per cent, highlights the unethical nature of African health worker recruitment by wealthier countries (WHO, 2006b; Wickramasekara, 2008b). Rural areas in particular are left with few health-care staff, increasing the workload for those who remain.

A recent OECD study on health worker migration estimated that 11 per cent of nurses and 18 per cent of doctors employed in OECD countries in 2000 were foreign-born. Half of these foreign-born doctors or nurses are employed in the United States, 40 per cent in Europe and the remainder in Australia and Canada. The main source region for health-care professionals employed in OECD countries is Asia, accounting for 52 per cent of the foreign-born doctors and 40 per cent of the foreign-born nurses in the United States, 43 per cent of the foreign-born doctors in Australia, 48 per cent of the foreign-born doctors in Ireland and 55 per cent of the foreign-born doctors in the United Kingdom (OECD, 2007a, table III.A1.1, p. 208). This OECD study confirms, however, that migration is not the sole cause of the health-care workforce crisis in many developing countries: the need for health workers in these countries surpasses the number of health workers who have departed for OECD countries.

The globalization of education also contributes to the brain drain, to which student migration acts as a precursor. UNESCO data from 2008 suggest that there are 2.9 million students currently studying outside their countries of origin, most of them in Australia, China, France, Germany, the United Kingdom and the United States (Atlas of International Student Mobility, 2008). While most intend to stay abroad only for the duration of their studies, a significant proportion become permanent residents in these countries. The rates of stay among different immigrant groups vary significantly, however (Finn, 2005).

The migration of more highly skilled people can also affect capital movements. Countries that do not have sufficiently skilled local personnel may fail to attract FDI from companies reluctant to invest there. In addition, migrants may depart not only with their education, but with significant amounts of capital. This is, in fact, encouraged by some destination countries. A number of developed countries, including Australia, New Zealand and the United States, have programmes for business migration, entrepreneur migration or business relocation, which require a minimum investment of capital. These capital transfer or investment requirements usually range upwards from US\$300,000, which can result in a substantial drain on capital-scarce developing countries.

There are nevertheless also positive aspects to skilled migration (Lowell and Findlay, 2002; Wickramasekara, 2003). ILO research has shown that the net impact of skilled migration from developing countries depends on a number of feedback effects, which may serve to balance positive and negative effects to some extent (see Lowell and Findlay, 2002; Wickramasekara, 2003). The most direct effect is a reduction of human capital stock, which is critical to productivity and economic growth. But this also sets in play a number of forces that can promote economic growth. For example, the large-scale emigration of ICT workers from Asia, particularly India, has had a number of salutary effects on origin countries in the form of skills transfer, outsourcing arrangements and investment flows. The promise of higher incomes through migration may itself encourage more investment in education, public and private, than might otherwise have been forthcoming. Expatriates who remain abroad can also positively affect the development of origin countries, to which they contribute funds via remittances and transfer knowledge, technology and investments which serve to boost productivity and economic development.

2.3.4 Return migration and circular migration

Return migration has traditionally been viewed as a good strategy to reverse brain drain, and considerable interest has been expressed in the return migration of skilled workers as a major positive factor for the development of origin countries. Unfortunately, there are extremely limited data on return migration, except that which has taken place on an organized basis, because countries do not have monitoring systems to record the return of nationals who have been employed abroad. Hardly any information exists on the types of return migration, motivations for it or time patterns. In any assessment it would be important to distinguish between what is most relevant for development, that is, voluntary return, from involuntary return associated with, for example, the rejection of asylum applications or deportation programmes for migrants in irregular status. Such data do not currently exist, however.

An OECD study of return migration from its member States sheds some light on when migrants return and why. According to the study (OECD, 2008), 20–50 per cent of migrants (depending on the destination country) leave within five years of their arrival, either to return home or to move to a third country (secondary migration). This proportion varies with the country of destination: some countries, such as Canada, New Zealand and the United States, are more successful than European countries in retaining immigrants. Individuals choose

to return because of four main reasons: “i) failure to integrate into the host country, ii) individuals’ preferences for their home country, iii) achievement of a savings objective, or iv) the opening of employment opportunities in the home country thanks to experience acquired abroad” (OECD, 2008, p. 163). Migrants’ contribution to the development of their home countries depends upon the combination of resources they transfer before and at the time of their return (OECD, 2008). Thus, individuals who return because of the latter two reasons are more likely to be in a position to contribute to the development of the origin country than those who return because of the former two.

Large-scale voluntary returns of migrant workers have rarely taken place without conditions at home improving sufficiently to make return attractive. Thus, often the deciding factor will be the situation in the country of origin, particularly an improved economic outlook. Recent examples illustrate the process: when northern Italy became very prosperous, it attracted back Italians who had earlier migrated to Germany and the Americas; after the collapse of the Soviet Union, ethnic Russians who had earlier been forcibly relocated to Central Asia and the Caucasus moved back to the Russian Federation; and after Ireland achieved rapid economic growth, it attracted back many skilled expatriates. The same phenomenon is taking place now in some southern European countries. When these migrants come back with skills or savings, they can make a welcome contribution to development. China, for example, is now taking advantage of what are sometimes called “turtles”, an allusion to the habit of turtles to return to the beach where they were born. Chinese students going abroad to study are returning in greater numbers. Thus, whereas about 6,000 students returned in 1995, almost 35,000 returned in 2005 (Zweig, 2006).

Of course, there are always individual migrants who return to their countries even though conditions there have not changed – perhaps because their employment contracts are over, because they were disappointed by their emigration experience, because they had accumulated sufficient funds or for other reasons. This is obviously the case, too, for temporary migrants, such as most contract workers in the Gulf States, who normally return after the fixed period set out in their contracts.

The actual impact of return migration depends on a number of factors, including reasons or motives for return, time pattern of return, and timing of return.⁶ The timing of return is crucial for several reasons. If migrants return after

⁶ The “time pattern of return” refers to whether return is occasional, seasonal, temporary or permanent. “Timing of return” refers to the actual date of return of the migrant. See King (2000) and Wickramasekara (2003), on which this section draws.

a sufficient period of time in destination countries to gain additional qualifications and skills, work experience and accumulated resources, while building social capital in the form of networks and linkages with those back home, they will be better equipped for reintegration and employment in their own countries upon return. In contrast, a migrant who returns after only a brief spell abroad may not be able to offer many benefits to his or her own country upon return. Sustainable return is most beneficial (Black, 2008). This has taken place, for example, with the return of highly skilled professionals to China, India, Ireland, the Republic of Korea and Taiwan (China) to manage high-tech businesses or start joint ventures. Sustainable return depends on both the pattern and the timing of return movements. The period during which the migrant is abroad should be long enough to acquire skills and accumulate both financial and social capital, and return should take place before the end of productive or working life and not for retirement only. Unfortunately, some recent temporary migration programmes allow a stay of only one or two years, which offers little chance of any substantive impact on the migrant's return.

In addition to those who return home permanently after a spell working abroad, there are also migrant workers who regularly move back and forth between two countries. This phenomenon is described as “circular migration” or repeat migration. In this case, rather than return migration meaning closure of the migration cycle, there are several departures and several returns during the life cycle of migration (King, 2000). Increasing attention is being given to circular migration as an instrument for promoting the mutual benefits of migration to both sending and receiving countries (Vertovec, 2007; Wickramasekara, 2003). The concept is broad enough to take into account both temporary migration systems and diaspora movements between origin and destination countries. In the case of skilled migration, circularity means that developing countries do not permanently lose skills. For low-skilled workers, circular migration programmes may provide much-needed regular and safe migration avenues. Circular migration also helps developed countries meet their labour market needs without having to provide for permanent settlement or integration.

Even so, current immigration and visa regimes in developed countries remain significant barriers to circulation (Wickramasekara, 2003). In a number of countries, permanent residents lose the right of return after they have left for six months or one year, as is the case for long-term residents in the EU. Circulation-friendly visa systems and more liberal rights of return to diaspora migrant communities could be provided with little effort. The European Commission has recently promoted the concept of circular migration and mobility partnerships with a view to both reducing migration pressures from developing countries and contributing to those countries' development (European Commission, 2007a). One promising

proposal is to extend the period of absence from EU member states before residence rights are lost from one to two or three years for long-term residents.

2.3.5 Transnational (diaspora) communities

Governments of origin countries are increasingly interested in the potential value of transnational communities as engines of development. For example, Mexico has created special programmes that match government funds to remittances that are invested to create jobs in migrant areas of origin (López Espinosa, 2002). Mexicans in the United States have thousands of “hometown associations” which have supported all kinds of community activities, from building new roads to repainting churches and funding fiestas. Similarly, migrants from El Salvador who live in Los Angeles, Washington, DC, and many other cities in the United States have established town committees (*comités del pueblo*) to support activities back home, such as paving roads and installing electricity (Portes, 1997; Portes, Escobar and Walton Radford, 2005).

In addition to sending remittances to their families as discussed above, overseas migrant communities are now seen as investors, welfare providers, knowledge communities and technology harbingers to their home countries (Davan and Tewari, 2001; Kuznetsov, 2006). They perform such services by exchanging information and contacts, helping to enforce contractual arrangements, reducing reputation barriers, and promoting investment and skill transfers. Indian nationals who have reached senior executive positions in multinational companies have encouraged their companies to set up operations in India. Studies undertaken by migration centres in Côte d’Ivoire and Ghana have shown that migration and return can act as a mechanism for providing capital to develop small enterprises, particularly among poorer and less-skilled migrants (Ammassari, 2003). In China, funds amounting to some US\$60 billion are estimated to have been invested by 55 million overseas Chinese.

The African Union (AU) has invited Africa’s diaspora to take an active part in the region’s development.⁷ The 2006 Joint Africa–EU Tripoli Declaration on migration and development made a commitment to facilitating the role of diasporas in contributing to the sustainable development of their countries of origin (EU–AFRICA, 2006).

⁷ The AU Maputo Summit of July 2003 amended the Constitutive Act of the African Union in order to provide for the participation of the African diaspora in the “building” of the AU. For additional information, see Mutume (2003).

Migrants themselves have formed associations and networks abroad of several types: student/scholarly networks, local associations of skilled expatriates, mentoring/venture capital networks and intellectual/scientific diaspora networks. Some well-known ones are Arab Scientists and Technologists Abroad, the Colombian Red Caldas Network, the Global Korean Network, the Global Scots Network, the Iranian Scientific Information Network, the Philippines Brain Gain Network, Polish Scientists Abroad, the South African Network of Skills Abroad and the Tunisian Scientific Consortium. The Internet has played a key role in this phenomenon (Kuznetsov, 2006). One study identified 158 diaspora knowledge networks globally in 2005, of which 101 were active (Meyer and Wattiaux, 2006; Wickramasekara, 2007b).

2.3.6 Migration and trade

Because traded goods include labour inputs, trade, like migration, involves the movement of labour. For this reason, economists look at trade as a substitute for migration. In the EU, expansion of intra-community trade has brought about a convergence of income levels. Today, even though workers are completely free to move within the EU, the number tempted to migrate is an insignificant proportion of the European workforce. This is because trade and other measures have largely accomplished the job of reducing economic differences between the Member States (see Venables, 1999). The relation between trade and migration is, however, much more complex than this would suggest. Some economic activities, such as “call centres”, can easily be relocated to low-wage countries, so that jobs, rather than people, migrate, but other activities cannot be relocated. In some fields, such as financial services and high-technology products, trade and migration are complementary, in that the former prompts an increase in the latter.

Other factors also influence outcomes. In North America, the North American Free Trade Agreement (NAFTA) may, in fact, have led to more rather than less migration between the United States and Mexico (Martin, 2006). The establishment of *maquiladora* enterprises in Mexico near the US border has triggered labour migration from the Mexican hinterland, which in turn has generated more pressure to cross the border for much higher wages.⁸ As noted earlier,

⁸ A *maquiladora* enterprise is a business entity or corporation authorized by the Government of Mexico to obtain duty-free imports of raw materials, component parts or other property and use them in manufacturing, processing or assembling items in Mexico, primarily for export.

remittances sent home by migrant workers may have a perverse impact on trade. Where remittances raise the exchange rate of the origin country's currency, the consequence may be a reduction in exports and an increase in imports. Some commentators have cautioned against the emergence of a remittance-dependency syndrome in countries such as the Philippines (Asian Development Bank, 2004).

Migrants contribute to trade by establishing stronger links between origin and destination countries. The most striking example of this synergy involves the Indian ICT industry. Initially, the Indian Government had not been enthusiastic about ICT, fearing that it would cause job losses. But multinational enterprises in India recognized the ICT talent in the country and sent Indians to their operations abroad. Meanwhile, Indian firms moved Indian ICT specialists overseas and soon saw the virtues of bringing some of them back to work in India. The Indian Government then bolstered the budding ICT industry by reducing barriers to the import of computers and helping to ensure that the necessary infrastructure was reliable. By 2005–06, India was earning about US\$23.4 billion a year in revenues from exports of ICT software and services (Ribeiro, 2006).

GATS, which came into force in 1995, represents the first multilateral and legally enforceable agreement on international trade in services. Its central objective is the progressive liberalization of trade in services. The idea is that GATS Mode 4, covering the movement of natural persons, provides the best of both worlds for promoting the circulation of skills. On the one hand, developing countries have surplus skills in the service sector, and GATS offers an opportunity for them to earn higher rewards in developed countries. On the other hand, the strictly temporary movement permitted by Mode 4 allays the concerns of developed countries regarding permanent settlement. Unfortunately, the potential of this option has been seriously constrained by developed countries restricting its use to highly skilled professionals. Strict immigration barriers further limit its use. Moreover, there are serious concerns about Mode 4 permitting differential treatment of workers, leading to discrimination (Burrow, 2006).

2.4 The impact of migration on destination countries

Immigration has consequences for destination countries just as profound as those for origin countries. The contribution of migrant workers to destination countries has generally been less researched, and consequently is not as well documented as the contribution of migration to origin countries. Thus it is more difficult to present a thorough discussion of the role of migration in destination countries.

There are, of course, proven benefits of migration to destination countries and societies. Despite this, public discourse usually centres on the social adjustments that receiving societies have to make to immigrants who have a different ethnic origin and whose values may differ considerably from their own. Many societies have managed to adjust to increasing immigration, and some, like Canada, even celebrate diversity. Today there is much greater cultural diversity in many countries, even in those which as recently as the 1990s did not see themselves as countries of immigration. There have been some negative reactions, however, which sometimes take the form of open racism and xenophobia, especially where migration is perceived, rightly or wrongly, to take away jobs from native workers. At another level, migration, especially when large in scale, may have important repercussions on the political order in destination countries. Particularly where it does not lead to integration, it sometimes results in ethnic tensions.

2.4.1 Economic growth

Migrants contribute to economic growth in numerous ways – by filling labour market needs in high-skill and low-skill segments of the market, rejuvenating populations, improving labour market efficiency, promoting entrepreneurship, spurring urban renewal, and injecting dynamism and diversity into destination countries and societies.

The contribution of migrants to the growth and transformation of destination countries has been amply demonstrated from the historical experience of countries that have experienced substantial immigration. In general, the countries with the highest levels of immigration are among the most economically successful – Australia, Canada and the United States. In Europe since the Second World War immigrant workers have been credited for contributing to 30 or so years of sustained growth. In East and West Asia since the 1970s, migrant workers have helped transform cities almost overnight into gleaming metropolises; and they currently form the backbone of the booming construction industry in Dubai and the United Arab Emirates. In North America, for generations, immigrants to Canada and the United States have renewed and re-energized the population and economy. Nor is the impact of migration limited to the labour market; it can provide incentives for capital accumulation as well (Burrow, 2006).

Germany, Luxembourg and Switzerland have some of the highest proportions of migrant workers in Europe and are among the region's wealthiest countries. A statistical analysis for 15 European countries over the period 1991–95 found that for every 1 per cent increase in a country's population through

immigration, there was an increase in GDP of 1.25–1.5 per cent (Glover et al., 2001). This result, of course, does not prove causality; but research which used simulation models to assess the impact of migration on GDP indicates that the impact can be substantial when the skills of the migrant workers complement those of the native population (Brücker et al., 2002).

The World Bank has used a general equilibrium model to estimate overall economic gains to the global economy through international migration. Assuming a modest increase in migration from developing countries to high-income countries (14.2 million workers, consisting of 4.5 million skilled and the balance low-skilled), the share of migrants in the stock of workers in high-income countries will increase by 3 per cent by the year 2025. The model predicts global real income gains of 0.6 per cent, or \$356 billion in absolute terms, as a result of this migration, distributed as shown in table 2.1.

Table 2.1 shows that new migrant workers gain the most in terms of real income, while natives in both high-income countries and developing countries also gain. The only losers are the existing migrants in high-income countries, who lose out as a result of competition with the new migrants. Natives in developing countries experience an improvement in their economic situation because of remittances and wage increases resulting from reduced pressure on labour markets. These predictions are broadly consistent with previous studies on the economic effects of migration on destination countries. This study also highlights the large differences between regions, explained by the relative differences in wages between origin and destination countries: the highest gains accrue to migrant workers from sub-Saharan Africa. Important conclusions are that labour market restrictions impose a much larger burden on the global economy than trade restrictions, and that the liberalization of labour movements results in larger gains than trade reforms. It should be stressed that the model does not incorporate social and political dimensions or other factors, such as changes in migrant

Table 2.1 Changes in global real income as a result of increased migration, 2001–25

	Real income (US\$ billion), 2025 ^a	% change since 2001
Natives in high-income countries	139	0.36
Old migrants in high-income countries	–88	–6.02
Natives in developing countries	143	0.86
New migrants	162	199.00
<i>World total</i>	356	0.63

^a Adjusted for cost of living differences.

Source: World Bank, 2006b, Ch. 2.

characteristics over time, the positive impact on investment through migration, adjustment costs, the distinction between regular and irregular migration, and the social and economic implications of diversity.

A number of recent country studies also lend support to the thesis that migration has a positive impact. For example, the Government of Spain estimates that 30 per cent of Spain's average annual economic growth between 1996 and 2005 was due to immigration (Sebastián, 2006). Further, in 2005 there was a surplus of public revenues over public expenditures related to migrant workers amounting to €5 billion, or 0.5 per cent of GDP. This represented around 50 per cent of the total surplus in the public accounts (Sebastián, 2006).

In the United Kingdom, migration trends affect growth principally through changes in the working-age population. The National Institute of Economic and Social Research found that around 17 per cent of the economic growth in 2004 and 2005 was attributable to immigration. The UK Treasury estimates that, between the third quarter of 2001 and mid-2006, migration added 0.5 per cent per annum to the working-age population and therefore supported growth in economic output. On this basis, migration had contributed around £6 billion to output growth in 2006 (UK Home Office, 2007). Anderson sums up these diverse contributions by migrants (box 2.1).

Box 2.1 Contributions of migrant workers to the United Kingdom

“Migrants to the United Kingdom bring valuable skills and ideas with them and help to fill job vacancies where Britons are unable or unwilling to do so.

“Their taxes help pay for our public services and our pensions, long after many migrants have returned home.

“Their presence also helps keep inflation low at a time when there are many forces pushing the other way.”

Source: Susan Anderson of the Confederation of British Industry, quoted in BBC Online News, 3 Jan. 2007, <http://news.bbc.co.uk/1/hi/uk/6226217.stm> (accessed 4 Jan. 2010).

Despite such research findings on the benefit of migration, there is still some political resistance. The latest UK House of Lords report expressed doubt about the positive impact of migration and the case for net migration to the UK economy: “Our overall conclusion is that the economic benefits to the resident population of net immigration are small, especially in the long run. Of course, many immigrants make a valuable contribution to the UK. But the real issue is how much net immigration is desirable” (UK House of Lords, 2008, p. 6).

2.4.2 Employment

There always seems to be controversy about whether immigration causes higher unemployment among natives. At the enterprise level there are sometimes displacements when firms restructure and foreign workers are hired to take the place of native workers, especially those older and less skilled. What is particularly difficult to assess is whether, in such situations, after taking all economic adjustments into account, there is higher unemployment among natives than there would have been if immigration had not taken place. For if immigration brings about an expansion of the economy, it is not so clear that it causes higher unemployment among natives.

Evidence from several EU countries shows that, in most cases, immigrants complement nationals in the labour market and thus have no negative effects on native workers' job prospects and wages (Münz et al., 2007). Migrant workers contribute to job creation in several ways, ranging from entrepreneurship to increasing domestic demand for goods and services and improving the efficiency of labour markets. Increases in consumption brought about by increasing numbers of migrants raise overall labour demand and economic growth, improving the economic outcomes for natives.

Many European studies show that immigration plays an important role in improving labour market efficiency. All sectors with jobs avoided by natives – for example, dirty, difficult and dangerous jobs; low-paid household service jobs; low-skilled jobs in the informal economy; jobs in sectors with strong seasonal fluctuations (e.g. farming, road repairs and construction, and hotel, restaurant and other tourism-related services) – depend heavily on the supply of immigrant labour. In the absence of migrant workers, these sectors would probably face severe shortages of labour or sharp increases in labour costs. During the 1990s empirical studies analysing the effects of labour migration on native employment pointed to small negative employment effects (UNECE, 2002, table 5.3.7). A survey of studies by the UN Economic Commission for Europe (UNECE) summarized in table 2.2 also confirms the limited impact of migration on the labour market.

After examining the experience of several countries between 1984 and 1995, the OECD concluded that there was no evidence of a negative impact. In one study, no relationship at all was found between the growth in immigrant arrivals and unemployment of natives. In the countries that had the highest inflows of immigrants, unemployment often stayed the same or went down (OECD, 1997, p. 41). Indeed, some studies even show that immigration has led to an increase in employment as a result of an expansion in production. The admission

Table 2.2 The employment impact of migration: A survey of European studies, 1992–2002

Study	Year	Country	Impact on employment ^a
Gang and Rivera-Batiz	1996	EU-12	Positive but insignificant correlation between unemployment probability and foreigner density
Gang and Rivera-Batiz	1999	EU-12	Weak but significant positive correlation between unemployment probability and foreigner density
Hunt	1992	France	An increase of the foreigner share by 1 percentage point increases native unemployment rate by 0.2 percentage point
Mühleisen and Zimmermann	1994	Germany	No significant impact of foreigner share on unemployment probability
Villosio and Venturini	2002	Italy	Ambiguous signs for both displacement risks and entry probability
Winkelmann and Zimmermann	1993	Germany	No significant increase of unemployment frequency of natives
Winter-Ebmer and Zweimüller	1994	Austria	An increase of the foreigner share by 1 percentage point increases individual displacement risks by –1 to 1.1% (instrumented) and 0.1 to 0.4% (not instrumented)
Hofer and Huber	1999	Austria	An increase in the foreigner share by 1 percentage point increases individual displacement risks by 0.8%
Brücker, Schräpler and Kreyenfeld	1999	Germany	An increase in the foreigner share by 1 percentage point increases individual displacement risks by 0.2%
Pischke and Velling	1997	Germany	Weak correlation between foreigner share and unemployment rate with ambiguous signs
Winter-Ebmer and Zimmermann	2000	Austria, Germany	An increase in the foreigner share by 1 percentage point increases (decreases) total employment by 0.002% (Austria) and 0.025% (Germany), and native employment by –0.25% (Austria) and –0.04% (Germany)

^a Elasticities have been converted at the sample mean.

Source: UNECE, 2002, table 5.3.7.

of low-skilled labour may, for example, lead to increased production of labour-intensive products and to increased exports, thus raising overall levels of employment (Venables, 1999).

A direct way of examining whether immigration adds to unemployment during a recession is to compare two periods to see if an increase in immigration is matched by an increase in unemployment. Table 2.3 draws on, and builds on,

Overview and analysis

Table 2.3 Gross immigration inflows and unemployment in selected OECD countries, 1995–99 and 2000–04

Country	Average annual inflow (000)		Unemployment rate (%)		
	1995–99	2000–04	1995–99	2000–04	Change (%)
France	76	120	11.9	9.5	-2.4
Germany	678	639	8.9	8.7	-0.2
Japan	252	357	3.8	5.0	+1.2
Luxembourg	10	11	2.8	3.1	+0.3
Norway	23	28	4.0	3.9	-0.1
Switzerland	78	94	3.6	3.3	-0.3
United Kingdom	263	414	7.1	4.9	-2.2
United States			4.9	5.2	+0.3
<i>Permanent</i>	747	926			
<i>Temporary</i>	1 035	1 288			

Note: Inflow data are not fully comparable. Data from Germany, Japan, Luxembourg, Norway and Switzerland are based on population registers, whereas data from France, the United Kingdom and the United States are based on residence permits or other sources. Furthermore, inflow data resulting from population registers are not fully comparable because the criteria governing who gets registered differ from country to country. Counts for Norway and especially Germany include substantial numbers of asylum-seekers.

Sources: ILO, 2005b; OECD, 1999; OECD, 2006a, p. 233.

the research carried out by the OECD for a range of countries for the periods 1995–99 and 2000–04. This table shows that annual immigration and unemployment rates do not appear to be related. Migration grew rapidly between the two periods. Of the countries that experienced a substantial increase in immigration between the two periods – the United States, Japan, Switzerland, the United Kingdom and France – the rate of unemployment dropped in two, rose slightly in one, and remained about the same in two. Another study concluded, consistently with the data in table 2.3, that both theoretical and empirical analyses suggest that migration has had no impact on the employment prospects of UK natives (UK Home Office, 2007).

2.4.3 Wages and earnings

There has also been controversy about whether the presence of migrant workers depresses the wages of native workers. It is assumed that migrant workers compete with native workers, reducing their wages and worsening income distribution. A recent World Bank study finds mixed results on this issue (World Bank,

2006b, p. 43, box 2.4). However, other research does not bear out such assumptions regarding immigration's negative impacts on wages. The near-uniform finding of a wide range of studies is that any negative effect of immigration on wages is small, if it exists at all. Studies in Hong Kong (China) and Thailand found that increases in immigration had only a small negative effect on wages. A study of the impact on wages in areas with high concentrations of migrant workers found that a 10 per cent increase in migrants would reduce the wages of Thais by about 0.2 per cent (UNDP, 2009). Similarly, in Hong Kong (China), a 40 per cent increase in new migrants would lower wages by only 1 per cent (UNDP, 2009).

Studies in Europe have produced various conclusions. A study in Germany in 1995 based on household panel data shows that a 1 per cent increase in the proportion of foreign citizens in the population actually has a small positive impact, of 0.6 per cent, on domestic wages overall, while wages of highly skilled natives increase even more, by 1.3 per cent (Zimmerman, 1995). Other studies found negative, but very small, effects, ranging from -0.3 to -0.8 per cent, while some suggested that natives' wages, especially of the highly skilled, increase slightly (Hanson et al., 2002). In the United States, a large number of studies have concluded that immigration has very little impact on the wages of native workers, typically concluding that a 10 per cent increase in the proportion of immigrants in a region lowers natives' wages by less than 1 per cent and often by an amount close to zero (Brücker et al., 2002). A survey of literature in the United Kingdom concluded that the "overwhelming majority of empirical studies agree that there is essentially no statistically significant effect of immigration on labour market outcomes" (Gaston and Nelson, 2000, cited in Glover et al., 2001, p. 37).

In general, the wages of immigrants as a whole are lower than those for native workers, though the United Kingdom is an exception (Srisankandarajah, Cooley and Reed, 2005). In most EU countries, migrants, and particularly non-EU migrants, are more likely to be unemployed or underemployed than natives. Although the situation varies among countries, the general picture indicates that this is the result of lower levels of education and skill among immigrants. This is the case in the United States as well, where in 1998 the hourly wage for immigrant men was 23 per cent less than that for native men, largely because of the increasing concentration of immigrants with low levels of education. Part of the explanation for lower wages is discrimination against immigrants. Many studies show that visible minorities earn significantly less than natives, even when taking into account occupation, industry, education, experience and language, among other factors (see Pendakur and Pendakur, 1998).

Some research supports the view that low-skilled migrant workers are relatively close substitutes for native workers, but found that the impact is not likely to

be large, because the proportion of low-skilled native workers in the populations of destination countries is falling. With the rise in educational levels, natives often shun manual work and move out of low-skilled jobs, thereby creating a demand for low-skilled migrant labour. One interesting example is provided by the Republic of Korea. During the Asian economic crisis of the 1990s, the Korean Government wanted more women and older people either to start working or to return to work. Most employers, however – as well as finding this source of labour impractical for heavy physical work – found that Korean workers refused to do even the lighter work for the wages being offered (Abella, Park and Böhning, 1995).

2.4.4 Migrant entrepreneurship

In many countries, migrants are more likely than natives to be entrepreneurial. They are also more likely to be self-employed. This can provide many benefits to destination societies. “Migrant entrepreneurs broaden the range of goods and services available, adding vitality to particular city neighbourhoods, thus preventing or even reversing deterioration. Migrant entrepreneurs often have skills that are no longer in sufficient supply in host economies and are willing to work long hours and use their social capital to reduce production and transaction costs” (UN, 2006, p. 49). The OECD found that in most of its member countries self-employment among the migrant population had increased between 2002 and 2005, both in numbers and as a proportion of overall self-employment (OECD, 2007a).

Several factors underlie the emergence of entrepreneurial initiatives among migrants: lack of success in formal labour markets; support from the extended family system, including the availability of family labour; access to credit and resources within the community and within social networks; and links with source countries for trade opportunities. An OECD study notes that migrants may be using this route as a means of escape from marginalization in the main labour market (OECD, 2007a).

Two categories of the self-employed can be identified: professionals and highly skilled persons, and low-skilled persons. The majority are probably low-skilled. By creating their own jobs, these people ease labour market pressures, and in turn can generate new jobs for both migrant workers and native workers. Women are also well represented in this sector. It is interesting that certain nationalities specialize in particular lines of economic activity. “In the United States migrants from India dominate the low-budget hotel business, Koreans specialize in retail businesses and Chinese run restaurants. In France, North Africans have

replaced retiring French shopkeepers; in the United Kingdom, migrants from South Asia run confectioners and newsagents, and in the Netherlands, Turkish migrants run bakeries and grocery stores” (UN-HABITAT 2006, p. 1).

Germany is a good example of a country where migrant business has expanded in spite of various administrative and regulatory barriers. “By the late 1990s, 51,000 German entrepreneurs of Turkish origin were employing 185,000 persons, 20 per cent of whom were German. Of those enterprises 73 per cent relied on German businesses for supplies. Increasingly, such firms engaged in international ventures beyond Turkey” (UN-HABITAT 2006, p. 1).

In the United Kingdom, the overall self-employment rate of foreign-born persons slightly exceeds that of natives, at 15 per cent compared to 13 per cent. Some migrant groups have above-average proportions of individuals in self-employment, such as those from Bulgaria and Romania (55 per cent), Pakistan (30 per cent) and the Middle East (24 per cent). On the other hand, self-employment among the foreign-born from Accession-8 countries has seen a dramatic decline, from 21 per cent to 11 per cent between 2004 and 2006. This probably reflects their absorption into wage employment (UK Home Office, 2007).⁹

In southern Africa, Southern African Migration Project studies show that women migrants are more likely than men migrants to engage in petty trading and small business, especially in South Africa (Crush, 2007). These small businesses create jobs for others. According to one study, the average migrant enterprise generates over three jobs (Peberdy and Rogerson, 2003; see also UN, 2006).

Research into whether migrants do well as entrepreneurs has produced mixed results. As noted above, OECD research has shown that they often resort to self-employment because of bleak prospects in the formal labour market. Self-employed workers and their family members often work longer for lower average earnings than wage earners. In the current economic climate small businesses owned by migrants may be at a higher risk of bankruptcy than those owned by natives. According to the OECD, “This is due inter alia i) to the fact that immigrants tend to have smaller businesses; ii) that they are largely overrepresented in hotel, restaurants and wholesale which are hit first during a crisis; and iii) those who provide services or trade products which are geared toward their communities may be adversely impacted by a decrease in their clients’ income.” (OECD, 2009a, p. 241). For example, in Spain the number of self-employed immigrants fell by almost 10 per cent between June 2008 and February 2009 (OECD, 2009a).

⁹ The “Accession-8” countries that joined the EU in May 2004 are the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. (Cyprus and Malta, known as the “Accession-2”, also joined in 2004.)

For migrants themselves, there are some advantages in the self-employment option. For example, it allows even those unfamiliar with the local language and customs to find jobs. Self-employment is also a diversification strategy offering families new routes to income and livelihood. It may also promote economic mobility for migrants and their families in the long run. As has been pointed out, migrant enterprises serve as a training ground for new waves of migrants (Zlotnik, 2006). And some studies show that many self-employed migrants do well over time (Bradley, 2004).

The dynamism of the entrepreneurial sector must be understood in the context of the many barriers to self-employment imposed by industrialized countries, such as licensing and access to credit. Because destination countries stand to gain by promoting migrant entrepreneurship, they should try to provide an enabling environment for it. As has been noted, “Regulation ... is not just a matter of repression and constraining, but also of enabling – sticks and carrots” (Rath, 2006). Policies should support both supply and demand aspects, through the training of aspiring entrepreneurs, improved access to credit, and privatizing and deregulating (Rath, 2006; Zlotnik, 2006).

2.4.5 Migrants' contributions to urban renewal

International migration has played an important role in preventing the depopulation of cities in developed countries and in reviving businesses and housing markets. Key cities in the traditional immigration countries of Australia, Canada and the United States provide examples, including Brisbane, Melbourne, Perth and Sydney in Australia; Toronto and Vancouver in Canada; and Chicago, Houston, Los Angeles, Miami and New York in the United States. Most of these cities have become “global cities”, as centres of trade, international finance and corporate or government headquarters (UN, 2006).

At the same time, the experience has been mixed, with some migrant groups being concentrated in segregated, poor suburban neighbourhoods. Migrants from common origins tend to move into specific locations or gather there as a result of government housing policies, thereby creating migrant enclaves. The establishment of disadvantaged and segregated migrant communities leads to social exclusion and marginalization and inhibits integration and social cohesion. The 2005 youth riots in the ghettos of Paris are a case in point.

A study by the International Research Network on Interethnic Politics and Migration of nine European cities (Brussels, Lisbon, Manchester, Mannheim, Murcia, Rotterdam, Stockholm, Toulouse and Turin) has shown that only three

have had relative success in economic integration; two have had mixed results, and in the other four immigrants have been economically marginalized. Only one city appeared to have achieved relative integration in housing, while relative segregation had become established in six (Caldeira et al., 2003). The study concludes that proactive local strategies focusing on cultural mediation and combating social exclusion are needed to promote levels of integration.

2.4.6 Fiscal implications

A major concern in destination countries has been that immigrants may become a burden on them by costing more in public services and welfare payments than they contribute through taxes and social security contributions. The mass media made a major issue of this fear before the accession of ten Eastern European countries to the EU in 2004. The fear of being “welfare magnets” caused some countries, including Ireland and the United Kingdom, to limit the welfare benefits that new immigrants could claim. The actual experience proved to be contrary to popular expectations. An analysis by the Department of Work and Pensions in the United Kingdom revealed no discernible statistical evidence that migration from accession countries had resulted in an increase in the welfare claimant rate since May 2004.

Attempts to estimate the net fiscal costs (if any) of immigration are fraught with difficulties for several reasons, according to the World Bank (2006b). Results depend to a great extent on what methodology is used, what expenditures and revenues are included, and whether households or individuals are considered. For example, static calculations of the current net fiscal impact fail to take into account the age structure of the immigrant population, while any valid computation will need to factor in the levels of skills, experience, education and fertility among immigrants. Most calculations, moreover, do not consider the savings in education and training to the host country when skilled migrants are recruited.

The fiscal impact of immigration appears to depend on the age at which immigrants arrive in the destination country. Those who come at working age are likely to make a greater contribution to public finances and social security than those who come as young children. A study in Germany, for example, shows that an individual who immigrates at age 30 will contribute €110,000 over his or her lifetime, while one who immigrates before his or her first birthday will create a net burden on public finances of €60,000. Given that 78 per cent of immigrants in Germany are of working age, the representative migrant makes a positive net

contribution of some €50,000 in his or her lifetime (Brücker, 2002). Immigration therefore helps Germany close the gap between expected tax revenues on the one hand and government consumption and debt servicing on the other. Some studies in the United States have concluded that immigrants make more use than natives of welfare in terms of public assistance and public medical care, mainly because they are on average less educated and poorer. Other studies have found that low-income immigrants are less likely to claim welfare than low-income natives (Fix and Passel, 1999). A long-term view of immigration leads to the conclusion that, although immigrants will in the early years add to costs, particularly for education, eventually each immigrant, with his or her descendants paying taxes, will make a net positive contribution to the national budget of US\$80,000 (Smith and Edmonston, 1997).

As for migrants in irregular status, they are usually so concerned with concealing their existence that they are unlikely to apply for welfare or other benefits. Employers who treat migrant workers in irregular status as workers in regular status on the basis of fake social security cards pay social security contributions to the Government for those workers nevertheless. These funds accumulate in a “suspense file” for contributions that cannot be matched to legally recorded names and will never be claimed by those who have worked for them, because they have no valid migration status. These contributions can add up to enormous amounts. For example, in the United States during 1990–98 more than US\$20 billion was being held in suspended status in the social security system (Hanson et al., 2002, p. 248). Many migrants in irregular status pay taxes through automatic deductions by their employers, and even some of those who are paid in cash pay taxes themselves to prove their residence in the country in case there should be a future amnesty.¹⁰

Other studies also show that immigrants are paying their way. For example, a study in Australia in 2000 found that immigrants, particularly in younger age groups, were less likely to receive welfare payments than people born in Australia (Birrell and Jupp, 2000). Across the EU the fiscal impact is more ambiguous, but in a number of countries, including Germany, Greece, Portugal, Spain and the United Kingdom, dependency on welfare among immigrants is similar to, and sometimes lower than, that of EU citizens (Brücker et al., 2002). The British Home Office carried out a more detailed analysis of the fiscal impact of the immigrant population in the United Kingdom and estimated that in 1999–2000 migrants paid £31.2 billion in taxes but used only £28.8 billion in benefits and

¹⁰ In some countries, tax and social security authorities are legally prevented from sharing information with immigration authorities: see Hanson et al., 2002, p. 248.

state services, making a net fiscal contribution of approximately £2.5 billion (Gott and Johnston, 2002). A recent, more comprehensive analysis of the fiscal contribution of immigrants conducted in the United Kingdom confirms that, far from being a drain on the public purse, immigrants actually contribute more than their share. It further suggests that many recent immigrants – especially those arriving through the various labour migration programmes and from the new Member States of the EU – are making relatively large contributions to the public purse (Sriskandarajah, Cooley and Reed, 2005). This study also found that in 2003–04 the average foreign-born person cost the Exchequer only £74 in net terms, while the average UK-born person cost the Exchequer £892.

In short, the research summarized above shows that common fears that migrants will be a drain on the public purse are unfounded.

2.4.7 The demographic contribution of immigration

It was noted in Chapter 1 that changing demographics – a combination of population decline and ageing in developed countries – acts as a driving force in international migration flows. The situation is well illustrated by Western and Central Europe, whose labour force today is 227 million and is predicted, assuming constant labour force participation rates, to shrink to 201 million in 2025 and 160 million in 2050, in the absence of immigration (Münz et al., 2007). Maintaining the current size of the labour force over this period would require a net inflow of 66 million migrant workers. Thus, on average, a net inflow of just under 1.5 million migrant workers per year would be required to keep Europe's economically active population at constant levels. Since not all migrants join the workforce and allowance must be made for family members, the total net immigration would have to be even higher.

A number of counter-arguments have been made to the predicted need for immigration. These include that the predicted number of migrants needed is just too large to manage, that such large-scale immigration would pose enormous challenges for integration, and that new immigrants are likely to acquire the demographic patterns of natives over time. Yet the fact remains that, while immigration may not be the only solution, there cannot be a solution without it as a component; as then UN Secretary-General Kofi Annan put it succinctly: “Migrants need Europe. But Europe also needs migrants. A closed Europe would be a meaner, poorer, weaker, older Europe. An open Europe will be a fairer, richer, stronger, younger Europe – provided you manage migration well” (Annan, 2004).

2.5 Conclusions

This is an age of global migration, with more migrants moving in more ways to more countries than ever before. As in the past, this migration can be beneficial for those who move, for the countries they leave, and for the countries that welcome them. The challenge is to govern and regulate migration in a way that maximizes benefits for all involved. Countries of origin have begun to recognize that their nationals abroad can be an important asset for home country development. Migrants who return or who circulate between countries of origin and destination can be an important source of new technologies and ideas. When emigration, remittances and returns come together in a virtuous circle, as in the Indian ICT sector, the result can be an important new export industry that also benefits those who do not migrate. The ambition and drive that motivate people to migrate generally help migrants in many countries to find jobs, work hard, and benefit both themselves and natives of the destination country. In most cases, migrant workers have only a slightly negative, if any, effect on the wages of native workers, and they usually pay more in taxes than they receive in tax-supported services. There is little evidence that migration leads to displacement of nationals in employment. One of the main challenges for destination countries is to ensure the integration of migrants in their societies.

The current emphasis on migration and development projects a positive image of international migration. This has resulted in greater international cooperation to maximize the positive aspects of migration and minimize the negative ones. Yet as Juan Somavia, the ILO Director-General, has emphasized, “gains from migration and protection of migrant rights are indeed inseparable. Migrant workers can make their best contribution to host and source countries when they enjoy decent working conditions, and when their fundamental human and labour rights are respected” (Somavia, 2006b). The next chapter deals with the treatment and conditions of work of migrant workers, highlighting the negative aspects which must be addressed.

Conditions of work and treatment of migrant workers

3

3.1 Introduction

The resolution and conclusions of the 92nd Session of the International Labour Conference, 2004, observed that, “Despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers’ rights, discrimination and xenophobia, as well as social exclusion” (ILO, 2004a, para. 5). All these negative factors rob workers of the potential benefits of employment in another country and undermine the development impact of migration. Unfortunately, the implementation of policies to protect migrant workers has lagged far behind the growth of labour migration.

This chapter reviews working conditions for international migrants, with a focus on employment sectors where they predominate, and on vulnerable groups of low- and semi-skilled women and men, who need greater protection than those with higher skills. As will be discussed in the next chapter, international labour standards developed by the ILO and international instruments developed by the UN provide a framework for national legislation and policies and international cooperation to address the working conditions of migrant workers.

Migrant worker issues should be seen in the context of the ILO’s Decent Work Agenda, which applies to all workers. Decent jobs are jobs which have fair and acceptable conditions of work. The ILO Director-General’s report to the ILC in 2001 identified decent work deficits in four categories: employment, rights at work, social protection and social dialogue, all of which apply to migrant workers just as any other workers (ILO, 2001a).

3.2 Evidence of disparities

Disparities in working conditions and treatment in countries of destination exist at two levels. First, of course, there are differences between migrant workers and native workers. There are also differences among migrant workers associated with skill level, gender and occupational concentration.

3.2.1 Disparities in employment

Unemployment rates and job security often differ between native workers and migrant workers in regular status. While some disparities can be explained by factors such as differences in migration status, skill profiles, or the nature of jobs and employment sectors, some are attributable to differential treatment. A Eurofound survey of employment and working conditions in the EU found that in most countries migrant workers have higher unemployment rates than natives and, when in employment, tend to be segregated in low-skilled occupations and more likely to be over-qualified for their work. Moreover, they experience considerable job insecurity, and work in sectors and occupations with less advantageous working conditions. Overall, women and young migrants are particularly vulnerable to these disadvantages (Eurofound, 2007).

Differences in unemployment rates are a clear indicator of the disadvantageous position of migrants in the labour market. Table 3.1 shows that in 2005 unemployment rates among migrant men and women in most European countries averaged almost twice those of their native counterparts. In Austria, the Netherlands, Norway and Switzerland, the unemployment rate for male migrants was nearly or over three times that for male native workers. The unemployment rates for migrant women were above 20 per cent in both Finland and France.

Table 3.1 also shows that between 2000 and 2005 the percentage of migrant workers in the labour force rose rapidly in southern European countries, such as Greece, Italy and Spain, and that the proportion is particularly high in Luxembourg and Switzerland. The percentage of foreign labour is also relatively high in some non-European OECD countries, such as Australia, Canada and the United States.

Unemployment rates of foreign-born workers during the current economic crisis underscore the disparities in employment between native and migrant workers. In Ireland, Spain, the United Kingdom and the United States the unemployment rate of foreign-born workers was much higher than the unemployment rate for the total labour force (see table 3.2).

Table 3.1 Unemployment rates of migrant and non-migrant workers in selected OECD countries, 2000 and 2005

Country	Foreign labour force			% of total labour force				Unemployment rate (%)				Foreign/native unemployment ratio (2005)	
	No. (000)		2005	2000		2005		Foreign (2005)		Native (2005)		Male	Female
	2000	2005		2000	2005	Male	Female	Male	Female				
Austria	377.0	413.0	9.8	10.5	11.8	9.8	4.1	4.4	2.9	2.2			
Belgium	366.0	385.0	8.4	8.5	14.8	20.3	6.3	7.5	2.3	2.7			
Czech Republic	28.0	42.0	0.5	0.8	10.4	16.5	6.2	9.7	1.7	1.7			
Denmark	78.0	89.0	2.8	3.2	7.2	12.4	4.0	5.0	1.8	2.5			
Finland	31.0	37.0	1.3	1.4	16.6	20.2	8.0	8.3	2.1	2.4			
France	1 549.0	1 379.0	6.1	5.2	13.3	16.5	8.1	9.2	1.6	1.8			
Germany	3 430.0	3 828.0	8.8	9.5	17.5	16.3	10.6	10.2	1.7	1.6			
Greece	163.0	322.0	3.8	6.7	6.4	15.9	5.9	15.3	1.1	1.0			
Hungary	-	32.0	-	0.8	-	7.3	7.0	7.4	-	1.0			
Ireland	64.0	159.0	3.5	8.1	6.0	6.0	4.5	3.5	1.3	1.7			
Italy	240.0 ^a	1 954.0 ^a	-	8.1 ^a	6.1	14.6	6.3	9.2	1.0	1.6			
Luxembourg	77.0	92.0	42.0	45.2	4.2	7.5	3.0	4.5	1.4	1.7			
Netherlands	298.0	291.0	3.7	3.5	11.9	9.5	3.6	4.5	3.3	2.1			
Norway	75.0	95.0	3.2	4.0	12.5	8.5	4.2	4.3	3.0	2.0			
Portugal	101.0	182.0	2.2	3.5	8.5	9.7	6.8	8.4	1.3	1.2			
Spain	255.0	230.8	1.4	11.1	9.5	13.5	7.0	12.0	1.4	1.1			
Sweden	205.0	231.0	4.8	4.9	15.6	14.1	7.9	7.9	2.0	1.8			
Switzerland	807.0	902.0	18.3	22.2	7.7	9.7	2.7	2.7	2.9	2.6			
United Kingdom	1 248.0	1 642	4.2	5.7	7.4	7.1	4.7	4.7	1.6	1.9			
Australia	2 242.0 ^a	2 615.0 ^a	24.5	24.9 ^a	5.0	5.2	4.7	5.0	1.1	1.0			
Canada	3 151.0 ^a	-	-	19.9 ^a	-	-	-	-	-	-			
United States	10 677.0	13 283.0	12.4	9.0	5.1	5.2	6.3	5.2	0.8	1.0			

- = not available. ^a Data based on foreign-born labour force only.

Source: For foreign labour force, OECD 2002b, table 1.13, p. 56, and OECD 2007a, table 1.8, p. 63; for unemployment rate, OECD 2007a, Annex table I.A.1, pp. 86-87.

Table 3.2 Unemployment rates^a for total labour forces and for migrant workers in selected countries, 2008 and 2009

Country	Unemployment rate total labour force, 2008	Unemployment rate for migrant workers, 2008	Unemployment rate total labour force, 2009	Unemployment rate for migrant workers, 2009
Ireland	7.4 ^c	9.5 ^c	11.3 ^d	15.6 ^d
Spain	13.4 ^b	17.0 ^b	12.5 ^c	21.3 ^c
United Kingdom	6.0 ^b	7.2 ^b	6.1 ^c	7.4 ^c
United States	5.4	7.3	9.3	11.3

^a US unemployment rates calculated using the Current Population Survey. UK unemployment rates for native-born and foreign-born only. Unemployment rates for Ireland calculated using the Quarterly National Survey.

^b Third quarter 2008. ^c Fourth quarter 2008. ^d Second quarter 2009.

Source: Revised version of table 3 in Awad, 2009. UK data: OECD, 2009a.

There are also notable differences with regard to employment security. Native workers in most countries can expect some form of protection if they lose their employment, such as redundancy payments or unemployment insurance, and they may also have opportunities for retraining. At the very least, there are no restrictions to keep them from looking for another job. Migrant workers usually have much less security. Permanent migrants may eventually enjoy labour market advantages similar to those of natives, but these are not normally available to temporary migrant workers. Some countries allow temporary migrant workers to seek alternative employment for the duration of their residence permit; in others, residence permits are tied to work, so that losing a job means losing the right to live in the country. In times of recession, the main adjustment burden often falls on migrant populations – as for example in Sweden, where many migrant workers were laid off during the recession of the 1990s (Eurofound, 2007; OECD, 2007b). During economic downturns migrant workers may be forced to accept lower wages and poorer working conditions in the hope of keeping their jobs. Anecdotal reports from the current crisis suggest that migrants are more vulnerable than native workers to contract violations, non-payment of wages and summary dismissal.

There is considerable evidence of migrants being concentrated in precarious jobs and self-employment activities. While self-employment and entrepreneurship are often very positive experiences, as noted in Chapter 2, they can also be the option of last resort in the face of labour market barriers. The Eurofound survey has shown that, when unable to find jobs as employees, male migrants “make recourse to self-employment as a back-door that gives access to a ‘hostile’ labour market” (Eurofound, 2007, p. 31). Atypical employment arrangements in

the form of flexible contracts and temporary work are also more prevalent among migrant workers for various reasons, such as government policies of issuing limited-duration work permits, the high incidence of seasonal work for migrants, placement by temporary work agencies and variable migrant status.

Migrant workers often have to work in jobs below their skills and qualifications; that is, they are “over-qualified” for the work in which they are employed – though other terms for this disparity, such as “brain waste” or “skill mismatch”, may be more appropriate. It is disturbing to note that in the OECD countries at least 25 per cent and on average almost 50 per cent of skilled immigrants were “inactive, unemployed or confined to jobs for which they were over-qualified” (OECD, 2007a, p. 25). Immigrants were certainly more likely than the native-born to hold jobs for which they were over-qualified. Foreign-born women were at an even greater disadvantage. In 2004, the differences between national and foreign workers were particularly pronounced in the case of Greece, where the over-qualification rate was 9.0 for natives, but 39.3 for the foreign-born. Italy followed with a rate of 6.4 for natives and 23.5 for foreigners (OECD, 2007a, p. 137, table II.2). With regard to women, the differences are even more marked: in Greece, the over-qualification rate for migrant women was 53.4, while for native women it was only 9.0. In Italy, the rate was 27.4 for women migrants and 7.1 for native women, and in Austria the rates were 24.8 and 9.3 respectively (OECD 2007a, table II.3). The Eurofound survey reported similar findings in Austria, Belgium, Cyprus, the Czech Republic, Estonia, Finland, Greece, Portugal, Spain, Sweden and the United Kingdom (Eurofound, 2007). This situation involves a triple loss – to origin countries that lose valuable skills, to destination countries that cannot benefit from migrant skills, and to migrant workers who cannot make full use of their potential (Wickramasekara, 2008a).

3.2.2 Disparities in wages and failure to pay wages

Wages are, of course, a crucial aspect of working conditions. Those paid to migrant workers are often lower than those of native workers in similar positions.

The Eurofound survey on employment and working conditions of migrant workers presents statistical analyses which point to a direct effect of migrant status on wages in several countries, including the Ireland, Sweden and United Kingdom. It also reports considerable wage disparities in other European countries, such as Denmark and Ireland, as well as the segregation of migrant workers into low-skilled jobs, for example in Austria, Cyprus, Germany, Poland and Portugal (Eurofound, 2007). In the Middle East, there are large wage disparities

between national and migrant workers, as well as a high level of segmentation in the labour market (Al-Najjar, 2002; ILO, 2002b; Jureidini, 2002; Sabban, 2002; Zachariah et al., 2002). In many Asian destination countries, migrant workers tend to receive lower wages than native employees for the same work, even when labour legislation prohibits this form of discrimination (Wickramasekara and Abella, 2003).

In some destination countries there are even differences in rates of pay between groups of migrant workers: that is, migrant workers of some nationalities receive more pay for the same or similar work than migrant workers of other nationalities. For example, an ILO study on Kuwait revealed that migrants working in that country from the Philippines tended to receive higher wages than those who were from South Asia (ILO, 2002b). Similar differentials apply to domestic workers in Bahrain and Hong Kong (China), where wage differences and wage violations among domestic workers of different nationalities seem to reveal a racial pattern (Al-Najjar, 2002; AMC, 2001). According to a study on domestic workers in Hong Kong (China), Indonesian workers were most seriously affected (AMC, 2001). Their situation further deteriorated after the Government of the Hong Kong Special Administrative Region reduced the minimum wage for foreign domestic workers in 2003.

As is the case for women national workers, women migrant workers often receive lower pay than men similarly situated. In the Republic of Korea, for instance, employers routinely pay female migrant workers less than male migrant workers for equal work, even though pay discrimination between men and women is legally prohibited (AI, 2006). In Greece, gender differences play an important role, as reported by the Eurofound survey. Women migrant workers are often segregated into low-paid jobs such as cleaning or household services (Eurofound, 2007).

In addition to paying migrant workers low wages, their employers may fail to give them their full wage payments, fail to pay them for overtime work, delay paying them, or even fail or refuse to pay them at all. The withholding of pay by employers constitutes the most common complaint by construction workers in the United Arab Emirates (HRW, 2006), and takes place in many other countries as well, including Malaysia (HRW, 2004a), the Republic of Korea (AI, 2006) and Saudi Arabia (HRW, 2004b). This practice seems to be particularly widespread in smaller companies with fewer than 100 workers (HRW, 2006), often in labour-intensive industries such as manufacturing, construction and catering. Migrant workers in the United Arab Emirates reported that their employers routinely withheld their pay, often for several months (HRW, 2006). Non-payment or delayed payment of wages is also a common practice in private households

employing migrant domestic workers, as will be more fully discussed later in this chapter (section 3.5.2).

It is all too often the case that migrant workers return to their home countries without ever having been fully paid. Once they leave, it is virtually impossible to collect their back wages. Indeed, employers sometimes seek the deportation of migrant workers to avoid paying them. Deportation of migrant workers in irregular status often results in their never being paid for work they have performed. According to Indonesia's Labour and Transmigration Minister, during Malaysia's mass deportation programme in 2005, 100,000 Indonesian migrant workers in irregular status refused to leave Malaysia, even in the face of the crackdown, because they had not been paid (BBC, 2005).

3.3 Factors affecting differences in working conditions

3.3.1 *Migration status*

Migrant workers generally fall into one of three categories, with their status subject to change among these categories. They may be in regular status with the right to permanent settlement and naturalization; they may be temporary workers in regular status, but required to leave when their contracts expire; or they may be in irregular status and liable to deportation at any time. As would be expected, migrant workers in the first category normally experience better working conditions than temporary migrant workers, who in turn experience better working conditions than migrant workers in irregular status. Women migrant workers in all categories are more vulnerable than men. The more tenuous the worker's migration status, the more barriers there are to seeking redress for unfavourable treatment.

3.3.2 *Conditions of recruitment*

In the 1950s and 1960s, bilateral agreements between origin and destination countries were the normal means of regulating labour migration. At that time, public employment services played a significant role in the recruitment of migrant workers and supervised contracts setting out wages and working conditions. However, in most countries this is no longer the case. The international mobility of workers is increasingly in the hands of private recruitment agencies

that charge fees – fees that are almost always paid by the workers.¹ Such agencies are responsible for a number of unethical practices that cause immense hardship to potential migrants and to existing migrant workers, including promoting irregular migration. For example, all too often private recruitment agencies provide false information about jobs, charge migrants excessive fees for services, and even send migrants to countries where they find that no jobs actually exist (ILO, 2003a, notes widespread recruitment malpractice, fraud and abuses in many Asian countries).

A survey of recruitment practices in Asian countries notes that high fees are one of the main factors adversely affecting migrant workers. “These high fees typically exceed any savings available to workers, with the result that they must find alternative means of financing. To finance fees, loans were taken by 73 percent of Filipino, 57 percent of Thai and Vietnamese, and 35 percent of Indonesian foreign contract workers interviewed. Average loans ranged from US\$376 to \$2,367” (Verité, 2005, p. 5). The debt repayment obligations thus incurred made workers much more vulnerable, with an overwhelming majority of Filipino, Thai and Vietnamese workers reporting the need to work overtime in order to repay their loans. An ILO study found that, in order to pay the recruitment agency’s costs, a worker intending to migrate to the Republic of Korea had to work at a minimum wage at home for a period ranging from a minimum of 159 days in the Philippines to a maximum of 848 days in Viet Nam (ILO, 2008a).

The sponsorship or *kafala* system common in the Gulf States has also led to labour inflows not matched by actual employer demand, resulting in irregular status for the migrants. It has been pointed out that “Working under the actual sponsorship system transforms a worker to a forced servant who lives at the mercy of his employer, and in fear of forced deportation at any time” (Bahrain Human Rights Society, 2003, p. 29). Thus, it has been recommended that the sponsorship system be repealed and replaced with a fair system that secures the human rights of migrant workers. Gulf countries have started to reconsider the sponsorship system. In Bahrain, Act No. 19 of 2006 established a new authority, the Labour Market Regulatory Authority, to oversee the labour market, recruitment of foreign workers, and employment and training of native workers. The Act also introduced reforms regarding the employment and recruitment of foreign workers: of

¹ Of the 90 respondents to the 2003 ILO Migration Survey, less than half authorized private recruitment agencies to bring in migrant workers. Of the remainder, 23 indicated that private recruitment agencies were entitled to charge fees. The respondents also reported on malpractices in this area, including offering non-existent jobs, withholding information or providing false information on the nature of jobs and conditions of employment, and imposing exorbitant fees. For further details, see the summary of replies to the survey in ILO (2004d).

particular note is article 25, which allows migrant workers to change employers without the consent of their existing employer.

Subcontracting of temporary and seasonal workers through labour brokers in many sectors has been carried out at the expense of worker benefits and entitlements such as holidays, bargaining rights and social protection (ILO, 2003b). As an ICFTU–APRO report noted, “Employment agencies caught for their malpractices and even illegal work are quite often found escaping any punishment. If at all a punishment is given, the penalty imposed is far less than the crime and damage inflicted on the concerned migrants” (ICFTU–APRO, 2003, p. 12).

For all these reasons, the manner of recruitment and placement has far-reaching consequences for the working conditions and general treatment of migrant workers. Some may be forced to endure situations of virtual debt bondage or near-slavery to pay off debts owed to recruiters and traffickers.

3.3.3 Growth of the informal economy and undeclared work

As discussed in earlier chapters, changing economic and demographic trends have combined to increase the demand for foreign labour in many industrialized countries. Ageing populations, older workforces and fewer young people entering into labour markets, together with the persistence of dual labour markets, expand the number of precarious jobs, which are often filled by migrants. Many small and medium-sized companies and labour-intensive sectors, which cannot relocate abroad, try instead to hold down labour costs by hiring migrants, so that the demand for foreign labour reflects the long-term trend of further informalizing or downgrading already low-skilled and poorly paid jobs (Taran, 2003).

The European Commission (2007b) has estimated that about 7–16 per cent of EU GDP is derived from the shadow economy. Migrants in irregular status are often preferred by employers in this economy, since they may have little choice but to work for lower wages and for short periods during production peaks, and to accept physically arduous and hazardous jobs. The Eurofound survey found “strong evidence of the tendency to recruit migrants for the most unskilled and flexible jobs in the services sector” (Eurofound, 2007, p. 28). This demand for migrant workers provides a significant impetus to labour flows and encourages the employment of migrant workers in irregular status, at the expense of protecting their safety in the workplace, their health and other workplace rights, including the right to the minimum wage.

3.3.4 Lack of freedom of association and of collective bargaining rights

The right to organize and to form trade unions is a fundamental right in the world of work. It is as significant for migrant workers as it is for native workers. Representation by trade unions and a collective voice at work greatly assist migrant workers in securing their rights and improving their working conditions. This assistance can be provided not only to those migrant workers who expect to remain in the country on a permanent basis, but also to temporary migrant workers and migrant workers in irregular status. When migrant workers have the right to form and join trade unions to assert their rights, this reduces unfair competition between employers who respect the labour and employment laws and those who do not – that is, those who are only searching for a cheap and pliable workforce.

While permanent migrant workers are more often able to exercise trade union rights than temporary workers or workers in irregular status, even they may be subject to restrictions based on their migrant status.² Legal restrictions based on nationality may make it more difficult for migrant workers to act as trade union officials, to participate actively as members, or to form their own unions.

There are other constraints on the exercise of freedom of association rights. For example, migrant workers often come to more industrialized countries from countries that do not have any tradition of union organizing or where unions have been associated with ruling parties or regimes, rather than with true service of workers' interests. Thus, they have no experience of the value of trade union action or of the benefits it can bring.

3.3.5 Discrimination and xenophobia

While some disadvantages in the labour market experienced by migrant workers may be explained by a lack of facility in the language of the destination country or related issues, some are a consequence of discrimination and unjustified differential treatment. Migrant workers are frequently subjected to unequal treatment and opportunities and other discriminatory behaviour.

While countries have the sovereign right to maintain temporary restrictions on the basis of nationality, unfortunately some laws and policies in this area are unnecessarily restrictive and go beyond any useful purpose. Of course, by definition,

² Of the 90 respondents to the ILO Migration Survey, 14 indicated that the right to organize and protect their interests was reserved for nationals.

short-term admission for employment purposes constitutes differential treatment of temporary migrant workers as compared to natives and even to other migrant workers; but efforts should be made to keep restrictions to the minimum necessary to achieve the goal of the temporary programme. When restrictions go beyond what is necessary and serve no discernible, legitimate purpose, they are discriminatory.

Continued discriminatory treatment of and prejudice against migrant workers lead to unemployment and poverty, the formation of ethnic ghettos, low educational levels and related unfavourable social conditions. Thus, discrimination in jobs, with its resultant lower pay, leads to other forms of discrimination, such as discrimination in housing and education. Discrimination serves to maintain stratification and segmentation in the labour market, and reinforces attitudes that relegate or confine certain identifiable groups to subordinate roles and lower strata in the workforce. Victims of discrimination, particularly those who may be uncertain of their rights as non-nationals, are often unaware of or intimidated by official complaint procedures.

The ILO has conducted and supervised research to measure the level of discrimination in a number of highly industrialized countries by employers actually seeking to appoint employees to vacant positions. This research, termed “situation testing” or “practice testing”, was conducted in Belgium, France, Germany, Italy, the Netherlands, Spain, Sweden and the United States. Testing following the same methodology was also done in Denmark and Switzerland. Pairs of candidates comprised one native applicant and one immigrant or immigrant-origin (descendant of an immigrant) applicant whose qualifications matched but who were of different ethnic or national origins; each pair applied to employers who were actually advertising job vacancies. These candidates were trained to behave similarly during the application process in order to eliminate other possible variables that might influence an employer’s hiring decisions, so that the perceptible differences between the two candidates were reduced to their names and physical appearance. For example, the most recent study conducted in France compared in separate tests native men and women of French family background and second-generation migrants, who, while French citizens born in France, were of Maghreb or sub-Saharan African origins. These practice tests focused on the behaviour of employers seeking to fill actual vacancies, who were unaware of the experiment.

The studies show high levels of discrimination in access to employment for those of immigrant origin. Young applicants of immigrant origin had to apply for four to five times as many jobs as natives with equivalent skills, education and experience in order to obtain positive responses in seeking employment (invitation to an interview at the first stage, appointment after interview at the last stage). Somewhat higher discrimination rates were detected in the service sector than in other sectors, and in small and medium-sized enterprises than in larger ones

(ILO, 1999a, 2003c; Zegers de Beijl, 2000). Discrimination was found in three stages of the recruitment process. The first and most common form of discrimination took place at the first contact between the migrant/minority applicant and the employer. At this stage, the only marker of differentiation between the paired candidates was their names, one typical of national background and the other typical of the immigrant group. Blatant, direct discrimination by employers was evident in their often refusing to accept the credentials of minority applicants for vacant positions, telling minority applicants that the vacancy was already filled while inviting the non-minority applicant for an interview for the same vacancy. Sometimes the minority candidate was told straight away that foreigners were not wanted. For example, the recent ILO study in France showed that, in nine out of ten cases where a choice was made in the application process, the choice between the equally qualified candidates was made before the employer had seen either one in person (Cediey and Foroni, 2007).

The second stage in the application process for those who made it beyond the initial contact was the interview stage. In many instances, the migrant/minority candidate was subjected to additional qualification requirements, but the national candidate was not. The third stage was the job offer stage. If the migrant/minority applicant was actually offered a job, the terms and conditions of employment tended to be inferior to those offered to a non-minority applicant to a similar job.

In the absence of discrimination, it would be expected that the “preference” for the national and minority candidates would be approximately the same (50 per cent). However, the results showed a large bias against the minority candidates. This bias ranged from 68 per cent to over 90 per cent in the European countries tested, meaning that the native/majority candidates were selected over the candidates of minority origin in as many as nine out of ten cases.

In short, even where migrant workers and their citizen descendants are entitled to work in a country, they are often subject to discriminatory treatment in the job application process, which in turn leads to other forms of discrimination. This has been vividly shown by the situation-testing studies in Europe, which demonstrated high rates of discrimination not only against migrants but against their children and grandchildren. Many are dismissed from consideration as soon as employers see that they are from foreign backgrounds simply by looking at their names.³

³ The ILO situation-testing approach is being considered as a model for EU measurement of discrimination in employment. A recommendation from the workshop on “Measurement of discrimination” at the EU Equality Summit held in Paris in 2008 called for situation testing to be used periodically in all EU member countries to establish a baseline and subsequently to review progress made in reducing discrimination in access to employment, an explicit EU policy objective. For more details on the testing studies, see Allasino et al. (2004); Arriijn, Feld and Nayer (1998); Attstrom (2008); Benedick (1996); Bovenkerk et al. (1995); Cediey and Foroni (2007); de Prada et al. (1996); Goldberg, Mourinho and Kulke (1996); Hjarnø (2008).

3.4 Conditions of work in sectors and occupations with large numbers of migrant workers

Highly skilled workers tend to migrate through regular channels for jobs in the formal economy that have good conditions of work. The great majority of migrant workers, however, are in low-skilled occupations, usually in jobs requiring long or irregular hours of work or subject to seasonal lay-offs: jobs which have often been shunned by national workers.

Migrant workers tend to be concentrated in sectors of the economy that are characterized by seasonality of production, low technology and high turnover (for details, see Martin, 2004). Most are employed in low-skill services, agriculture and labour-intensive manufacturing. Employers are often small enterprises who, in the face of increased competition with suppliers from other parts of the world, seek to maintain small profit margins by squeezing workers' wages. Migrant workers are therefore often concentrated in labour markets that are sometimes characterized as the "bargain basement" of globalization. Garment manufacturing is one example of this.

While there are country-specific differences, manufacturing, construction and the hotel and restaurant sectors generally employ significant numbers of migrant workers, as shown in table 3.3 for OECD countries.

While there are no comparable data for non-OECD countries, data collected in the ILO's 2003 ILM Survey show a similar picture. The share of manufacturing in total migrant employment is very high for Mauritius at 85 per cent, the Republic of Korea at 70 per cent and Malaysia at 52 per cent. Construction is important in the countries of the Gulf and Central Asia, accounting for 89.5 per cent of total migrant employment in Bahrain and 54 per cent in Kazakhstan (GOSI, 2007). Sizeable shares of migrant workers are also clustered in manufacturing in Germany, Italy and Japan, and in hospitality services in Ireland, Spain, and the United States.

3.4.1 Agriculture

Agriculture was the world's largest employment sector until recent years, when the service sector has come to account for a larger share of employment. Across the world today, 33.5 per cent of the 3 billion people comprising the active labour force work in the agricultural sector (ILO, 2009c), and the livelihoods of 2.5 billion of the world's 3 billion rural people are tied to agriculture (World Bank, 2007). Women account for over half of all agricultural labour (Pigott, 2003).

Table 3.3 Employment of foreign-born workers by sector, 2007

	% of total foreign-born employment ^a																		
	AT	BE	CH	CZ	DE	DN	ES	FR	GR	HU	IT	LU	NL	NO	PT	SE	TU	UK	US
Agriculture, hunting, forestry and fishing	1.0	1.2	1.0	3.6	1.1	-	4.5	1.1	4.8	-	3.4	0.7	1.4	-	-	0.6	12.0	0.6	1.7
Mining and manufacturing	21.0	14.0	18.1	35.4	30.3	16.2	11.4	13.7	14.7	20.6	23.0	7.5	17.5	12.0	10.6	16.1	30.0	13.0	13.0
Electricity, gas and water supply	-	0.6	0.4	-	0.3	-	0.1	0.3	-	-	-	-	-	0	-	-	0.2	-	0.4
Construction	10.0	8.2	8.4	8.8	6.7	3.3	21.0	10.1	32.0	10.0	15.0	13.6	4.8	5.2	15.9	3.2	5.8	5.7	13.0
Wholesale and retail trade, repair	15.0	14.0	13.7	14.1	12.4	14.0	13.0	12.1	10.3	19.9	11.0	11.5	12.2	13.0	14.3	10.7	18.0	11.8	13.0
Hotels and restaurants	12.0	8.0	7.4	6.1	8.4	7.8	14.7	6.9	10.2	3.6	8.1	6.1	6.8	5.9	8.3	7.8	4.8	8.6	10.0
Transport, storage, communication	6.0	6.7	4.5	4.6	5.4	7.7	4.5	6.3	2.4	4.6	4.6	3.9	6.9	8.0	5.0	7.0	6.6	7.8	6.2
Financial intermediation	1.0	2.1	4.6	1.4	1.5	1.7	1.0	2.2	-	-	0.7	12.7	2.7	0.7	1.8	1.1	1.8	4.9	3.6
Real estate and business activities	18.0	27.0	23.3	14.0	15.8	22.4	11.8	23.8	5.7	16.2	15.0	25.5	27.7	22.0	15.0	25.1	7.9	30.5	25.0
Public administration and extraterritorial organization	3.0	11.0	3.1	2.7	2.5	3.4	1.2	7.0	1.3	-	1.5	12.6	6.0	3.8	6.5	4.2	4.0	5.0	2.2
Education	3.0	5.6	5.9	4.2	4.3	8.0	2.0	5.5	1.5	8.9	2.3	2.8	5.4	10.0	6.8	11.4	5.4	7.1	5.7
Health and social work	9.0	9.8	13.6	5.8	10.4	19.5	4.1	11.2	2.6	8.4	4.9	7.8	15.2	22.0	7.3	19.3	4.7	14.4	11.0
Other community and personal services	11.0	4.5	7.1	6.8	9.8	4.9	6.3	9.5	3.9	5.3	9.2	6.0	8.8	7.5	8.8	7.4	2.5	4.9	8.5
Private households	-	1.2	1.6	-	1.0	-	12.2	4.8	14.0	-	11.0	3.4	-	-	5.4	-	1.0	0.6	1.5

Key: AT: Austria; BE: Belgium; CH: Switzerland; CZ: Czech Republic; DE: Germany; DN: Denmark; ES: Spain; FR: France; GR: Greece; HU: Hungary; IT: Italy; LU: Luxembourg; NL: Netherlands; NO: Norway; PT: Portugal; SE: Sweden; TU: Turkey; UK: United Kingdom; US: United States.

- = not available. ^a Labour force surveys for 2007, except for the United States, where data are from the Current Population Survey.

Source: OECD, 2009b, Annex 2.

Economic development is associated with a declining percentage of employment in food and fibre production. The exodus of rural youth to manufacturing and services in urban centres has raised the demand for migrant agricultural workers to replace them. In Asia, the decline in agricultural employment and simultaneous growth in non-agricultural employment is a factor behind international labour movements within the region. Agricultural employment provides only a small proportion of total employment in Japan and the Republic of Korea, and less than a quarter in Malaysia. Agricultural employment has fallen to slightly less than half the total in Indonesia, the Philippines and Thailand, while in Bangladesh and India it remains close to two-thirds (Jones, 2008).

Among the developed countries, the United States employs the most farm workers. About 2.5 million people are temporarily employed during a typical year, most of them for less than six months. About 90 per cent of the migrants who work seasonally on farms producing fruit, vegetables and horticultural commodities were born abroad. The share of workers in irregular status among all hired crop workers is estimated to have risen from less than 10 per cent to over 50 per cent during the 1990s (Martin, 2004). Every year, the EU's agricultural sector employs close to 4.5 million seasonal workers, almost 500,000 of whom come from countries outside the EU-15. Women workers make up a large percentage of the workforce in some countries – about 40 per cent of the total seasonal agricultural workforce in Germany, for example (Renaut, 2003).

Agricultural work is dangerous. It is one of the three most hazardous sectors of employment, mining and construction being the others. The ILO has estimated that, out of the 335,000 fatal workplace accidents a year worldwide, some 170,000 involve agricultural workers. Millions of agricultural workers around the world suffer serious injury because of workplace accidents involving machinery or become poisoned by pesticides and agrochemicals. In the United States, for example, agricultural workers made up 3 per cent of the workforce between 1990 and 1995 but suffered 7.4 per cent of work-related deaths (Forastieri, 2000). Agricultural workers endure excessive working hours and inadequate daily or weekly rest. Migrant workers, especially workers in irregular status, are particularly vulnerable, because they may have inadequate or no insurance.

The agricultural sector also employs many children, including migrant children. While the Safety and Health in Agriculture Convention, 2001 (No. 184), specifies 18 years as the minimum age for employment in agriculture in dangerous jobs and 16 years for other farm jobs, the ILO estimates that more than 130 million children aged 5 to 14 years work in agriculture (ILO, 2006b). In some countries, migrant children are employed to produce commodities for export. For

example, migrant children from Burkina Faso and Mali work in Côte d'Ivoire, mostly on farms growing cocoa for export.

In developing countries, a series of factors have helped to create vicious circles of lower wages and less protection for hired farm workers, leading to migration both from town to city and internationally. These factors include intensified competition, especially with countries that heavily subsidize their agricultural sectors; domination of agricultural export markets by multinational buyer cartels; loss of jobs in farming and farm-related industries as a result of privatization; and rising input costs and declining prices for many commodities produced in developing countries, including bananas, cocoa, coffee and sugar. This cost-price squeeze pushes down farm wages and incomes and increases emigration pressures in agricultural areas.

In the past, when workers generally lived on plantations all year round, they usually enjoyed better protection. Then in the 1990s there was a switch to seasonal workers supplied by labour contractors, which put downward pressure on working conditions for all farm workers, including migrant workers in the countries where they are a significant part of the hired workforce, such as Costa Rica, Malaysia and Thailand. Contractors often hire the most vulnerable workers, are often under extreme competitive pressure to keep wages low, and generally operate without written contracts and in areas with few labour inspectors. Fifty-five per cent of union complaints to the ILO in the 1990s alleging violations of core ILO standards were from the Americas, and many were directed at governments that had assisted, for example, banana plantations seeking to replace year-round workers (Pigott, 2003). As an ILO study summarized the situation, "Poverty wages, atrocious working conditions and downward pressure on the terms of collective agreements negotiated by the unions are all part of the immigrant workers' fate. They embody the whole decent work deficit in agriculture" (Pigott and Demaret, 2003, p. 13).

In Germany, the agriculture and construction union IG Bau has expressed grave concern at the growing trend of permanent jobs being replaced by temporary contracts, particularly in tree nurseries and horticulture. Many migrant agricultural workers are recruited in a very informal manner, often through an intermediary or labour contractor (Renaut, 2003). According to the British Trades Union Congress, many seasonal workers end up signing contracts that include very high charges for transportation, housing and other services, so that their earnings are often far less than they had expected (TUC, 2003).

A Council of Europe report (2003a) notes that reliance on migrant labour has become a characteristic feature of Mediterranean agriculture, especially for seasonal activities, and that the work of many of these migrants is undeclared. As a result, they have no right to receive minimum wages or make social security contributions and are often subjected to abuse and exploitation. Abuses of migrants

include making false promises concerning wages and working conditions during recruitment, imposing high or unexpected charges for transportation, housing and meals, and taking unauthorized deductions from wages or failing to forward taxes to government authorities.

Contractors usually compete with each other on cost, and some agree to supply workers at such low costs that they end up violating minimum wage and tax laws. In the United States, for example, contractors charge an overhead commission of at least 25–35 per cent on average, yet some contractors offer to bring crews to farms for lower than that. This suggests that they are cheating the workers of wages or the Government of payroll taxes or both. It is estimated that one-third of workers' wages may be lost as a result.⁴

An ILO study on decent work in agriculture succinctly summed up the situation:

Deficits in social protection for waged agricultural workers are further exacerbated through the practice of labour contracting, where abusive systems are contributing to the erosion of rights and protection. The system of labour contracting in all its forms (both national and transnational) now appears to be a central component in labour market institutions in all parts of the world, and underlies many of the decent work deficits identified. (ILO, 2003d, p. 58)

Workers' organizations in the agricultural sector are often weak or non-existent and may not even be permitted. For example, national law in the United States specifically excludes agricultural workers from the right to form trade unions or engage in union activity.⁵ Less than 10 per cent of the world's hired farm workers are represented by unions. Additionally, unions find it very hard to organize the fast-growing female segment of the seasonal farm workforce brought to farms by contractors. The worker organizations that do exist are often defensive, fighting to retain the wages and benefits they have won as state-owned or foreign-owned plantations are restructured. Migrant workers may receive the lowest priority in the process. These factors mean that farm workers often have no collective bargaining rights. They have inadequate income in relation to basic needs, no social protection in case of unemployment, sickness or injury, and no collective voice to further their interests.⁶

⁴ Many farm organizations survey members and contractors to determine average overheads or commissions, so contractors are rarely able to overcharge farmers. See Martin (2004).

⁵ National Labor Relations Act, 29 U.S.C. Sec. 2(3).

⁶ Some trade unions, including the International Trade Union Confederation (ITUC), are establishing good practices to protect migrant agricultural workers, including information centres set up with the cooperation of unions in countries where migrants work. See Renaut (2003).

3.4.2 Construction

Construction is a large, labour-intensive industry. About 111 million people were estimated to be employed in the construction sector in 1999: 29 million in more developed countries and 82 million in less developed countries (ILO, 2001b, p. 5, table 1.1). The construction industry has a long tradition of employing migrant labour from lower-wage economies. Migrant labour is important in the Gulf region, where countries have small populations and large construction programmes financed by oil revenues. In Asia, Malaysia and Singapore rely heavily on foreign construction workers. Israel has replaced Palestinian construction workers with workers from other countries, including China, the Philippines, Romania and Thailand. Many of the construction workers in Moscow and its environs come from the Caucasus and the Central Asian republics. A tripartite meeting convened by the ILO in Geneva in March 1996 concluded that countries will continue to rely on foreign workers to fill jobs in construction (ILO, 1996a).

Construction remains unique in several respects. It is project-based, with the production site constantly moving; demand is cyclical, that is, it has a “boom–bust” quality; and governments often begin public construction projects during recessions to create jobs. The industry is fragmented, with a preponderance of small firms operating only in local markets, because of their knowledge of building codes, available workers and customers. In fact, it is probably better to regard construction not as an industry but as a loose agglomeration of agents and activities which can be unpackaged and packaged in different ways.

Employment relations in construction are also unique (ILO, 2003b). Workers move from project to project, and on any particular building site there are usually multiple small employers whose activities must be coordinated so that buildings are constructed in the correct manner and quality control is ensured. The construction workforce includes those who are highly skilled, such as carpenters and electricians, and those who are low-skilled, such as labourers, with the skilled workers often providing on-the-job training to the low-skilled. Many subcontractors on construction sites have limited capital and engage in labour-intensive tasks.

In the past, construction was an industry that offered above-average wages to compensate for arduous and dangerous work, with relatively large employers making considerable investments in their relatively highly skilled workers and taking responsibility for training them. It has also, historically, been an industry with fairly high levels of unionization, at least in the developed countries. The entire industry is, however, undergoing a profound transformation as a result of

the surge in subcontracting and high level of privatization.⁷ These trends have grown to such proportions that some builders see their job solely as that of managing subcontractors, who provide the labour and materials to build a project. Today, casual and temporary employment has become the rule, with firms often employing fewer than 20 workers and self-employment common. In some cases, vertically integrated construction firms have become mere managers that allow subcontractors to compete against one another to supply workers for their projects (ILO, 1996a).

As a result of these factors, work in construction has become increasingly temporary and insecure, and workers' protection, where it formerly existed at all, has been eroded. The ILO has found that, in much of the world, work in construction is not regarded as "decent work" (ILO, 2001f). It is, in fact, one of the most dangerous sectors, with two to four times the average frequency of fatal accidents. Because of high rates of injury, frequent lay-offs and substandard housing, young native workers tend to shun construction jobs, setting in motion a situation where migrant workers without adequate protection and training are drawn into the labour force in increasing numbers (see e.g. Abdul-Aziz, 2001). An ILO Workers' Consultation on the topic notes: "Deregulation has also led to a race to the bottom making jobs in sectors like construction unattractive and underpaid for nationals and calling on foreign labour to fill those gaps, including through irregular migration channels" (quoted in ILO, 2004b, p. 54). According to an ILO report (2006e), the linkage between risk of accident and lack of worker protection has been well documented in situations where subcontracting is extensively used. The improper use of subcontracting has led to workers being exposed to increased risks and unable to benefit from collective bargaining and labour legislation, as noted earlier with regard to agriculture.

The current trends towards subcontracting and privatization in the construction industry appear to be irreversible. This makes it even more important to find ways for employers, unions and governments to cooperate and help ensure that migrant workers employed by subcontractors do not remain a disadvantaged and isolated labour force whose vulnerability is used to pull down wages and conditions in the entire industry. Thus, measures are needed to prevent a race to the bottom that puts construction among the worst occupations in respect of general working conditions (ILO, 2001f).⁸

⁷ Governments undertaking construction projects are often under an obligation to pay prevailing or union wages on projects.

⁸ The ILO 1996 Tripartite Meeting on Social and Labour Issues concerning Migrant Workers in the Construction Industry recommended measures to provide for legal admission of construction workers and adequate protection for them in accordance with ILO and UN Conventions (see ILO, 1996a).

3.4.3 Manufacturing

Globalization has liberalized international capital mobility and enabled the re-location and outsourcing of production. In this process, jobs in manufacturing are created for workers in developing countries, thereby reducing pressures for migration. At the same time, there has been an international outcry regarding the conditions of work in some of the clandestine workplaces, described as “sweatshops”, which do not offer decent working conditions and which violate fundamental labour standards.⁹ A significant number of these, employing local workers, are found in the developing world. Some are linked to multinational companies through a complex network of subcontracting chains from retailer down to production units. The production of international brands of garments, shoes, toys and sports equipment, among other things, has been targeted as sweatshop production in which children and women work in conditions amounting in most cases to forced labour. The discussion here is focused on sweatshop situations involving migrant labour.

Sweatshops have re-emerged in developed countries with the use of cheap migrant labour often provided through trafficking and smuggling of persons. An ILO report on the textiles, clothing, footwear and leather (TCF) industries points out that migrant workers constitute an important part of this workforce in industrialized countries and in those developing countries that have progressed furthest along the road to industrialization (ILO, 2000a). Concentrations of clandestine workshops are found in a number of European countries. These workshops employ large numbers of migrant workers in irregular status and use “labour practices that are contrary to the most rudimentary principles of respect for human rights at work” (ILO, 2000a, p. 79). An ILO study found that in southern Europe migrants are mainly employed in manufacturing jobs that have the toughest conditions with respect to physical effort, endurance, overtime work and night shifts, as well as the highest risk of accidents (Reyneri, 2001).

In the United States, the discovery of sweatshops attracted much media attention. In August 1995, the case of 72 young Thai women who were found to have been forced to work in conditions of near-slavery for a clothing enterprise in southern California caused public outrage. More recently, media attention homed in on the island of Saipan, part of the Commonwealth of the Northern Mariana Islands, which is US territory, where slavery-like practices were used in sweatshops

⁹ The word “sweatshop” originated in the clothing industry, where it has been used to refer to firms that require workers to work long hours to meet production targets without regard for their health and safety. See Sweatshop Watch (2000).

producing goods for major American distributors. More than 50,000 young female migrant workers from Bangladesh, China, the Philippines and Thailand were found working as virtual prisoners, forced to work up to 15 hours a day, seven days a week. Trade unions, non-governmental organizations (NGOs) and the US authorities joined forces to combat such sweatshop practices. As a result of lawsuits, a monitoring system was set up to monitor whether manufacturers are respecting basic workers' rights. The federal authorities have also launched a number of initiatives aimed at combating sweatshops during recent years with the support of major enterprises in the textiles sector (Reyneri, 2001). The US Department of Labor collected US\$213 million in back wages for 342,000 workers during fiscal year 2003 from low-wage industries including garment manufacturing; many of the unpaid workers were migrant workers (US Department of Labor, 2003).

Violations of human rights at work in clandestine workshops are very common and very serious. The scale of the phenomenon, which is seen mainly in the clothing sector, is such that it threatens the viability of legal enterprises through unfair competition. Voluntary private initiatives, including codes of conduct, can complement existing legislation and encourage the promotion of fundamental principles and rights in the workplace. In Europe in 1997, the European Trade Union Federation of Textiles, Clothing and Leather and the European Apparel and Textile Organisation signed the first "European Code of Conduct" designed to achieve compliance with and promotion of basic human rights in the workplace, based on international norms (ETUF:TCL, 1997).

The ILO Tripartite Meeting on the TCF industries (2000) adopted a resolution that supports the promotion throughout these industries of the ILO Declaration on Fundamental Principles and Rights at Work (discussed in Chapter 4 below) and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, as well as all relevant ILO Conventions and Recommendations (ILO, 2000b).

3.4.4 Services

The services sector today employs 43.3 per cent of the global labour force and has replaced the agriculture sector as the largest single area of employment (ILO, 2009c). The World Bank has found that the world's economy is based predominantly on services, with 64 per cent of the global GDP of US\$48 trillion in 2006 accounted for by services and 65–70 per cent of workers in the more developed countries employed in service-producing sectors (World Bank, 2002, 2008). The composition of the sector in various locations changes with economic

development and rising incomes, as educational, business and health services account for greater shares of GDP. The fact that the demand for migrant workers has ranged from highly skilled to low-skilled workers also reflects this shift in the types of services that are most prominent.

The distribution of foreign-born workers by sector in OECD countries highlights these structural changes. In the past few years the services sector has become more important for the employment of foreign-born workers and now employs more than three-quarters of all such workers in some countries, for example Belgium, the Netherlands, Sweden and the United Kingdom, as shown in table 3.3 above. While sectoral distribution varies significantly by country, wholesale and retail trade, hotels and restaurants, health and social work, and household services appear to be the most important.

Nursing and other care services

The migration of health-care workers, especially nurses, has grown in recent years in response to high demand in developed countries, as discussed in section 2.3 above. An ILO study has highlighted the problems faced by such workers. These include a lack of recognition of their skills and previous experience, leading to systematic “deskilling”; channelling into non-career grades in unpopular specialities; and the “ethnic penalty”, which results in restricted access to training and poorer career progression because of migrant status (Bach, 2003). A recent OECD study shows that overseas health-care workers are more likely to work shifts at night, during weekends and at other undesirable times (OECD, 2007c). Because of such problems, the United Kingdom has introduced an international nurses’ advice line to provide advice to nurses working in England who are experiencing problems with supervised practice placements and agencies who fail to honour the terms of their employment contracts (ILO, 2004d).

The demand for foreign household and care workers has grown in OECD countries with rising female employment rates, changes in family structures, and an ageing population leading to higher dependency ratios. According to a 2003 OECD report, more than 10 per cent of migrant workers in southern Europe are employed in household services, especially in Greece, Italy and Spain. In France and the United States, about 51,000 and 150,000 migrant workers, respectively, provide care for the elderly and children at home. More than 950,000 Italian families hired foreign workers to tend to the needs of the elderly or children in 2002. Regularization programmes have shown by the number of caregivers applying for regularization of their status that many of these migrant workers are in irregular status (OECD, 2003).

Data from the Philippines for 2008 demonstrate that nurses and caregivers are the fourth and fifth largest groups of new appointees, respectively. Kuwait, Saudi Arabia, Singapore, the United Arab Emirates and the United States are among the largest employers of Filipino nurses (POEA, 2008).

In 2002, Canada responded to the need for such workers by establishing the Live-in Caregiver Program to allow foreign employers and caregivers to fill the need for live-in care work for children, elderly people and people with disabilities (CIC, 2002). The Program offers the possibility of applying for permanent residence in Canada after two years of employment. Previously, Canada granted permanent residence status to only a very limited number of migrant workers performing this kind of work. The Program represents good practice in providing regular and permanent opportunities to low-skilled workers in response to demand.¹⁰

Hotels, catering and tourism

Worldwide employment within the tourism sector is estimated to rise from 219.8 million jobs (7.6 per cent of total employment) in 2009 to 275.7 million jobs (8.4 per cent of total employment) by 2019 (World Travel and Tourism Council, 2008). The industry is heavily dominated by small and medium-sized enterprises, which employ over half the labour force working in the industry (ILO, 2001a). In Europe, for example, there are 2.7 million small and medium-sized enterprises operating in the sector, representing almost all types of hotel, catering and tourism (HCT) enterprise. Some 94 per cent of them are micro-enterprises employing fewer than ten people.

Migrant workers in the tourism labour market of destination countries include daily commuters, seasonal workers and permanent migrants. The majority are drawn into lower-paid informal or casual employment in the sector. Although many migrant workers stay for a number of years, they often remain at low skill levels compared to native workers. An ILO study equates their social status to that of ethnic minorities, another group strongly over-represented in the HCT sector. European countries such as Austria, Denmark, Germany and Switzerland employ large numbers of migrants in this area. In 2005 the percentage of foreign-born workers in hotels and restaurants was estimated at almost 30 per cent in Switzerland and around 27 per cent in Germany. In Spain, the coastal resorts employ large numbers of migrants in irregular status (OECD, 2008).

The hotel, restaurant and catering sector remains an area in which undeclared labour is frequently used. In some countries, this may involve the

¹⁰ It should be noted that some NGOs have criticized this programme, in particular the requirement that each caregiver reside with his/her employer for two years.

clandestine employment of migrant workers in irregular status who work under less favourable conditions of employment than natives. It may also take the form of employers under-reporting the number of hours employees actually work and giving them part of their pay in cash, thus enabling the employer to pay them less and both employer and employee to avoid fully paying for social insurance contributions. Undeclared labour is mainly found in small enterprises where cash is available outside official accounts.

3.5 Particularly vulnerable groups of migrant workers

The 2004 ILC resolution concerning migrant workers in a global economy identified several categories of highly vulnerable migrant workers: women migrant workers, particularly women in domestic service and the informal economy; temporary migrant workers, including seasonal workers; and migrant workers in irregular status, including trafficked workers (ILO, 2004a; Wickramasekara, 2002). The resolution called for special consideration to be given to these categories of workers to prevent their abuse and exploitation, and protect their fundamental human and labour rights. The ILO Multilateral Framework on Labour Migration, which will be discussed in Chapter 4, contains particular principles and guidelines on these categories.

3.5.1 Women

Although migration for the purposes of work can be an empowering experience for some women from traditional societies, it can also lead them into situations of abuse and exploitation. Women migrant workers may be victims of “double discrimination” – as migrant workers and as women. Attention must be paid to protecting women from the problems and conditions they can face, such as sexual exploitation, violence and trafficking,¹¹ and to the conditions of certain forms of work held predominantly by women migrant workers, such as domestic work. Women

¹¹ The ILO Mekong Sub-regional Project to Combat Trafficking in Children and Women (2000–08) provides some important lessons on combating trafficking in women and children. In response to the challenges trafficking presents in the Greater Mekong Subregion, the project developed practices and policies that effectively respond to the root causes of trafficking. The project also used a methodology involving all levels of government, civil society, and potential victims of trafficking. For more information see <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/index.htm> (accessed 4 Jan. 2010).

migrant workers are often directed into traditional forms of “women’s work” and paid less than men for work of comparable skill levels. They may be more isolated than men migrant workers, again, for example, when they perform domestic work.

Women migrant workers in some countries are required to undergo pregnancy testing and are then subject to termination of employment and deportation if the result is positive. In the case of Malaysia and Singapore, domestic workers must undergo periodic pregnancy tests and are immediately deported if they test positive, in contravention of the ILO’s Maternity Protection Convention, 2000 (No. 183). In 2001, Italy took a step to prevent such terminations by requiring a new general national contract for domestic work, which contains a provision prohibiting the dismissal of women workers because of pregnancy.

Women migrant workers from some origin countries have experienced abuse and exploitation on such a scale that a few countries, including Bangladesh and Pakistan, have banned the emigration of low-skilled women workers altogether.

3.5.2 Domestic workers

Domestic migrant workers, the vast majority of whom are women, are among the world’s most vulnerable workers. Most are women moving from poorer to richer countries, and most leave their children behind, often in the care of relatives or a caregiver hired locally, creating global care chains. The availability of foreign maids in turn allows women with children in destination countries to work for wages, so that many of the world’s women are able to pursue paid employment outside the home (ILO, 2003e, Booklet 1).

In some European countries, such as France, Greece, Italy and Spain, domestic work or housekeeping is the most common occupation open to women migrant workers (Reyneri, 2001). During the 1990s, numerous migrants with residence permits entered Greece, Italy and Spain as domestic workers through a quota system, and a large proportion of those regularized were domestic workers. High- and middle-income states in Asia, including Hong Kong (China), Malaysia, Singapore and Taiwan (China), as well as the Gulf States, also employ large numbers of women migrant workers (Al-Najjar, 2002).¹² Data from Sri Lanka for 2007 identify Kuwait, Saudi Arabia and the United Arab Emirates as the top three countries of destination for domestic workers (Sri Lanka Bureau of

¹² Most employed women in the Gulf States work in government services. Married women in Kuwait aged 40 years or over can retire with full benefits after 15 years of employment; about 90 per cent of Kuwaitis work for the Government.

Foreign Employment, 2008). Costa Rica employs many domestic workers, most of whom are drawn from neighbouring Nicaragua.

Government policies of origin countries towards women going abroad to be domestic workers range from a liberal approach to highly regulated systems. As noted above, a few countries, such as Bangladesh and Pakistan, completely ban the emigration of low-skilled female workers, to prevent them from being subjected to the abusive conditions which too frequently exist in domestic work.

The working conditions of domestic workers vary enormously. Some have a positive experience, but too many others are exploited and subjected to conditions that can amount to virtual slavery and forced labour. Domestic workers are often required to work long or excessive hours (on average, 15–16 hours per day), with no rest days or compensation for overtime. They generally receive very low wages and have inadequate health insurance coverage, if any at all. They are frequently exposed to physical and sexual harassment, violence and abuse. In some cases they are trapped in situations where they are physically or legally restrained from leaving the employer's home by threats or actual violence, by withholding of pay, or by confiscation of identity documents (ILO, 2003e).

Domestic workers often fall completely outside the destination country's labour and employment law system, not being covered by laws on pay and working hours, safety and health, or other working conditions. In many countries, migrant domestic workers do not enjoy equality of treatment in respect of many protections and rights, particularly social protection. Pregnancy or positive HIV status often result in the worker's dismissal, either formally or informally (ILO, 2009e). Domestic workers are excluded from labour legislation, including provisions on the minimum wage and overtime pay, in Kuwait, Lebanon, Saudi Arabia and the United Arab Emirates, among other countries (HRW, 2007). Similarly, domestic workers are not covered by minimum wage protection in Malaysia, the Republic of Korea and Thailand (ILO, 2009e). Inflation has further eroded the financial situation of many domestic workers. In Saudi Arabia, rates of pay have remained the same for 15 years, so that, for example, the pay of a Sri Lankan domestic worker in 2007 was worth about half what it was worth in 1992 (HRW, 2007).

In some regions, there is even differential pay for migrant domestic workers, so that some nationalities are paid more than others. This is the case in most countries in Asia and the Middle East. Filipinos generally earn the highest wages among domestic workers, partly because of their knowledge of English and their greater awareness of local laws and regulations, while most Indonesian and Sri Lankan maids do not receive the legal minimum wage (Oishi, 2005). An ILO study in Bahrain found that "wages are determined according to the nationality of female domestic helpers instead of their experience" (Al-Najjar, 2002, p. 20).

In addition to destination countries' preferences for certain nationalities, the regulations of origin countries may also have an impact on the differential wage levels of foreign domestic workers. For example, the Philippines sets a higher minimum wage than Indonesia or Sri Lanka. In 2006, the Philippines raised the monthly minimum wage for Filipino domestic workers from US\$200 to US\$400 in an attempt to stem abuse and reflect the particular training and skill level of their overseas workers. While this minimum wage cannot be enforced in the destination country, its inclusion in the employment contract is required prior to a worker's deployment (POEA, 2007).

Non-payment or delayed payment of wages is also a common practice in private households employing domestic workers. Employers often refuse to pay their domestic workers in full until they have completed their contracts, which in the Malaysia and Middle East usually run for two years, in order to prevent their escaping abusive conditions or actively to defraud them (Wickramasekara, 2005a). Practices like these amount to the imposition of involuntary servitude. In a small survey of 51 domestic workers in Malaysia by Human Rights Watch, it was found that 12 received no salary at all, 26 did not receive their full salary, and most of the remainder had finished their two-year contracts but were still working and waiting to receive their pay (HRW, 2004a). Similar findings are reported from Sri Lankan domestic workers in Kuwait, Lebanon, Saudi Arabia and the United Arab Emirates, where 20 per cent of the women domestic workers interviewed had not received their full wages (HRW, 2007): their payment had been withheld for periods ranging from several months to four years. The Sri Lankan Legal Aid Commission, which provides legal aid to domestic workers, stated in 2006 that the most common complaint it receives is non-payment of wages (HRW, 2007). Like other migrant workers who have not received full payment before leaving the country upon completion of their contracts, migrant domestic workers have little chance of ever seeing the money they are owed after they have left. Many of the Indonesian domestic workers interviewed after their return from Malaysia never received their full salaries (HRW, 2004a).

Domestic work takes place in the private household, which is typically excluded from labour market regulations. Although theoretically labour inspection may be required in all employment situations, in practice the home is essentially either out of bounds for or ignored by labour inspectors (ILO, 2005a). A 2004 ILO study of national laws in 65 countries revealed that only 19 of them had specific laws or regulations dealing with domestic work (Ramirez-Machado, 2003). An exception is Hong Kong (China), where domestic workers have the legal right to organize and are covered by the Employment Ordinance (ILO, 2009e).

Even if they are protected by labour legislation, it can be very difficult for domestic workers to learn about or benefit from available protections, so that violations of the law are widespread. Consequently, many organizations working in this area have recommended the enactment and amendment of labour and employment laws to protect domestic workers, including the Asia Regional Summit on Foreign Migrant Domestic Workers (CARAM Asia, 2002) and the Migrant Workers Protection Society (n.d.) in Bahrain.

In 2010, the agenda of the ILC will include an item on promoting decent work for domestic workers, with a view to developing ILO instruments to provide badly needed protection for these workers. While it is intended that all domestic workers will be covered, it will be very important for migrant workers, as they make up such a sizeable portion of the domestic worker workforce (ILO, 2009e).

3.5.3 Children

Children are involved in the migration process in a variety of ways: they may be left behind by parents who migrate to another country for employment; they may accompany their parents, through either regular or irregular channels; and they may migrate independently, seeking asylum or employment, or to join family members in the destination country.¹³ This section will focus primarily on children who migrate for employment.

Children who decide to migrate are particularly vulnerable to trafficking, exploitation and abuse, and may fall victim to smuggling networks. Socio-economic and gender inequalities render some child migrants even more vulnerable than others. In rural areas of origin countries the quality of schooling is often poor, and children from poor families do not have the means to access better educational opportunities (Development Research Centre on Migration, Globalisation and Poverty, 2008). These limitations shape children's employment opportunities, and often lead to their working in low-skilled jobs in the informal economy. Gender perceptions also play a role in children's migration experiences. Girls and boys often work in different types of jobs, with girls more likely to be employed in domestic work, and in some cases being forced into prostitution.

Child migrants may not completely comprehend the risks involved in migration, leaving them unprepared to face the challenges they may confront at

¹³ The UN Convention on the Rights of the Child defines a child as a male or female under 18 years of age.

their destination (Development Research Centre on Migration, Globalisation and Poverty, 2008a), such as local hostility or coercion into criminal activities. Immigration authorities may not distinguish between children and their parents or other adult migrants in their treatment of those who violate immigration regulations. For example, a recent report from the United Kingdom indicates that at least 1,300 children were detained in immigration detention centres in the country over a 15-month period (BBC, 2009). Administrative detention of children violates their rights and exposes them to undue harm.

The UN Committee on the Rights of the Child has identified three main categories of concerns in respect of unaccompanied child migrants: the lack of adequate strategies to reduce their particular vulnerability; their treatment in transit and in their countries of destination; and their treatment on returning to their countries of origin (UNOHCHR, 2008). Research from the Greater Mekong Subregion illustrates these concerns. A report on young migrants in Thailand finds that demand for labour in agriculture, fishing, manufacturing and domestic work acts not only as a pull factor for young people, including children, from Cambodia, the Lao People's Democratic Republic and Myanmar, but can also lead to situations of trafficking and exploitation.¹⁴ Most of those under the age of 18 years in this study worked in fishing and domestic work. Children in these sectors worked long hours, faced more barriers to leaving their jobs, and were more likely to be unregistered than adult workers. The study noted in particular that boys between the ages of 15 and 17 working on fishing boats were judged to be in a “worst form of child labour” (UNOHCHR, 2008). The labour law's exclusion of workers employed in agriculture, domestic work and fishing, and the steady supply of migrants from neighbouring countries, increases child migrants' vulnerability to exploitation and trafficking.

3.5.4 Migrant workers in irregular status

Irregular migration has a variety of causes, as discussed in Chapter 1. Given their precarious legal position in the countries in which they work, migrant workers in irregular status easily fall prey to extortion and are highly vulnerable to abuse and exploitation by employers, migration agents, corrupt bureaucrats and criminal gangs. According to the UN Office of the High Commissioner for Human Rights, “Migrant workers face the gravest risks to their human rights

¹⁴ Of the 376 migrants surveyed by the study, 75 per cent were female, 5 per cent were below 15 years old, 20 per cent were aged 15–17 years and 75 per cent were aged 18–25 years.

and fundamental freedoms when they are recruited, transported and employed in defiance of the law” (UNOHCHR, 1996, p. 7). Women in irregular status are doubly vulnerable as they are also at risk of sexual exploitation. The basic human rights of migrants in irregular status are therefore often violated, even though those rights are enshrined in international human rights instruments which have been ratified by most countries (Wickramasekara, 2000) and will be outlined in Chapter 4.

Migrant workers may enter a destination country in regular status and later fall into irregular status for a variety of reasons, frequently through no fault of their own. For example, in some cases recruiters give false information; or a migrant worker may lose his or her job (Ellman and Laacher, 2003).¹⁵ Fear of detection and deportation deters most migrant workers in irregular status from using even those few services that are available to them. In short, they are not able to “secure for themselves protection against hazards to their health and safety, join unions or organize themselves for collective bargaining, obtain fair wages, ask for compensation in case of injury or illness, or have any security of employment” (Wickramasekara, 2002, p. 26).

The Platform for International Cooperation on Undocumented Migrants (PICUM) sums up the European situation as follows:

Undocumented migrants residing in Europe are socially excluded and very vulnerable to marginalization. Europe needs and makes use of the labour of undocumented migrants, but at the same time is not willing to give any rewards for their contributions. Undocumented migration is fought in many ways, including by blocking access to basic social services. It is alarming that there has been a tendency to criminalize undocumented migrants themselves and penalize the social and humanitarian assistance that citizens and civil organizations offer them. (PICUM, 2002, p. 94)

If root causes are to be addressed, more legal migration opportunities must be created to keep up with countries’ demands for labour. The conclusions of the 2003 ILO Asia Regional Tripartite Meeting in Bangkok stated that easy and transparent access to legal migration opportunities could be part of an effective response to the problem of irregular migration (ILO, 2003a). At the

¹⁵ The members of the mission reported by Ellman and Laacher were alarmed to find that, of approximately 300,000 foreign workers brought into Israel, more than 65 per cent, or over 200,000, were in irregular status, and many migrant workers who went to Israel because they were promised jobs discover upon arrival that no such jobs exist.

ILO Workers' Consultation in 2003 in Nyon, Switzerland, the consensus was that legal migration should be facilitated as a means of combating trafficking and irregular movements (ILO, 2004b). The ILC resolution recommended change in this area. It is supported by principle 5 of the ILO Multilateral Framework on Labour Migration, which states: "Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends." Given the ambivalence apparent in some countries towards addressing the gulf between the demand for labour and laws restricting admissions of migrant workers to meet that demand, combating smuggling of human beings is unlikely on its own to resolve irregular migration. What is required is the opening up of more legal migration channels.

Unfortunately, the popular official response to illegal migration has often been to intensify border controls and deportation procedures: that is, to have "more policing" instead of better policies. Yet experience has shown that these policing responses are of limited effectiveness. As then UN Secretary-General Kofi Annan succinctly put it: "Few if any states have actually succeeded in cutting migrant numbers by imposing such controls. The laws of supply and demand are too strong for that. Instead, immigrants are driven to enter the country clandestinely, to overstay their visas, or to resort to the one legal route still open to them, namely the asylum system" (Annan, 2003). Annan further stated that such measures lead "almost inevitably" to human rights violations. One study of unauthorized migration in four South-East Asian countries comes to similar conclusions: "Experience shows that this approach [keeping our borders tightly guarded] has not succeeded in keeping all unwanted persons out. It does succeed in rendering many unauthorized persons – who form the backbone in some sectors – without protection from insecurity and abuse" (Battistella and Asis, 2003, p. 31).

Another disturbing trend highlighted by the UN Special Rapporteur on the Human Rights of Migrants is the practice of using administrative detention, rather than judicial processes, to deal with irregular migration (UNCHR, 2003). Contrary to international norms, there have been mass deportations of undocumented migrant workers from some Asian and African countries, causing serious human rights violations. Malaysia deported more than 400,000 migrant workers in irregular status in 2005, paying vigilante groups to turn in or capture them: this led to gross violations of migrants' human rights (Wickramasekara, 2005a). Some countries have migrant holding centres which are overcrowded and unhygienic, with detention conditions in violation of international norms, standards and principles. Inhumane or degrading treatment of migrants is not uncommon (AMCPSDA, 2002; Wickramasekara, 2005a).

3.5.5 Trafficked persons

The trafficking of human beings represents a violation of the fundamental rights and core labour standards relating to forced labour, discrimination, freedom of association and, not infrequently, child labour enshrined in the ILO Declaration on Fundamental Principles and Rights at Work. Those who are smuggled use the services of smugglers willingly; trafficking involves coercion.

According to the ILO Global Report on forced labour, labour trafficking can be attributed essentially to imbalances between labour supply and the availability of legal work in a place where the jobseeker is legally entitled to reside (ILO, 2001c). Smuggling occurs because borders have become barriers between jobseekers and job availability. Trafficking occurs when not only do borders act in this way as barriers to labour supplies meeting demands, but no knowledge is available about proper migration channels, employment is itself illegal and/or underground, and conditions of work below the legal minimum are tolerated or ignored (ILO, 2001c).

Those who recruit people to be trafficked often create the conditions for forced labour by giving migrants false information on the nature or place of work to which they are going, entering into loan agreements with migrants that put them into debt bondage, or facilitating undocumented or falsely documented migration, thereby making migrants vulnerable to threats of deportation. Victims of trafficking usually work in economic sectors where they are hard to detect, such as agriculture, domestic service and the sex industry.

The ILO estimates that in 2005 about 2.45 million people were in forced labour as a result of trafficking (ILO, 2005a).¹⁶ Trafficking constitutes the antithesis of any notion of decent work. The consequences are that

the trafficking victim will be at the mercy of the traffickers and, far from being able to find work to begin to build a better future, will be forced to labour to pay off debts, as a result of fear of disclosure, violence or reprisals. This labour is likely to be performed without a contract, time off, insurance, access to health or social security services or pay, and often for long hours in the kind of work too often reserved for low-skilled migrant workers: in sweatshops, agriculture, construction work, domestic service, food processing or labour-intensive manufacturing and, of

¹⁶ The most recent report on forced labour (ILO, 2009f) uses the 2005 estimate, since “a repeat of the first global estimate would be premature. The methodology, which involved extrapolations from real cases of forced labour reported over a ten-year period, meant that repeating the exercise so soon afterwards would have limited value” (p. 1).

course, for women and older girls, in commercial sex. Such exploitation is at the heart of trafficking. (ILO, 2003f, p. 3)

There has been a substantial degree of convergence at the international level on combating trafficking, with more and more countries taking action. The international legal framework, which will be discussed in the next chapter, has been strengthened by the ILO Declaration on Fundamental Principles and Rights at Work and the UN Convention against Transnational Organized Crime and its protocols on smuggling and trafficking (Taran and Moreno-Fontes Chammartin, 2002). A number of agencies, including the International Organization for Migration, have been actively assisting countries in combating trafficking (IOM, 2001). In 2000, the United States enacted the Trafficking Victims Protection Act, which mandates an annual report assessing the efforts of governments around the world to meet minimum standards in combating trafficking. The law provides for economic sanctions on countries that do not take effective measures to combat trafficking. The law also provides temporary residence for victims of trafficking.

There are also a number of anti-trafficking activities in Europe. Iceland, for example, which is part of the Nordic–Baltic Campaign Against Trafficking in Women, carries out public information campaigns about trafficking and also warns women who apply to come to Iceland as “dancers” about the dangers of trafficking and informs them of their legal rights. In 2004, the Council of the European Union implemented Directive 2004/81/EC providing temporary residence for third country nationals who are victims of trafficking. Many States, including Belgium, the Netherlands and Spain, have adopted legislation that allows victims of trafficking to stay temporarily in the country. Some of this legislation is based on the ground of social protection, as in Italy, or requires victims to cooperate actively in the prosecution of their traffickers (Geronimi, 2003b). There has been considerable international cooperation between origin and destination countries on this issue.

The ILO Committee of Experts on the Application of Conventions and Recommendations is currently asking Government members for updated information on measures designed to encourage victims of trafficking to report this crime to the authorities (ILO, 2007b). It seeks information on measures being taken, such as granting permission to stay in the country for those in irregular status who were trafficked into the country; protection from reprisals against victims agreeing to testify and their families; measures designed to inform victims and potential victims of trafficking; and other measures relating to investigation, training of law enforcement officers and international cooperation in all these fields.

Counter-trafficking measures focused on law enforcement and control are not enough, however. What is also needed in the long term is the creation of productive employment in countries of origin and access to legal migration channels to match the labour market needs of destination countries. A comprehensive response framework must include certain elements, including treating trafficking as a distinct crime in itself; addressing the root causes of supply of and demand for workers; promoting a standards-based approach along with measures to protect the human rights of all workers, supported by adequate legal frameworks and effective enforcement; working towards more regulated, orderly and humane labour migration systems; and mobilization of all social actors (ILO, 2003e; Anti-Slavery International, 2003).

3.5.6 Temporary migrant workers

The various forms of temporary migration programmes were described in Chapter 1, where some of their advantages and disadvantages were pointed out. These schemes have in the past proved inadequate in providing short-term solutions to labour shortages in destination countries, have often failed to guarantee migrants' rights, and in some cases have produced the unintended effect of creating a category of second-class workers, fuelling social tension. Since about 1990, developed countries have been increasingly opting for temporary migration programmes to manage labour migration, and the number of workers admitted under these schemes has accordingly risen. This recent trend has important implications both for developing countries that face a surplus of less-skilled labour and for developed countries regarding their treatment of migrant workers.

The vulnerability of migrant workers in the workplace and in the wider society is linked to a variety of different economic, cultural and political factors, including the specific features of labour laws and the effectiveness of enforcement mechanisms. Short-term migrant workers, for example, are often limited either *de jure* or *de facto* in their right of access to courts in cases of abuse, such as unfair dismissal. In many cases, especially in the absence of specific bilateral agreements, social protection legislation may in actuality discriminate against temporary migrant workers.

Foreign contract workers (who are all in temporary status) in Asia and the Middle East are particularly vulnerable to wide-ranging exploitation and abuse as a result of strict legal limits on their freedom of movement (including the lack of freedom to change jobs) and restrictions on their ability to organize, as well as the considerable debt that they often incur in order to finance work abroad. Over the

course of more than 1,500 factory audits, Verité has found the following abuses to be common among foreign contract labourers: excessive overtime; improper wage payment and withholding of wages; poor health and safety conditions; harassment (physical, verbal and sexual); and compromised freedom of movement (Verité, 2005).

Temporary migrant workers may be excluded from wage protection and social security programmes as a result of stringent residence requirements. In addition, some jobs disproportionately filled by migrant workers may be excluded from full coverage by wage laws and benefit programmes: for example, in agriculture, in free trade zones and in private households (Ramirez-Machado, 2003). Even when migrant workers are covered by wage laws and benefit programmes on the same basis as non-migrant workers, they may not enjoy these rights in practice.

Individual migrants' welfare, including their secure and legal status and enjoyment of rights, is the key to maximizing their contribution to the economic, social and cultural development of their countries of origin. There appears to be a positive correlation between the security of stay and the amount of remittances transferred, by which temporary migrant workers remit less, and less often (Verité, 2005).

The existence of unscrupulous recruitment and placement agencies is a key feature of the temporary migration phenomenon in many countries, with all the accompanying abuses that have been discussed above, such as high fees, debt bondage, false promises of work, false information about the job and fraudulent employment contracts.

3.6 Occupational safety and health

There are two aspects of safety and health issues for migrant workers: occupational safety and health at the workplace, and the general health of workers. These are closely related. Occupational safety and health is an important issue for migrant workers, for several reasons.¹⁷ First, as noted earlier, migrant workers tend to be employed in high-risk and hazardous sectors, such as agriculture, mining, construction and the informal economy. Second, language and cultural differences require that instructions and training regarding safety and health at work be given in a language the workers can understand. Third, many migrant workers

¹⁷ For general reference on this issue, see ILO (1983, 1998).

perform heavy physical labour for very long hours and consequently frequently suffer from poor general health and fatigue. This makes them particularly prone to occupational injuries and work-related diseases.

International migration itself often results in more precarious living conditions and a higher risk of adverse health outcomes (ILO, 2003g). Occupational accident rates are about twice as high for migrant workers as for native workers in Europe, and there is no reason to believe that the situation is any different in other parts of the world (Braunschweig and Carballo, 2002). Many migrant workers, especially seasonal migrant workers, are placed in high-risk, low-paid jobs with poor supervision. Linguistic obstacles, lack of familiarity with modern machinery and different attitudes to safety all increase work-related risks. Migrant workers often put up with these dangerous working conditions for fear of bringing attention to themselves and losing their jobs or being deported.

The conclusions of the ILO Tripartite Meeting on Migration in Asia succinctly sum up the situation:

Safety and health issues for migrant workers are a major concern as they may be involved in hazardous and risky jobs. Language barriers, exposure to new technology, family disruption, poor access to healthcare and stress and violence, are the specific problems faced by migrant workers leading to higher vulnerability to safety and health risks at the workplace. (ILO, 2003a, p. 2)

The ILO report on standards-related activities in occupational safety and health (ILO, 2003a) highlights the need for strategies to take account of the increased vulnerability of certain groups of workers, including migrant workers. A related survey found that specific safety and health measures for migrant workers (and older workers) were less prevalent than for other categories of workers (ILO, 2003g, p. 88).

Migrants take up the most hazardous and unhealthy low-skilled jobs. Data on exposure to risks and accidents at work in relation to migrant workers are troubling. For instance, the Eurofound Austrian country report states that 37 per cent of migrant workers surveyed felt affected by poor health conditions at work, compared with only 16 per cent of Austrian workers; and that some 30 per cent of migrant workers felt particularly affected by accidents and injury risks in the workplace, compared with only 13 per cent of Austrians (Eurofound, 2007). With regard to Spain, information provided by the Spanish Ministry of Employment and Social Affairs (Ministerio de Trabajo y Asuntos Sociales) reveals that 8.4 out of every 100,000 migrant workers died in labour accidents in 2005, as compared

to 6.3 for the overall Spanish labour force. In Italy, in the total active population there is one accident at work for every 23 people, but one accident at work for every 16 non-nationals.

According to a report on agricultural workers in the United States, “Migrant farm workers have a third-world health status, although they live and work in one of the richest nations on earth.” The report also states that poverty, high mobility, low literacy, and linguistic, cultural and logistic barriers impede farm workers’ access to social services and cost-effective primary health care. Economic pressure makes farm workers reluctant to miss work when it is available. In addition, they are not protected by sick leave, and risk losing their jobs if they miss a day of work. These circumstances cause farm workers to postpone seeking health care unless their condition becomes so severe that they cannot work (Migrant Health Promotion, 2005). The report concludes that migrant farm workers have different and more complex health problems than those of the general population, and that they also suffer more frequently from infectious diseases.

Temporary workers, and in particular migrant workers in irregular status, are often unable to access social security benefits such as health insurance and employment injury coverage.¹⁸ In addition, they tend to resist seeking medical treatment because of cost, inability to take time off work, lack of childcare, and problems of transportation. Many are unfamiliar with the local health-care systems and may have linguistic or cultural difficulties in communicating their problems. These problems are compounded for migrants in irregular status and trafficked persons. Another unfortunate related issue is that in a number of countries migrant workers are stereotyped as a threat to public health and as disease carriers, leading to prejudice and discriminatory treatment.

Sometimes migrant workers cannot fully access available medical services in the destination country or have access to fewer or more costly services than natives. Temporary or guest workers in Canada, for example, may have to pay a small fee for medical consultations, while those in irregular status would not normally have access to public health facilities at all, aside from emergency treatment. In New Zealand, migrants who do not expect to stay for more than two years are not entitled to free medical treatment, as natives are, and have to pay for emergency care. In Mexico, migrants in irregular status are given treatment only in an emergency. In other countries, such as Portugal, the provision of health facilities for migrants depends on a reciprocal arrangement with the origin country. In the United States, which does not have a national health-care system for its citizens,

¹⁸ On the issue of social security coverage for migrant workers, see Chapter 4 below.

it is estimated that fewer than 20 per cent of all migrant farm workers have access to quality health care (Beck, 1997).

Migrant workers and members of their families often have restricted access to disease prevention, detection and treatment facilities, even though they may need them more than other workers (ILO, 2002c). Those employed in mining, seasonal agriculture, temporary work or migratory trade, who have to live away from spouses and partners and work in geographically isolated areas with limited health-care facilities, are particularly at risk. The problems are compounded where they face discrimination or where there is a general lack of respect for human rights (Braunschweig and Carballo, 2002). Migrant workers are often concentrated in poor areas with substandard housing. Temporary and seasonal migrant workers face serious housing problems and tend to cluster in makeshift accommodation or in shanty-towns. There is a vicious cycle linking poor housing, hazardous working conditions, social disruption and the spread of disease among migrant workers (Braunschweig and Carballo, 2002).

Migrant workers and their families face higher risks of HIV/AIDS infection than non-migrants: one study in South Africa has found that migrant workers and their partners are about twice as likely to be infected with HIV as non-migrant couples (Braunschweig and Carballo, 2002). According to the World Economic Forum, almost 5 per cent of (internal) migrant workers in China and India are HIV-positive (World Economic Forum, 2003). While Filipinos working and living abroad constitute 10 per cent of the population of the Philippines, they constitute 28 per cent of the total number of reported HIV/AIDS cases (World Economic Forum, 2002).

The ILO code of practice on HIV/AIDS in the world of work provides important guidelines on the development of workplace policies and programmes on HIV/AIDS (ILO, 2001d). The code recognizes the workplace as a major entry point in the fight against HIV/AIDS, with trade unions and employers playing an important role. However, the fact that migrant workers are often not allowed to join trade unions and participate in their activities can be an obstacle to the campaign for health and safety.

3.7 Social security and migrant workers

The ILO defines social security as “the protection which society provides for its members, through a series of public measures, against the economic and social distress that would otherwise be caused by the stoppage or substantial reduction of

earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old-age and death and the provision of medical care and subsidies to families with children” (ILO, 1984, p. 3).

Migrant workers experience particular difficulties in the field of social security, as social security rights are usually related to nationality, periods of employment, contributions or residency. They run the risk of losing entitlements to social security benefits in their country of origin through absence, and may at the same time encounter restrictions in the destination country on their coverage by its national social security system. It is therefore of particular importance for migrant workers (1) to have the same access to coverage and entitlement to benefits as native workers; (2) to maintain acquired rights when leaving the destination country, including exporting the benefits they have earned; and (3) to benefit from the accumulation of rights acquired in different countries (Kulke, 2006; OSCE, IOM and ILO, 2007, section VII.5).

While no exact estimates are available, it can be assumed that only a small fraction of the estimated 105 million migrant workers across the world are likely to enjoy social security benefits. Most of the migrant workers who do enjoy some degree of social security protection come from OECD countries. A World Bank study identifies four regimes with regard to the access of migrant workers to social security in host countries and the portability of benefits to home countries (see table 3.4). Migrant workers in the informal economy, whether in regular or irregular status, have the least coverage, and the World Bank study estimates this group to be about 20 per cent of international migrants. The situation also differs across the various regions of the world.

An ILO study on ASEAN social security systems affirms that in the majority of the world’s countries, including many ASEAN members, the legislative barriers limiting migrant workers’ access to social security benefits are compounded by the fact that social security systems cover only part of the labour force. Tamagno (2008, p. vi) notes:

Moreover, in some countries, migrant workers are often employed in sectors of the labour market that either are not covered by social security or in which compliance with social security laws is poorly enforced. Even when migrant workers are employed in covered sectors and social security laws are enforced, irregular migrant workers are usually disqualified from social security benefits due to the fact that they are undocumented.

Most of the migrant-receiving Gulf States, which account for a large share of Asian migrant workers, exclude foreigners from the public social security

Table 3.4 Estimated social security coverage of international migrants

Regime	Types of social security/groups covered	% of international migrants (estimated)
Regime I: Access to social security benefits and advanced portability regulated by bilateral agreements between sending and receiving countries	Migrants originating from and living in Europe, Latin America or Oceania are covered by bilateral agreements	20
Regime II: Access to social security benefits in the absence of bilateral agreements	Access to portable benefits for regular migrants in an uncoordinated manner depending on the national social laws of receiving countries and sending countries	55
Regime III: No access to portable social security benefits in the host country	Migrant workers cannot even contribute on a voluntary basis to long-term benefits such as old-age pensions in the host country. Access to short-term benefits like health care might be granted. Some Gulf region countries fall into this category	5
Regime IV: Regular and irregular migrants who participate in the informal economy of the host country	These migrants have no or very limited access to social protection and usually have no acquired and portable rights to long-term benefits	20

Source: Adapted from Holzmann, Koettl and Chernetsky, 2005.

system and make no provisions for migrant workers, even on a voluntary basis (Holzmann, Koettl and Chernetsky, 2005). Migrant workers may, however, have access to workplace injury compensation and health-care benefits based on their contributions.

It has been estimated that workers in irregular status in the United States contribute close to US\$6–7 billion to the social security system without receiving any benefits. One estimate shows that about 3.8 million households headed by workers in irregular status generated \$6.4 billion in social security taxes in 2002 (Porter, 2005).

There are several mechanisms for extending social security coverage to migrant workers. The most promising is the conclusion of social security agreements – treaties which coordinate the social security schemes of two or more countries to eliminate, or at least reduce, the barriers to coverage migrant workers often encounter. Multilateral agreements on social security offer great advantages

because these agreements set common standards and rules for coordinating the social security systems of countries party to the agreement. In particular, a multilateral agreement ensures equal treatment of all workers, irrespective of their countries of origin, with regard to their rights and entitlements under all the participating countries' social security systems. In a network of bilateral agreements, on the other hand, migrant workers in a country might have different rights and entitlements, depending on the terms of the bilateral agreement between their countries of origin and the country of employment. The ILO international instruments on social security discussed in section 4.3.7 below address these issues.

The ILO Multilateral Framework on Labour Migration strongly encourages ILO member States to base their relevant national laws and policies on the relevant ILO social security Conventions and Recommendations and promotes the conclusion of bilateral, regional and multilateral social security agreements to guarantee social security coverage and benefits, as well as the portability of social security entitlements to migrant workers.

The coverage of migrant workers depends on the network of social security agreements among countries. These are common among industrialized countries. Several multilateral instruments adopting the European model have also been concluded among developing countries belonging to economic communities: examples are the Caribbean Community (CARICOM) and Common Market Agreement on Social Security and the general Convention on Social Security adopted by the Economic Community of West African States (ECOWAS). Out of 20 social security agreements concluded between the 12 major migrant-sending and migrant-receiving countries, 15 were concluded between developed countries while only five agreements were concluded between developing and developed countries.¹⁹

There are a number of best practice examples regarding social security for migrant workers. One example is the European–Mediterranean agreements of the 1990s between the EU and the Maghreb countries (Algeria, Morocco and Tunisia), which contain far-reaching provisions on the portability of social security benefits for migrant workers from the Maghreb working in the EU. The EU also promotes cooperation in the area of social security with other neighbouring countries. Since the Barcelona Declaration in 1995, the EU has negotiated multilateral association agreements with all Euro-Mediterranean partners. As the sections on the coordination of social security use more or less the same social security provisions, they can serve as models for further association agreements with other countries and the EU.

¹⁹ For details, see Kulke (2006).

The CARICOM Agreement on Social Security was created with a view to coordinating the social security legislation of its member States. The Agreement, whose provisions are largely based on the model provisions for the conclusion of bilateral or multilateral social security instruments set out in the ILO Maintenance of Social Security Rights Recommendation, 1983 (No. 167), entered into force in 1997. Thirteen member States have so far signed and ratified it, and 12 of these have enacted domestic legislation to implement the agreement.

The 2003 Andean Social Security Instrument, signed by the Plurinational Republic of Bolivia, Colombia, Ecuador, Peru and the Bolivarian Republic of Venezuela is another comprehensive agreement.²⁰ The instrument provides that member countries must ensure that migrant workers and their beneficiaries receive “treatment equal to that of [their] own nationals in regard to social security benefits”. Latin American countries have entered into two other multilateral agreements on social security: the 1968 *Convenio Iberoamericano de Seguridad Social*, signed by Argentina, the Plurinational Republic of Bolivia, Chile, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Spain, Uruguay and the Bolivarian Republic of Venezuela (Fick and García Flechas, 2007), and the 2005 *Acuerdo Multilateral de Seguridad Social del Mercado Común del Sur*, signed by Argentina, Brazil, Paraguay and Uruguay; a further multilateral agreement was signed in 2007, called the *Multilateral Convention on Social Security*.²¹

In Africa, a multilateral initiative that represents good practice is taking place in the eastern African countries of Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania, which together make up the East African Community (EAC). The EAC has embarked on a four-stage programme of regional integration, of which the first stage, a customs union, has already been successfully completed. The second stage, an EAC common market, is at an advanced stage of planning. A Protocol for the Establishment of the East African Community Common Market was signed in November 2009. This enshrines the principle of the free movement of both persons and labour between the EAC partner States. The protocol also enshrines the right of establishment and the right of residence of all EAC nationals. However, in order for the principle of free movement of persons and labour and the rights of establishment and residence to be fully realized, there must be accompanying measures to remove the

²⁰ Available online at: <http://www.comunidadandina.org/ingles/treaties.htm>, Decision 546 (accessed 4 Jan. 2010).

²¹ This document was signed by Andorra, Argentina, the Plurinational Republic of Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Uruguay and the Bolivarian Republic of Venezuela.

disadvantages in relation to social security that can arise when persons move from one country to another. For this reason, the EAC secretariat, with the ILO's technical assistance, has drafted an annex on social security to be added to the protocol.

The recent proliferation of temporary migration and circular migration schemes has raised the relevance of this issue. The ILO is working with the Government of Mauritius to develop and negotiate bilateral social security agreements with Canada and France, within the circular migration and labour mobility partnerships, which would benefit all Mauritian migrant workers in these two countries.

3.8 Conclusions

Migrant workers face multiple disadvantages. As temporary workers they often have limited legal rights. Most can find employment only in sectors where wages are squeezed because producers are at the highly competitive end of global production chains. Trends towards more flexible employment relationships, gender discrimination, abuses in recruitment and irregular status compound these disadvantages and have increased the vulnerability of most migrant workers. Governments have a responsibility to comply with the equal treatment pledges in their constitutions and international treaties. Much needs to be done to ensure the equal treatment of migrant workers, especially those most liable to abusive situations, such as domestic workers, and to minimize exploitation, forced labour, smuggling and trafficking. There is thus a large unfinished agenda in the promotion and protection of rights of migrant workers worldwide.

Examples of good practice in various regions of the world can inspire improvements in working conditions for migrant workers. These include, for example, having competent institutions supervise recruitment and migration; encouraging migrants to sign contracts whose provisions have been approved by competent national authorities; including migrant workers in work-related health programmes; and establishing specialized agencies to monitor and reduce discrimination. Workers' organizations have established networks to provide greater protection for migrant workers and have adopted an action plan against racism and discrimination. In several countries, private businesses have taken the initiative to improve housing, living conditions and health care for migrant workers.

The complexity of issues arising from migration means that responses must be comprehensive and multi-faceted, and based on international norms. A better

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understanding of the economic forces that shape working conditions in different sectors is also needed. A sound framework for improving the conditions of employment for migrant workers will need to draw on multilateral or interstate cooperation, good governance, labour market regulation, joint liability of subcontractors and enterprises or employers, appropriate laws and their enforcement, labour inspection, and effective mobilization of social partners and other concerned agencies, as elaborated in international instruments and the ILO Multilateral Framework on Labour Migration. The next chapter will look at the international instruments protecting the rights of migrant workers which form the foundation of a rights-based approach to labour migration.

PART II

**International labour migration:
Towards better governance**

International standards on labour migration

4

4.1 Introduction

It is clear from the previous chapters that international migration cannot be left to market forces alone, but should be subject to governance and regulation at the international level. International standards provide a framework for cooperation between States at either end of the migration process, and for national legislation, policy and practice. Standards provide principles and guidelines for the governance of migration, protect migrant workers and safeguard States' interests. The ILO has pioneered the development of labour standards for migrant workers since the 1930s. The international community has developed several complementary legal instruments covering areas such as human rights, labour and the criminal trade in human beings. The regulatory system is multilayered, reflecting efforts to protect migrant workers' rights and to address issues related to migration at the multilateral, regional, bilateral and national levels. This chapter will review the international normative framework on labour migration, covering both ILO standards and other international standards, particularly those developed by the UN.

There are several sets of international standards which provide rights to migrant workers. Some are broad and general, applying to all human beings; others are narrower, applying variously to all workers, to all migrant workers or only to migrant workers in regular status. International standards can be found in international instruments, in ILO standards on workers and other ILO standards more specifically on migrant workers, in UN Conventions and instruments, and in other international agreements between or among countries covering migrant

workers. The discussion of standards below will begin with those conferring the most basic rights on all human beings, moving on to those applying to workers in general, and then to those specifically targeted on migrant workers.

4.2 International instruments guaranteeing human rights

Migrant workers, whatever their status, are always entitled to human rights, as are all members of the human family in every part of the world. There are three international instruments which together comprise the International Bill of Human Rights – the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights.¹

4.2.1 *Universal Declaration of Human Rights*

The Universal Declaration of Human Rights, adopted by the UN General Assembly in 1948, is universal in scope.² It applies to every member of the human family in every part of the world, regardless of whether or not States have formally accepted its principles, and grants anyone the right to file a complaint.³ The Declaration establishes basic rights for “human beings”, rights that are held by all persons, “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2). Rights particularly relevant for migrant workers are the right to be free from slavery or servitude; equality before the law and equal protection of the law; protection against discrimination; effective remedy by national tribunals; freedom from arbitrary arrest, detention or exile; freedom of movement and residence; peaceful assembly and association; and social security. There are Articles specifically addressing work and employment, granting: the right to work; free choice of employment; just and favourable conditions of work and protection against unemployment; equal pay for equal work without any discrimination; just and favourable remuneration; the formation and membership of trade unions; rest

¹ Fact Sheet No. 2 (Rev. 1), The International Bill of Human Rights, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf> (accessed 4 Jan. 2010).

² Available at: <http://www.un.org/en/documents/udhr/> (accessed 4 Jan. 2010).

³ Fact Sheet No. 2 (Rev. 1).

and leisure, including reasonable limitation of working hours and periodic holidays with pay; adequate standard of living; and security in the event of unemployment, sickness, disability or other lack of livelihood (Articles 23, 24 and 25).

4.2.2 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights was adopted by the UN General Assembly in 1966 and is legally binding on those States that have accepted it by ratification or accession.⁴ It speaks of rights for “all members of the human family” and for “everyone”. The rights are to be exercised “without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2.2). Among the economic rights is the right to work, including the rights to receive technical and vocational training; to just and favourable conditions of work; to fair wages and equal remuneration for work of equal value; to safe and healthy working conditions; to equal opportunity for promotion in employment; to rest, leisure and reasonable limitation of working hours and holidays with pay; and to form and join trade unions and to take strike action (Articles 6–8).

4.2.3 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights was also adopted by the UN General Assembly in 1996 and is legally binding on those States that have accepted it by ratification or accession.⁵ It, too, is inclusive of all human beings, speaking of “all members of the human family” and “all individuals”. It applies to all individuals within the territory “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (Article 2.1). All are equal before the law; discrimination is prohibited, and equal and effective protection against discrimination is guaranteed for everyone. The Covenant states that no one shall be held in slavery or servitude or required to perform forced or compulsory labour. It also provides the right to form and join trade unions (Articles 8 and 22).

⁴ Available at: <http://www2.ohchr.org/english/law/cescr.htm> (accessed 4 Jan. 2010); Fact Sheet No. 2 (Rev. 1).

⁵ Available at: <http://www2.ohchr.org/english/law/ccpr.htm> (accessed 4 Jan. 2010); Fact Sheet No. 2 (Rev. 1).

4.3 ILO Conventions and other instruments

Since ILO Conventions apply to workers, they generally apply to all workers. Thus, unless otherwise stated, all ILO Conventions apply to migrant workers, who should not receive differential treatment because they are not nationals of the countries in which they work. While some Conventions state explicitly that there are no exclusions for any workers, other Conventions cover migrant workers by virtue of the fact that they do not specifically exclude them from any provision. By ratifying an ILO Convention, States commit to applying it in national law and practice and submitting reports to the ILO at regular intervals regarding its application.⁶ Complaints alleging non-compliance with a ratified Convention may be filed against a member State.

ILO instruments applicable to migrant workers can be categorized as follows:

- core labour standards or fundamental Conventions which apply to all persons, including migrant workers;
- labour standards which apply to all workers in the workplace, including migrant workers; and
- instruments dealing specifically with migrant workers (Wickramasekara, 2007c).

4.3.1 *Declaration on Fundamental Principles and Rights at Work*

In 1998, the ILO turned its focus on eight Conventions in four key areas in its Declaration on Fundamental Principles and Rights at Work.⁷ These eight fundamental Conventions contain what are considered human rights at work. All member States of the ILO have an obligation arising from the very fact of membership to comply with these core Conventions, regardless of whether or not they have ratified them. Apart from the Declaration's Conventions applying to migrant workers, the Declaration specifically states that "the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers".

⁶ The ILO system for monitoring and supervising standards will be discussed more fully in section 4.5 below.

⁷ Available at: <http://www.ilo.org/declaration/thedeclaration/textdeclaration/index.htm> (accessed 4 Jan. 2010).

The four fundamental principles are:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect to employment and occupation.

4.3.2 Freedom of association and collective bargaining

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87),⁸ and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98),⁹ are the two basic Conventions providing freedom of association. Convention No. 87 guarantees the right of workers and employers to establish and join organizations of their own choosing without previous authorization. Convention No. 98 protects workers and employers who exercise the right to organize, forbids interference in the activities of workers' and employers' organizations, and promotes voluntary collective bargaining. Representation by trade unions and the right to a collective voice at work are important means through which migrant workers, just like other workers, can secure other labour and employment rights and improve their working conditions.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA) have repeatedly reaffirmed the fundamental rights of workers, including migrants and those in irregular status, to form and join trade unions and to be protected against any act of discrimination on the grounds of trade union activities.¹⁰

⁸ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 150 ratifications as of 31 Dec. 2009.

⁹ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 160 ratifications as of 31 Dec. 2009.

¹⁰ The CFA examines complaints about violations of freedom of association, whether or not the country concerned has ratified the relevant Conventions. The CFA is composed of an independent chairperson and three representatives each of Governments, Employers and Workers. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the ILO Governing Body and makes recommendations on how the situation can be remedied. Where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the Committee of Experts. With respect to migrant workers in an irregular situation, the CFA considered that Article 2 of Convention No. 87 “recognize[d] the right of workers, without distinction whatsoever, to establish and join organizations of their own choosing without previous authorization. The only permissible exception to Convention No. 87 [was] that set out in Article 9 concerning the armed forces and the police” (ILO, 2002d, para. 561).

Overly restrictive nationality provisions related to these rights risk depriving migrant workers of the right to elect their representatives in full freedom, especially in sectors where they account for a significant proportion of the workforce. National legislation should allow foreign workers to take up trade union office, at least after a reasonable period of residence in the country in which they are working (ILO, 1994, para. 118).

4.3.3 Elimination of forced labour

The Forced Labour Convention, 1930 (No. 29),¹¹ and the Abolition of Forced Labour Convention, 1957 (No. 105),¹² prohibit forced and compulsory labour for all persons, irrespective of the type or location of their economic activity. Convention No. 29 prohibits work exacted under the menace of penalty where the individual has not offered him- or herself voluntarily. It prohibits forced labour for private entities and severely restricts its use by public authorities to imminent necessity, when it requires that wages be paid to workers. Convention No. 105 requires States to implement “effective measures to secure the immediate and complete abolition of forced or compulsory labour”.

The ILO has defined the incidence of forced labour in relation to migrant workers, particularly as a result of cross-border trafficking, as a major area of concern (see esp. ILO, 2007b; also 2005a). Migrant workers in irregular status are more at risk than others of being lured into situations of forced labour, including trafficking. The illegal exaction of forced labour often implies that the migrant worker concerned is in irregular status, whether as a result of irregular or undocumented entry or stay, or to irregular employment.

ILO supervisory bodies have expressed grave concern about the illegal exaction of forced labour, including debt bondage of migrant workers in both agricultural and non-agricultural sectors, and trafficking of men and women migrant workers in agriculture, the sex industry and domestic service.¹³ They have also expressed concern about the absence of penal sanctions on those perpetrating forced labour practices involving migrant workers and the inadequacy of penal

¹¹ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 173 ratifications as of 17 Nov. 2008.

¹² Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 171 ratifications as of 17 Nov. 2008.

¹³ Concerned by the increase in trafficking of men, women and children for purposes of forced labour in areas such as domestic service, agriculture, factory work and the sex industry, in 2001 the CEACR adopted a general observation concerning labour trafficking under Convention No. 29: see ILO (2001e), p. 119.

protection for those subject to them. Such practices have included, for example, the use of excessive power by employers over migrant workers in irregular status, in particular domestic workers; the retention or non-payment of wages; contract substitution and retention of passports; long working hours; and physical violence (ILO, 2003h). The absence or inadequacy of measures, including legislation, taken against the trafficking of women and children into forced prostitution, or forced labour in agriculture abroad, indicate the lack of commitment or institutional capacity to address the issue seriously.

4.3.4 *Abolition of child labour*

The elimination of child labour is covered by the Minimum Age Convention, 1973 (No. 138),¹⁴ and the Worst Forms of Child Labour Convention, 1999 (No. 182).¹⁵ Convention No. 138 prescribes specific age limits for the admission of children to work, including a prohibition on children under 18 years engaging in hazardous work. Convention No. 182 calls for “immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency”. It defines the worst forms of child labour as (a) slavery and forced labour, including child trafficking and forced recruitment for armed conflict; (b) child prostitution and pornography; (c) production and trafficking of drugs; and (d) work likely to harm the health, safety or morals of children. The exact types of work to be prohibited as hazardous work under category (d) are to be determined at the national level, after consultation with employers’ and workers’ organizations and taking into consideration relevant international standards.

Most comments by the supervisory bodies on migrant child labour have been issued under Convention No. 29 and relate to the lack of penal sanctions on those perpetrating practices such as the trafficking of children into prostitution, domestic service, agriculture and vending, the use of children as camel jockeys, and the forced labour of migrant children in plantations.

¹⁴ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 151 ratifications as of 17 Nov. 2008.

¹⁵ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 169 ratifications as of 17 Nov. 2008. Although Convention No. 182 was adopted relatively recently, both this Convention and Convention No. 138 have received a large number of additional ratifications in the past few years. The ILO supervisory system is in the early stages of monitoring the implementation of these instruments in many countries of the world.

4.3.5 Equality of opportunity and treatment

The Discrimination (Employment and Occupation) Convention, 1958 (No. 111),¹⁶ requires ratifying States to declare and pursue a national policy aimed at promoting equality of opportunity and treatment and eliminating all forms of discrimination in employment and occupation based on race, colour, sex, religion, political opinion, national extraction and social origin.¹⁷ The Equal Remuneration Convention, 1951 (No. 100),¹⁸ requires States to pursue a policy of equal remuneration for work of equal value carried out by men and women workers.

The two Conventions apply to nationals and non-nationals alike without distinction of status. Although nationality is not listed among the grounds of discrimination expressly prohibited by Convention No. 111, ILO supervisory bodies have repeatedly affirmed that migrant workers are protected by this instrument in so far as they are victims of discrimination in employment and occupation on the basis of any of the expressly prohibited grounds of discrimination (see ILO, 2001e, individual observations concerning Conventions Nos. 97 and 111, pp. 369–74 and 493–95).¹⁹

4.3.6 Conventions particularly relevant to migrant workers

As stated earlier, ILO Conventions generally apply to all workers, including migrant workers. In addition to the above eight fundamental Conventions, other Conventions are particularly relevant to migrant workers through their engagement with certain aspects of their employment as migrants and certain sectors of work in which they are concentrated. These include the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Protection of Wages Convention, 1949 (No. 95), the Minimum Wage Fixing Convention, 1970 (No. 131), the Plantations Convention, 1958 (No. 110), the Occupational Safety and Health Convention, 1981 (No. 155), the Occupational Health Services Convention, 1985 (No. 161),

¹⁶ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 168 ratifications as of 17 Nov. 2008.

¹⁷ For a discussion of the distinctions between race, national extraction and other terms such as national origin, see O'Rourke (2008).

¹⁸ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 166 ratifications as of 17 Nov. 2008.

¹⁹ A proposal has been submitted to the ILO Governing Body to adopt a Protocol to Convention No. 111 that would allow member States to formally accept additional grounds on which discrimination would be prohibited. The grounds proposed include nationality. See ILO (2004e), paras 8–15.

the Safety and Health in Construction Convention, 1988 (No. 167), the Safety and Health in Mines Convention, 1995 (No. 176), the Safety and Health in Agriculture Convention, 2001 (No. 184), the Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172), the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19),²⁰ the Nursing Personnel Convention, 1977 (No. 149), the Maternity Protection Convention, 2000 (No. 183), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).²¹

4.3.7 Conventions on social security

Migrant workers are confronted with particular difficulties in the field of social security, as social security rights are usually related to periods of employment, contributions or residency. They run the risk of losing entitlements to social security benefits in their country of origin due to absence, and may at the same time encounter restrictive conditions in the destination country with regard to their coverage by its national social security system. As noted in section 3.7 above, it is of particular importance for migrant workers (1) to have the same access to coverage and entitlement to benefits as native workers, (2) to maintain acquired rights when leaving the destination country, including the right to export the benefits they have earned, and (3) to benefit from the accumulation of rights acquired in different countries.²²

There are two Conventions and an accompanying Recommendation on social security rights that aim at equal treatment with national workers. These are the Equality of Treatment (Social Security) Convention, 1962 (No. 118),²³ the Maintenance of Social Security Rights Convention, 1982 (No. 157),²⁴ and the Maintenance of Social Security Rights Recommendation, 1983 (No. 167).²⁵

²⁰ There were 121 ratifications as of 18 Nov. 2008.

²¹ The texts of all these Conventions are available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010).

²² Social security benefits are traditionally divided into nine different branches: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit. For a detailed overview of ILO instruments on social security, see Humblet and Silva (2002), pp. 41–45.

²³ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 37 ratifications as of 18 Nov. 2008.

²⁴ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were four ratifications as of 18 Nov. 2008.

²⁵ Available at: <http://www.ilo.org/ilolex/english/recdisp1.htm> (accessed 4 Jan. 2010).

All current ILO social security standards stipulate that the personal scope of coverage applies irrespective of nationality,²⁶ and almost all contain similar clauses on equality of treatment for native and foreign workers in the destination country. However, the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), specifically establishes the right to equality of treatment for foreign workers of any other State that has ratified the Convention with regard to workmen's compensation for industrial accidents. Convention No. 118 provides for equality of treatment with regard to the nine branches of social security (see n. 22 above). For each of the nine branches that it accepts, a State party to the Convention undertakes to grant within its territory to nationals of any other State that has ratified the Convention equality of treatment with its own nationals. The provisions in both Conventions are thus dependent on reciprocity.

Other social security instruments also contain special non-discrimination clauses, for example the Social Security (Minimum Standards) Convention, 1952 (No. 102).²⁷ Part XI of this Convention is entirely devoted to equality of treatment of non-national residents. Article 68 of Convention No. 102 applies to all branches of social security, and calls for nationals and non-nationals to have the same rights. It also provides, however, for some flexibility permitting exclusions of non-nationals in cases where benefits or parts of benefits are payable wholly out of public funds.

Convention No. 118 further provides for the maintenance of acquired rights and the export of benefits. In essence, a State party to Convention No. 118 has to ensure the provision of benefits abroad in a specific branch for its own nationals and for the nationals of any other State that has accepted the obligations of the Convention for the same branch, regardless of the place of residence of the beneficiary. Convention No. 19 also provides for the export of benefits for foreign workers covered by the Convention, but only when the ratifying State provides for such export of benefits for its own nationals.

Convention No. 157 and Recommendation No. 167 institute an international system for ensuring that workers who transfer their residence from one country to another maintain their acquired social security rights and that benefits acquired abroad are effectively provided when migrants return to their country of origin. Under this Convention, the maintenance of acquired rights has to be

²⁶ Their applicability to migrant workers is demonstrated by the fact that the ILO supervisory bodies have made specific reference to migrant workers in the context of their regular supervision: for example, with respect to application of the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121), and of the Medical Care and Sickness Benefits Convention, 1969 (No. 130).

²⁷ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 44 ratifications as of 18 Nov. 2008.

ensured for the nationals of other States party to the Convention in any branch of social security in which the States concerned have legislation in force. Within this context, the Convention provides for the conclusion of bilateral or multilateral social security agreements. The accompanying Recommendation contains model provisions for such agreements. Other social security Conventions, such as the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), contain specific clauses providing for the maintenance of acquired rights.

For regular and longer-term migrant workers, equality of treatment between native and migrant workers in the country of employment with regard to existing social security benefits seems to be the rule. Regarding the export of benefits abroad, equality of treatment also seems to be the rule; however, possibilities for exporting benefits vary greatly depending on the country and the branch of social security in question.²⁸ Restrictions most often concern unemployment benefits, so that temporary migrant workers are at a comparative disadvantage with respect to this contingency. In most cases where migrant workers carry out work in different countries over a period of time, they are entitled to accumulate and maintain rights.

4.3.8 Convention on private employment agencies

The Private Employment Agencies Convention, 1997 (No. 181),²⁹ is particularly relevant to migrant workers, especially since private agencies are now heavily involved in the transfer of workers between countries. The Convention provides that States implement a system of licensing or certification of agencies. It prohibits the denial of workers' rights to freedom of association and collective bargaining; the practice of discrimination against workers; and the charging of fees to workers, directly or indirectly. With regard to migrant workers, States are required to ensure adequate protection for, and prevent abuses against, those recruited or placed in their territory by private recruitment agencies. States are encouraged to enter into bilateral agreements to prevent abuses and fraudulent practices against migrant workers who use private recruitment agencies and must have procedures to investigate complaints by workers. In addition, there must be adequate protection for, among other things, minimum wages, working time and other working conditions, social security benefits, and occupational safety and health.

²⁸ Finland, for instance, allows both native and migrant workers to export only long-term benefits (old-age benefit, employment injury benefit, invalidity benefit and survivors' benefit), while Egypt does not limit the benefits that can be exported.

²⁹ Available at: <http://www.ilo.org/ilolex/english/convdisp1.htm> (accessed 4 Jan. 2010). There were 21 ratifications as of 18 Nov. 2008.

4.3.9 Migrant worker Conventions

There are two ILO Conventions and two Recommendations specifically regarding migrant workers. These are the Migration for Employment Convention (Revised), 1949 (No. 97),³⁰ and its accompanying Recommendation, the Migration for Employment Recommendation (Revised), 1949 (No. 86);³¹ and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143),³² and its accompanying Recommendation, the Migrant Workers Recommendation, 1975 (No. 151).³³

Conventions Nos. 97 and 143 both apply to persons who migrate from one country to another with a view to being employed other than on their own account, and cover issues concerning the entire migratory process: that is, emigration, transit and immigration. With a few exceptions, they do not make a distinction between permanent and temporary migrant workers. The provisions in these instruments do not depend on reciprocity, and their coverage of migrants who are employed includes those refugees and displaced persons who are employed (ILO, 1999a, para. 101). There are exceptions to the application of both Conventions,³⁴ namely in relation to seamen, frontier workers, and artists and members of the liberal professions who have entered the destination country on a short-term basis. Convention No. 143 also contains some exclusions for trainees and employees admitted temporarily to carry out specific duties or assignments (ILO, 1999a, para. 115 and nn. 19–22).

The 1949 Convention and Recommendation were prompted by interest in facilitating the movement of surplus labour from Europe to other parts of the world in the aftermath of the Second World War. Thus, Convention No. 97 and Recommendation No. 86 focus on standards applicable to the recruitment of migrants for employment and their conditions of work. These instruments cover only those migrant workers in regular status. The Convention includes provisions on facilitating the departure, journey and reception of migrant workers. It requires that migrant workers be treated no less favourably than nationals in areas including pay, working hours, holidays with pay, apprenticeship and training,

³⁰ Available at: <http://www.ilo.org/ilolex/english/convisp1.htm> (accessed 4 Jan. 2010). There were 48 ratifications as of 18 Nov. 2008.

³¹ Available at: <http://www.ilo.org/ilolex/english/recdisp1.htm> (accessed 4 Jan. 2010).

³² Available at: <http://www.ilo.org/ilolex/english/convisp1.htm> (accessed 4 Jan. 2010). There were 23 ratifications as of 18 Nov. 2008.

³³ Available at: <http://www.ilo.org/ilolex/english/recdisp1.htm> (accessed 4 Jan. 2010).

³⁴ Under Article 11 of Convention No. 143, the named categories are excluded from the scope of Part II only.

trade union membership and collective bargaining, and, with some limitations, social security. The Convention has two Annexes, one covering those recruited under government-sponsored arrangements for group transfers and one covering those recruited under other means.

Recommendation No. 86 supplements Convention No. 97 with more detail on such matters as providing information to migrants, facilitating migration, providing access to schools for migrants and their families, providing medical assistance, selecting migrants for employment, family reunification and protection upon loss of employment. An Annex contains a model agreement on temporary and permanent migration for employment that origin and destination countries can use as a guide in drawing up agreements to arrange the transfer of groups of migrant workers. The model agreement includes provisions concerning the equal treatment of migrants and natives and appropriate arrangements for acquired rights in the area of social security. It also advocates the development of model employment contracts to govern the situation of migrant workers.

By the time the 1975 Convention and Recommendation were developed, governments had become increasingly concerned about unemployment and the increase in irregular migration. The focus shifted from facilitating the migration of surplus labour to bringing migration flows under control. Convention No. 143 and Recommendation No. 151 resulted from the first multilateral attempt to deal with migrant workers in irregular status and to call for sanctions against traffickers.

Thus Convention No. 143 covers migrant workers in both regular and irregular status, with some provisions covering all migrant workers and other provisions granting additional rights to those in regular status. The Convention first asserts that the basic human rights of all migrant workers must be respected. It places a duty upon States to determine whether there are illegally employed migrant workers in their territories and to take all necessary and appropriate measures to suppress clandestine movements of migrants for regular or irregular/illegal employment. Measures, including the imposition of sanctions, must be taken against the organizers of these movements and against those who employ workers who have immigrated in illegal conditions, in order to prevent abuses.³⁵ Those in irregular status are granted equality of treatment in respect of rights arising out of their past employment as regards remuneration, social security and other benefits. They are also entitled to equality of treatment in working conditions. In other words, they are entitled to equal treatment – as workers – for

³⁵ The Convention does not, of course, provide for sanctions against the workers themselves consequent on their irregular status.

work they have actually performed. For those migrant workers in regular status, Convention No. 143 provides both equality of treatment (as in Convention No. 97) and equality of opportunity. This equality is to be given in respect of employment and occupation,³⁶ social security, trade union rights, cultural rights, and individual and collective freedoms.

Recommendation No. 151 supplements Convention No. 143 with more detail on equality of treatment and opportunity for those migrant workers in regular status and on equality of treatment for those in irregular status. It additionally includes provisions on social policy, family reunification, protecting the health of migrant workers, social services, and employment and residence.

In 1998, the CEACR conducted a detailed examination of the instruments relating to migrant workers and concluded that the international context had changed since their formulation. As examples of contextual changes, it cited the declining role of state leadership in the world of work (demonstrated by, among other things, the increasing role of private recruitment agencies), the increasing proportion of women among migrants for employment, the increase of temporary migration in place of migration for permanent settlement, the growth of irregular migration and the development of certain means of transport. The CEACR further noted that Conventions Nos. 97 and 143 did not provide for the elaboration and establishment of a national migration policy, in consultation with employers' and workers' organizations, within the framework of overall national policy.³⁷

4.3.10 The ILO Multilateral Framework on Labour Migration

The ILO placed labour migration and the rights of migrant workers at the forefront of its agenda in 2004, when it undertook a General Discussion on Migrant Workers at the 92nd Session of the ILC. As stated earlier, one outcome of this Discussion was the adoption by consensus of a resolution on a fair deal for migrant workers in the global economy. That, in turn, called for an ILO plan of action on labour migration. The centrepiece of the plan of action was the development of a rights-based Multilateral Framework on Labour Migration.

In 2005, the ILO convened a tripartite meeting of experts, with representatives from all regions of the world, who debated and adopted the ILO Multilateral Framework on Labour Migration: Non-binding principles and

³⁶ Equality of treatment between regular migrants and nationals with regard to admission to employment had earlier been provided in Recommendation No. 86.

³⁷ See, however, Recommendation No. 151, para. 1.

guidelines for a rights-based approach to labour migration. In 2006, the ILO Governing Body approved the publication and dissemination of this Framework. Available in Arabic, Chinese, English, French, Russian and Spanish, it is intended to be a guide in the development, strengthening, implementation and evaluation of national, regional and international labour migration policies and practices for improving the governance, promotion and protection of migrant rights and promoting linkages between migration and development. The Framework has drawn in particular upon Conventions Nos. 97 and 143 and their accompanying Recommendations Nos. 86 and 151, as well as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The ILO Multilateral Framework on Labour Migration addresses the major issues faced by those making migration policy at national, regional and international levels and the important themes of decent work for all, governance of migration, protection of migrant workers, promoting migration–development linkages and expanding international cooperation. The Framework also advocates gender-responsive migration policies that address the special problems faced by women migrant workers. It sets out in one non-binding instrument principles and guidelines for migration policy and practice that can be used by governments and employers’ and workers’ organizations, as well as other stakeholders. At the same time, it recognizes the sovereign right of all nations to determine their own policies on migration.

The Framework addresses nine major areas and is composed of 15 broad principles, with guidelines under each principle for giving practical effect to them.³⁸ The nine areas are as follows:

- *decent work*, with a principle and guidelines addressing opportunities for decent and productive work for all men and women of working age, including migrant workers;
- *means for international cooperation on labour migration*, with a principle and guidelines on how governments, in consultation with employers’ and workers’ organizations, can engage in international cooperation to promote managed migration for employment purposes;
- *a global knowledge base*, with a principle and guidelines regarding the collection of knowledge and information on labour migration and its application to policy and practice;

³⁸ The Framework is printed in full at the end of this volume in Appendix I.

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- *effective management of labour migration*, with principles and guidelines on the role of international labour standards in government policy, expanding avenues for regular labour migration, social dialogue, and consultation with civil society and migrant associations;
- *protection of migrant workers*, with principles and guidelines on the human and fundamental labour rights of migrant workers, international labour standards, and the protection of the rights of migrant workers by the application and enforcement of national laws and regulations in accordance with the standards;
- *prevention of and protection against abusive migration practices*, with a principle and guidelines on measures to prevent abusive practices, migrant smuggling and trafficking in persons, and to inhibit irregular labour migration;
- *the migration process*, with principles and guidelines on promoting an orderly and equitable process of labour migration through all stages of migration, and licensing and supervising recruitment services;
- *social integration and inclusion*, with a principle and guidelines on promoting the social integration and inclusion of migrant workers, preventing discrimination against them, and measures to combat racism and xenophobia;
- *migration and development*, with a principle and guidelines on recognizing and maximizing the contribution of labour migration to development and to the alleviation of poverty in both origin and destination countries.

The Framework contains an annex of best practices, and the ILO maintains a database of good practices on labour migration, which it updates regularly.³⁹

4.4 UN and other international Conventions and instruments

4.4.1 Convention on migrant workers

The UN has also devoted a Convention to the protection of migrant workers and the furtherance of their rights. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides a broad range of protections for migrant workers and their families in

³⁹ Available at: <http://www.ilo.org/dyn/migpractice/migmmain.home> (accessed 4 Jan. 2010).

many areas of work and life.⁴⁰ Migrant workers in regular status are provided with certain additional rights. Briefly, some important provisions include the following.

Human rights are guaranteed to all migrant workers and their families who reside within the territory, without distinction of any kind. No migrant worker or member of his or her family shall be held in slavery or servitude. Certain freedoms are guaranteed, including freedom of religion and expression, as well as the right to privacy, liberty and security of person, and protection by the State against violence, physical injury, threats and intimidation, whether by the Government or private persons. Certain rights are guaranteed in the event of arrest, detention or legal proceedings, including the right to the free assistance of an interpreter, if necessary. The Convention requires States to make it unlawful for private individuals to confiscate, destroy or attempt to destroy migrant workers' identity or other documents authorizing their presence in the country. There are provisions in respect of rights related to expulsion, including the right to a reasonable opportunity to seek the payment of unpaid wages before departure. The Convention gives migrant workers the right to the assistance of the consulates of their own countries.

With regard to employment, all migrant workers are entitled to treatment not less favourable than that applying to nationals with regard to pay and conditions of work. All are entitled to join trade unions and engage in union activity, to receive emergency medical care, and to transfer their earnings out of the country upon the termination of their stay. Additional rights provided to those migrant workers in regular status include equality of treatment with nationals in vocational training, and access to housing and to social and health services. Measures are to be taken to promote family reunification and equality of treatment in education and social and health services for the family members of migrant workers. Those in regular status are not to be regarded as in irregular status if their jobs are terminated prior to the expiration of their work permits (except where a permit is expressly dependent on a particular job) and have the right to seek alternative employment. Migrant workers in regular status are further accorded equality of treatment with nationals with regard to protection against dismissal and to unemployment benefits.

Additional provisions contained in the Convention relate to the orderly return of migrant workers, preventing and eliminating irregular or clandestine movements, and employment of migrant workers in irregular status. These provisions include imposing sanctions against those who operate such movements or employ those in irregular status.

⁴⁰ Available at: <http://www2.ohchr.org/english/law/cmw.htm> (accessed 4 Jan. 2010). There were 39 ratifications as of Nov. 2008.

4.4.2 *Trafficking and smuggling*

The 2000 UN Convention against Transnational Organized Crime and its two protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air,⁴¹ are important international instruments in the fight against the trafficking and smuggling of persons. The Convention against Transnational Organized Crime covers criminal activity committed in or having effect in more than one State. It requires States to adopt legislation to establish certain criminal offences, contains provisions on such crimes as money laundering and corruption involving public officials, and requires law enforcement cooperation among signatory States. Even though it came into effect relatively recently, this Convention has been widely ratified.⁴²

Both the Trafficking Protocol and the Smuggling Protocol supplement and are to be interpreted with the Convention, but can be separately ratified.⁴³ The Trafficking Protocol is directed not only at preventing and combating trafficking in persons, but also at protecting and assisting victims, particularly women and children. Trafficking in persons is defined as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (Article 3(a)). Where any of these means have been used against an adult migrant, the consent of the victim is considered irrelevant. The trafficking of children (under age 18) is a violation irrespective of whether the use of threat or coercion can be demonstrated. Exploitation includes prostitution or sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The Trafficking Protocol has a section on assistance to and protection of victims of trafficking, which covers provision for their physical, psychological and social recovery, physical safety, privacy, medical assistance and employment, education and training opportunities; permitting them to remain in the territory temporarily or permanently; and assisting with repatriation. Additional sections cover prevention of trafficking, information exchange between States and other issues.

⁴¹ Available at: http://www.unodc.org/pdf/crime/a_res_55/res5525e.pdf (accessed 4 Jan. 2010).

⁴² There were 147 ratifications as of 26 Sep. 2008.

⁴³ There were 124 ratifications of the Trafficking Protocol and 116 ratifications of the Smuggling Protocol as of 26 Sep. 2008.

The Smuggling Protocol is directed against smugglers, that is, those who profit by assisting people to enter illegally into other countries. The individuals transported by smugglers, unlike those trafficked, voluntarily cross borders with the assistance of smugglers because they cannot cross through regular means. However, the Protocol explicitly states that smuggled migrants themselves shall not become liable to criminal prosecution under the Protocol (Article 5). It includes, among other things, provisions on suppressing the smuggling of migrants by sea, on strengthening border control, on travel and identity documents, and on programmes to increase public awareness of the criminal activity and of the serious risks to migrants involved in smuggling. There are provisions regarding protection and assistance measures for people smuggled, including protection of their rights to life and to freedom from torture or other cruel, inhuman or degrading treatment or punishment, protection against violence, assistance to migrants whose lives or safety are in danger, the special needs of women and children, and informing detained migrants that they have rights concerning notification to and communication with consular officers of their countries. There is a provision on the return of smuggled migrants, which addresses the facilitation of their return, giving due regard for their safety and dignity.

4.4.3 Other relevant international Conventions

Two additional international Conventions relevant to migrant workers should be mentioned, both of which are aimed at eliminating discrimination.

The first is the Convention on the Elimination of All Forms of Discrimination against Women.⁴⁴ It includes an Article directed at eliminating discrimination in employment on the basis of sex, addressing such issues as equal remuneration for work of equal value, and women's rights to the same employment opportunities available to men, to free choice of profession and employment, and to training, equal remuneration, social security, and health and safety. The Convention further specifies the prohibition of dismissal on the grounds of pregnancy. Also of relevance to migrant workers is a provision directing the suppression of trafficking in women and of the exploitation of women through prostitution.

The second is the International Convention on the Elimination of All Forms of Racial Discrimination, which provides for equality in employment.⁴⁵ This Convention does not prohibit discrimination on the basis of nationality, that

⁴⁴ Available at: <http://www.un.org/womenwatch/daw/cedaw/> (accessed 4 Jan. 2010).

⁴⁵ Available at: <http://www2.ohchr.org/english/law/cerd.htm> (accessed 4 Jan. 2010).

is, according to whether an individual is a citizen or a non-citizen, but does cover instances where migrant workers are victims of discrimination because of their “race, colour, descent, or national or ethnic origin”. It expressly does not affect the legal provisions of States concerning nationality, citizenship or naturalization, so long as such provisions do not discriminate against a particular nationality. Thus, for example, it would prohibit a destination country from giving preferential treatment to migrant workers from one particular country over migrant workers from another country, a practice which, unfortunately, does exist.

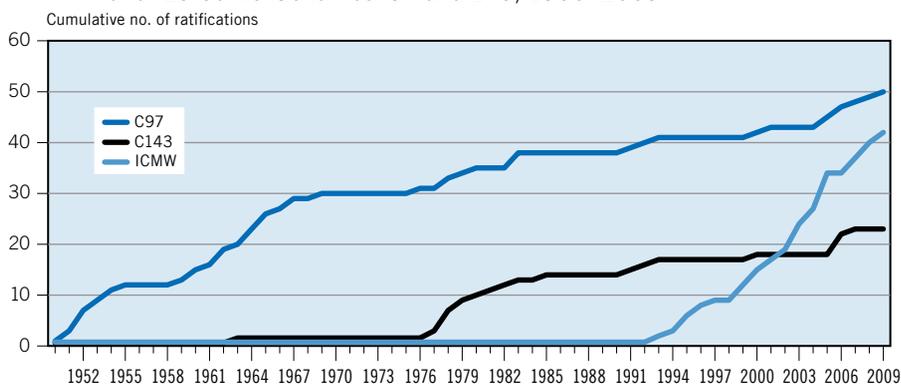
4.5 Promoting the ratification of international standards and increasing their impact

The impact of ILO and other international Conventions and instruments on migrant workers depends in the first place on the number of ratifying countries (see Appendix II). As figure 4.1 indicates, ratifications of the 1990 International Convention on the Rights of All Migrant Workers and Members of Their Families have gained momentum in recent years; by late 2008 the total number of ratifications had reached 39. This is the result of a broad-based ratification campaign, after ten years in which the measure received relatively little attention. Thus far, ratifications have tended to predominate among countries with net emigration, although Argentina, Ghana, Libyan Arab Jamahiriya, Mexico and Senegal, among other ratifying countries, are also destination countries for hundreds of thousands of migrants (some 2 million in the cases of Argentina and Mexico). National campaigns to promote ratification have been initiated in a number of industrialized countries.

As of late 2008, a total of 80 countries had ratified at least one of the three migrant worker Conventions. By November 2008, ILO Convention No. 97 had been ratified by 48 countries, nearly half of which are countries with net immigration; ILO Convention No. 143 had been ratified by 23 countries, including both those with net immigration and those with net emigration. The ratification levels of the other ILO and UN Conventions reviewed in this chapter vary considerably.⁴⁶ Probably the most ratified are the eight core Conventions that comprise the ILO Declaration on Fundamental Principles and Rights at Work, which have been ratified by 80–95 per cent of ILO member States.

⁴⁶ For example, the Protection of Wages Convention, 1949 (No. 95), has received 95 ratifications, while the Maintenance of Social Security Rights Convention, 1982 (No. 157), has received only three.

Figure 4.1 Cumulative ratifications of the International Convention on the Rights of All Migrant Workers and Members of Their Families (ICMW) and ILO Conventions Nos. 97 and 143, 1950–2009



Source: Chart created by the ILO based on ratification information concerning international instruments on migrant workers.

It must be emphasized that the impact of the standards contained in Conventions and Recommendations is not limited to ratifying countries. Even member States that have not ratified them use them as models for national rules and policies. In general, countries have tended to follow these instruments more in broad terms and less in specific commitments regarding the protection of migrant workers (see ILO, 1999a, para. 647).

The promotion of ILO standards is not always pursued in a consistent way. Once an instrument has been submitted to the competent authorities of a country, there is no specific obligation to periodically reconsider ratification. Therefore, unless a focused promotional campaign is undertaken, ratifications may stagnate. Promotional campaigns are beneficial, because they can help governments understand the perceived obstacles to ratification and, in many cases, overcome them. The increased level of ratifications of the fundamental Conventions is a telling demonstration of the effectiveness of targeted, sustained and systematic promotional campaigns. The ILO migrant worker Conventions Nos. 97 and 143 have rather modest levels of ratifications, which may be partly a consequence of their not having been the object of a sustained, targeted ratification campaign. By contrast, the global promotional campaign for ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has been quite successful. Before 1999 it had only nine ratifications; as noted above, following promotional efforts, by late 2008 it had been ratified by a total of 39 countries and signed by 14 others. ILO technical cooperation

at the country level can also lead to increased ratification. It is noteworthy that between 2005 and 2008 there were six additional ratifications of Convention No. 97 (by Albania, Armenia, Kyrgyzstan, Montenegro, Republic of Moldova and Tajikistan) and five additional ratifications of Convention No. 143 (Albania, Armenia, Montenegro, Philippines and Tajikistan), largely as a result of ILO advocacy and technical support.

Other ILO standards are promoted in the context of related ILO activities. A promotional campaign targeted at addressing migrant workers' concerns could be based on, and facilitated by, a coherent presentation of all the relevant standards, including among others those on protection of wages, labour inspection, and safety and health in construction. Further efforts could focus on how to encourage the extension of national legislative coverage to categories of work regularly filled by migrant workers, especially agricultural and domestic work.

The 2004 ILO resolution concerning a fair deal for migrant workers in a global economy stated that "The Office shall undertake to identify the impediments to the ratification of these Conventions ... The ILO may take appropriate steps to better promote the ratification of Conventions Nos. 97 and 143, and the application of the principles they contain pertaining to the protection of migrant workers" (ILO, 2004a, para. 27). The Office has drawn up legislative profiles for 55 countries based on the main principles contained in Conventions Nos. 97 and 143. These profiles provide a snapshot of the degree of correspondence between the principles and national legislation, and thereby help identify the main obstacles to their ratification and implementation.

The ILO system for monitoring and supervising standards can also lead to an increase in the impact of Conventions and Recommendations. It has several distinct components, including supervisory machinery based on regular reporting. Reports by member countries are examined by the CEACR, a group of 20 independent legal experts, and a further report prepared on the basis of this examination is subsequently discussed in a tripartite context in the Conference Committee on the Application of Standards at the annual session of the ILC. This system, which is designed for ratified Conventions, provides information on the actual application of ILO standards and permits monitoring of their impact in practice. The impact of non-ratified Conventions and Recommendations is also monitored, although less systematically, through General Surveys, such as the one carried out in 1999 in relation to the two migrant worker Conventions and their Recommendations on the basis of article 19, paras 5(e), 6(d) and 7(b), of the ILO Constitution (ILO, 1999a). Since 1955, the ILO has carried out one such General Survey on one or more instruments relating to a specific subject area each year.

The comments made by the CEACR on the application of Conventions demonstrate that migrant worker concerns are regularly monitored, both through Conventions Nos. 97 and 143 and through other Conventions. This monitoring covers a large number of countries, and the ILO supervision of the situation of migrant workers is therefore not limited to migrant workers in countries that have ratified the two migrant worker Conventions. ILO research has demonstrated that this monitoring has had a positive impact, particularly in relation to the application of Conventions.⁴⁷ It would be productive to take a more coherent approach to improving the situation of migrant workers by using the comments on all relevant Conventions as a basis for national action and ILO technical assistance.

The monitoring of UN human rights instruments, the 1990 International Migrant Workers Convention, and other UN Conventions relevant to migrant workers is carried out by treaty bodies, which include among their independent members experts in law and other disciplines relevant to each instrument. This monitoring is not conducted on a tripartite basis, however.

The 2003 ILO ILM Survey revealed that a large number of member States would like the ILO to expand its knowledge base on migrant workers, and the ILO International Migration Programme has begun the process of doing so. More systematic collection of information on national law and practice should be gathered, and an analysis of the national situation regarding migrant workers should be undertaken. This would also constitute an important tool for the promotion of ILO instruments and follow-up to their implementation, and would enable technical assistance to be adapted to national needs. Articles 10 and 19 of the ILO Constitution offer ample possibilities for developing such additional tools (see also ILO, 2001f, para. 187).

Account should be taken of the 1997 Guidelines on special protective measures for migrant workers in time-bound activities.⁴⁸ It would be useful to update and/or complement these guidelines with guidelines concerning other vulnerable categories of migrant workers, such as those in irregular status. It should also be noted that the General Survey undertaken for the Conference Committee on the Application of Standards in 1999 proposed to fully revise Conventions Nos. 97 and 143 and to merge them into a single Convention.⁴⁹ This is an option that the ILO members could consider in the future.

⁴⁷ This is especially true in the field of freedom of association and in relation to the application of the Equality of Treatment (Social Security) Convention, 1962 (No. 118).

⁴⁸ These guidelines emerged from a Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration (21–25 April 1997): see MEIM/1997/D.4, Annex I.

⁴⁹ ILO (1999b), para. 174.

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The 2004 resolution concerning a fair deal for migrant workers in a global economy proposed a series of measures aimed at achieving wider application of ILO standards and other instruments:

- identifying the impediments to the ratification of the Conventions;
- taking appropriate steps to better promote the ratification of Conventions Nos. 97 and 143, and other relevant ILO standards, and the application of the principles they contain pertaining to the protection of migrant workers;
- addressing the issue of gaps in current instruments;⁵⁰
- carrying out further research on how to address some of the gaps identified in ILO standards on migrant workers; and
- periodically preparing and widely disseminating a report on the implementation of international labour standards relevant to migrant workers.

The 2004 resolution recognized that existing ILO instruments contain gaps in the protection of some migrant workers, including migrant workers in irregular status. In relation to these workers, it called for:

- due consideration to be given to the particular problems faced by migrant workers in irregular status and the vulnerability of such workers to abuse;
- measures to ensure that their human rights and fundamental labour rights are effectively protected, and that they are not exploited or treated arbitrarily; and
- the development of best practice guidelines on preventing and combating irregular labour migration, including amnesties and regularizations.

4.6 Conclusions

The discussion in this chapter shows that there is a wide variety of international instruments providing rights and protection that apply to migrant workers, including both those developed by the ILO and UN and agreements between and among countries at the bilateral and regional levels. These instruments and agreements apply variously because migrant workers are members of the human family, because they are workers, or because they are migrant workers. In the last

⁵⁰ The resolution also highlighted the need to consider the gender dimension and temporary migrant workers in the application of relevant international labour standards.

case, as shown, some rights vary depending on whether the workers are in regular or irregular status. But even when migrants have performed work in irregular status, they are entitled to certain rights by virtue of the fact that they have actually performed the work.

With regard to the three Conventions specifically pertaining to migrant workers, there are several priorities for further action. One priority is to launch a promotional campaign, coupled with structured technical assistance, for the ratification of ILO Conventions Nos. 97 and 143 and the application of their provisions in national law and policy. This could be combined with the continuing promotion of the International Convention and would thus benefit from the strengths of both the UN and the ILO. Another priority for further action is promotion of the implementation of the principles and guidelines contained in the ILO Multilateral Framework on Labour Migration, which is a comprehensive instrument designed to address current issues in labour migration. Since the Framework is based upon ILO Conventions and other international instruments, implementation of its principles and guidelines by countries can go a long way in the promotion of standards and of a rights-based approach to labour migration.

Migration policies and governance

5

5.1 Introduction

Mobility and migration are inevitable aspects of the process of globalization and transnational linkages. As emphasized throughout this book, international migration is a complex phenomenon, ever-increasing in scale, which affects almost every country and region in the world. It involves a diverse range of stakeholders with different, and sometimes conflicting, interests, and it is increasingly linked with other pressing global issues, such as development, trade, human rights and security. The international mobility of labour will surely accelerate in the twenty-first century.

The objective of this chapter is to provide an overview of the policy challenges and issues raised in previous chapters, and to outline ILO approaches to these challenges. It will summarize the main policy options in addressing the governance and regulation of labour migration for the benefit of origin and destination countries and migrant workers. The analysis draws upon the experiences many countries reported in their responses to the 2003 ILO ILM Survey.

This chapter will begin with a discussion of the objectives and key criteria of good migration governance. This will be followed by a discussion of selected policy issues and options in origin and destination countries respectively and, finally, by some conclusions drawn from the discussion.

5.2 Objectives of migration policy and governance

Those concerned with international migration have increasingly called for more attention to be paid to its management. Although it is common in the literature to refer to “migration management” and “managed migration”, there are several problems with either term. First, they imply that a state has more or less complete control over migration and can effectively manage it. Yet the overwhelming historical experience is to the contrary. In practice, it is often not possible to turn migration on and off like water from a tap. Policies based on the assumption that migrant workers can be brought in when needed and then sent home when no longer needed have failed in every region where they have been tried. The main reason for this failure has been summed up by the Swiss writer Max Frisch: “We called for labour power, and human beings came” (see ILO, 2006c, p. 23). On the one hand, men and women, as social beings, have needs that go beyond physical maintenance; on the other hand, once these men and women have come, destination societies and economies adjust to their presence and come to depend on their services.

A second problem with the concept of migration management is that it is linked to a view of unilateral migration control by destination countries. The dividing line between migration “management” and migration “control” is indeed thin. As another commentator noted, the former term “suggests migration control, when in reality the movement of people can only be helped or hindered to a greater or a lesser extent and the nature of migration means that policies can, in many ways, only be reactive” (Niessen, 2005).

Third, migration management can imply a top-down approach that encourages governments to regulate migration in an isolated way, that is, without consulting other stakeholders, such as social partners, migrant workers and broader civil society. This is an overly simplistic approach, given the complexity of migration. For example, it has been noted that the very use of this term “suggests a slightly old-fashioned, pre-globalization assumption of state control over migration processes” (Newland, 2005, p. 15), whereas in fact States are only one among a number of important kinds of actor. “Regulation” is a better term, which deals with the question of overseas employment administration, but it carries potentially negative connotations of bureaucratic procedures.

While the term “good governance” may be a helpful one in this area, it does not have a universally accepted definition, so that its meaning depends on the context in which it is used. One example is provided in a resolution on the role of good governance in the context of the promotion of human rights. The UN Commission on Human Rights included the following as essential elements of

good governance: promotion of the rule of law, strengthening services delivery for human rights, strengthening democratic institutions and participation, combating corruption in the public and private sectors, and international cooperation in support of national good governance practices (UNCHR, 2004). Another example is provided by the Commission on Global Governance, which defined governance as “the sum of many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and cooperative action taken” (Commission on Global Governance, 1995, p. 4). The Report of the GCIM states that, “in the domain of international migration, governance assumes a variety of forms, including the migration policies and programmes of individual countries, interstate discussions and agreements, multilateral fora and consultative processes, the activities of international organizations, as well as laws and norms” (GCIM, 2005, p. 65).

Despite these definition problems, the concept of “management” with reference to labour migration has nevertheless been used by the ILO in some instances. For example, the 2004 ILC resolution observed that “coherent, comprehensive, consistent and transparent policies are required to effectively manage migration” (ILO, 2004d, p. 3); and while the preface to the ILO Multilateral Framework on Labour Migration states that it addresses – among other things – the “governance of migration”, one of the main principles of the Framework refers to “effective management of labour migration” (ILO, 2006a, principle 4, p. 22).

Finally, another example is provided by the GCIM calling for improved governance of migration at national, regional and international levels through better coherence and strengthened capacity at the national level, greater consultation and cooperation between States at the regional level, and more effective dialogue and cooperation among governments and between international organizations at the global level. In short, while not easily defined and dependent on the context, “migration management” or “managed migration”, and “good governance”, are increasingly being seen as important issues for labour migration.

5.3 Criteria of good governance

Several characteristics, which will be elaborated more fully below, are commonly associated with the notion of “good governance” in the field of migration. These include consistency with international standards and good practices, policy coherence, gender sensitivity, transparency and flexibility, social dialogue, and

formulating policies based on evidence or data. The ILO Multilateral Framework on Labour Migration (reproduced in Appendix I below) is a rich source of key principles and guidelines in establishing and evaluating good governance.

5.3.1 Consistency with international standards

Migration policies and practices can only be viable and effective when they are based on a firm foundation of legal norms and operate under the rule of law. Most measures needed to govern labour migration and ensure adequate protection for migrant workers can be found in the framework of international human rights and labour standards described in the previous chapter.

Regulation of labour migration and protection of migrant workers in a destination country are best secured by the legislation of that country – by the labour code, employment legislation, and/or other rules concerned with the regulation and protection of foreigners. This body of national legislation should apply and build upon the minimum norms accepted at the international and regional level. Further, even when countries are not prepared to adopt international or regional standards in full, they nonetheless should use them as models for the development of national legislation and policy.

The non-binding ILO Multilateral Framework on Labour Migration offers a range of policy options to assist States in achieving consistency with international standards.

5.3.2 Policy coherence

Migration represents one of the most complex policy challenges for governments (Spencer, 2003), in which they find themselves balancing a host of different issues and interests, some economic, some social and some political. In essence, these concern regulating labour markets, promoting economic growth, protecting workers, providing for social welfare and social security, and sustaining social cohesion.

Policy coherence means ensuring that policies and programmes regarding migration and other areas do not conflict with each other, either directly or unintentionally. The GCIM report states that “Establishing a coherent approach to international migration is a first step towards better national governance” (GCIM, 2005, p. 68). Such coherence must, at the very least, ensure that migration policies are directed at meeting foreseeable long-term requirements of the

economy and society. Governments should take measures that support legal migration, that ensure migrant workers receive wages that are not lower than those of local workers for comparable work, and that contain enforcement provisions, including sanctions, to discourage the employment of irregular workers without criminalizing the workers themselves.

At the national level, a lack of policy coherence often results from a lack of coordination and information-sharing between those ministries that directly relate to migration and other ministries that may not appear to be so closely concerned with the matter, but still have important responsibilities affecting migration. A lack of policy coherence can also result from insufficient coordination between the Government and other stakeholders. It is often the case that immigration policies determined by ministries with such names as home affairs, immigration or the interior may conflict with admission or work permit policies determined by the ministry of labour or employment in response to labour market needs. In relation to co-development initiatives, former UN Secretary-General Kofi Annan commented in 2006 that they would benefit from “better coordination and coherence between migration and development policies”, which in turn would require “closer cooperation among the authorities in charge of migration and those working on development strategies and development cooperation” (UN, 2006, p. 16).

Lack of policy coherence may also be a reflection of the conflicting pressures on political leaders. Nervous about losing the support of key constituencies, they may respond in a way that generates a contradiction between their public pronouncements and what happens on the ground. For example, a government may stress its opposition to the use of low-skilled foreign labour and its determination to stop irregular migration, while in practice subsidizing and protecting sectors that employ low-skilled foreign labour, such as agriculture. A government may fail to regulate wages and working conditions, giving unscrupulous employers an incentive to hire workers in irregular status because they can be cheaper, or may even expressly permit employers to pay below-minimum wages to foreign “trainees” who are actually no different from other workers. Although they may believe that it is expedient to try to keep all groups satisfied in this way, politicians who fail to develop clear policies on migration run the risk of appearing hypocritical and losing public support, resulting in policy being enacted in reaction to the demands of extremist pressure groups.

At an international level, policy coherence can involve facilitating dialogue and cooperation between countries of origin and destination with the aim of establishing the most effective policies that increase the benefits of migration. It can involve developing policies and programmes that are consistent with regional

and international development strategies and standards (IOM, 2005b, p. 147). Ensuring that policies are coherent and complementary requires appreciation of the close linkages between international migration, development and other key issues, including trade, aid, state security, human security and human rights (GCIM, 2005, p. 4). An OECD study (2007d) emphasized that the migration, trade and security policies of OECD countries have an impact on development outcomes, in addition to their development assistance policies. It also pointed to various possibilities for more coherence in the integration of policies dealing with trade, aid and migration. This could help both the least wealthy middle-income countries and the poorest countries, both currently suffering from emigration of the highly skilled.

5.3.3 Gender sensitivity

As noted earlier in this book, women constitute approximately half of all international migrants. The important differences both in the factors that drive the migration of women, as opposed to men, and in their experiences as migrants, require policies that reflect these differences. Women tend to hold kinds of jobs that may leave them unprotected by laws that cover other workers and that may leave them isolated as well; are vulnerable in ways not shared by the majority of men migrant workers, for example to sexual abuse, to becoming victims of traffickers and to being forced to work in the sex industry.

Despite such differences, gender-differentiated information to guide policy-making is often lacking. With this in mind, the ILO Multilateral Framework on Labour Migration contains a guideline (3.1) which covers the collection and analysis of sex-disaggregated data on migration and its application to labour migration policy. Another guideline (9.8) recommends that countries adopt measures to ensure that their labour legislation and social laws and regulations cover all migrant workers, both male and female, including domestic workers and other vulnerable groups. Guidelines on trafficking (11.5, 11.9) recommend that particular attention be paid to women. These guidelines follow the ILC 2004 resolution, which stated that policies should reflect differences between men and women migrant workers by promoting measures to improve the conditions and reduce the specific vulnerabilities experienced by women (ILO, 2004a, para. 24).

5.3.4 *Transparency and flexibility*

Clearly, there is no perfect migration policy in an absolute sense in any country in the world, and the development of migration policy will almost always involve an element of trial and error. There are, however, two key features that all effective migration policies share. These are transparency and flexibility, to ensure that migration policy is accessible to and understood by the relevant stakeholders, and is adaptable to changing circumstances.

Transparency is important so that both potential migrant workers and the public in destination countries have a clear understanding of the issues that are important to them, whether these concern admission procedures, terms of employment or conditions of work. Transparency is certainly a feature of the points schemes for the admission of highly skilled migrants in Australia and Canada. Indeed, the schemes allow potential migrants to assess their own eligibility in advance. Transparency additionally means that there are no hidden agendas behind proclaimed policies. For example, if the real objective behind an amnesty or regularization programme is deportation of migrant workers in irregular status, the programme may not succeed at all.

Similarly, new schemes should not reverse the terms offered to migrants under previous schemes upon which they have relied and within which they have tried to play by the rules. After the United Kingdom revised its immigration law following the accession of new countries to the EU by giving preference to EU citizens over Commonwealth citizens, it applied the changes retroactively. Many professionals from Commonwealth countries who had migrated under the 2002 Highly Skilled Migrant Programme were affected by this retroactive change. After a legal challenge to the retroactive application of the law, the courts held that the former rules applied to those immigrants who had come into the United Kingdom when they were in effect, ruling, in essence, that it was unreasonable to snatch away the benefits offered to them originally (Wire, 2008).

Migration is an area where future decisions are often constrained by past decisions so that there is strong “path dependency”. This is because, unlike the movement of goods, the movement of people is difficult, indeed often impossible, to reverse. Even changes in economic circumstances may have little effect on migration flows, because migration can respond to economic cycles in an asymmetric fashion, increasing on the upswing but not necessarily falling on the downswing. This has been seen in Europe, where a number of countries established guest-worker programmes to inject labour during a period of industrial reconstruction and expansion, and in East Asia, when several countries established trainee-worker programmes to use migration to inhibit wage increases during peaks in economic activity. The

expectation in both cases was that, when they were no longer needed and their work permits expired, migrants would leave. However, return seldom takes place in this fashion (especially among migrant workers in an irregular situation), not only because migrant workers often do not want to leave, but also because employers often want them to stay. Even when unemployment is rising, employers can find it difficult to recruit national workers for certain jobs and may prefer employing migrant workers in these roles to raising wages to entice native workers to take them.

Of course, flexibility does not mean that policies should be changed all the time in an ad hoc manner. What it does mean is that the administration of migration policy should be sufficiently flexible to respond to important developments. On the one hand, policies must evolve and take into account new knowledge, changing conditions, shifting objectives and the lessons of experience. Experience shows that planned migration is rarely achieved. This was the case with the German *Gastarbeiter* (“guest worker”) programme and with the former “White Australia” policy. Circumstances may change, and migration outcomes may bear little relation to the original objectives of the policy; but this does not necessarily mean that the policy has failed.

As many national authorities have learned, some of the best-designed procedures to manage migration can go awry, because it is very difficult to anticipate the responses of the main players in the labour market. In the United States, for example, the H1-B visa category was created to meet the demands of private industry for highly skilled workers when these workers could not be found within the domestic labour market. However, the “body brokers” who recruited skilled foreign workers for jobs in the United States found it financially advantageous for themselves to obtain as many visas as they could, regardless of demand; so some brought in foreign workers even when there were no jobs available for them (Martin, Abella and Kuptsch, 2005).

5.3.5 Social dialogue

To maximize the development potential of labour migration, a wide range of actors should be consulted and actively engaged in the design, monitoring and evaluation of international migration policies. While, of course, the ultimate responsibility for creating the enabling environment lies with governments through the enactment and enforcement of effective laws, policies and programmes, the formulation and implementation of migration policies is more likely to be effective when it is based upon widespread consultation with a diverse range of actors, particularly the social partners.

Social dialogue is essential to establish support for a country's approach to governing migration. In destination countries, taking account of the concerns of employers will contribute to formulating policies that address business and employment needs. Doing so should encourage compliance by the private sector. Incorporating the counsel and experience of worker organizations will certainly contribute to effective protection of both migrant and native workers and to the prevention of conflicts within the working population. Dialogue is crucial to enlisting social partners as agents of migration policies, given that the implementation of significant parts of labour migration and integration policy takes place at enterprises and in workplaces. Important services needed by migrant workers, such as representation, employment orientation and support in conflict resolution, can best be delivered by worker organizations. At the same time, it is important to recognize the role of civil society organizations who offer support services to migrants, especially to vulnerable groups such as those who are trafficked and/or in irregular status.

Social dialogue is equally critical to the success of migration policies in origin countries. Employer and worker organizations are naturally among the strongest advocates of the establishment of appropriate policies and structures for regulating emigration. Employer interests coincide with government concerns in relation to retaining the skills and talents needed for national development, while trade unions support strengthening legal migration channels to ensure better protection of migrant workers abroad. In the Philippines, for example, tripartite advisory boards oversee the two key agencies responsible for labour migration policy and administration, the Philippine Overseas Employment Administration and the Overseas Workers Welfare Administration. Innovations supported or initiated by social partners are partly responsible for Filipino workers being among the most sought-after abroad, often benefiting from higher wages and better working conditions than their counterparts from other countries.

Trade unions have a critical role to play in countries of origin and destination alike by promoting the ratification of relevant Conventions and monitoring the compliance of national laws and practices with international labour standards. They play a key role in mobilizing and organizing migrant workers to better articulate and defend their rights and dignity. Trade unions are particularly well placed to provide migrant workers with legal advice, support and assistance in seeking redress when their rights are violated.

While most countries who responded to the 2003 ILO ILM Survey indicated that they held regular consultations with representative employers' and workers' organizations when adopting or amending laws pertaining to national immigration policy, it is not clear whether this reflects the actual situation; there are only a few instances where the formulation of labour migration policies, laws

and regulations takes place through formally established tripartite structures, and governments may not want to admit that their decisions are actually more unilateral in nature. This is especially the case where ministries other than labour ministries have primary responsibility for migration matters.

A good practice in consulting social partners is the National Labour Migration Policy adopted by the Sri Lankan Cabinet in 2009. The policy was formulated through a consultative process involving government ministries and agencies, trade unions, employers' organizations, civil society, the ILO, the IOM and other concerned international organizations (see ILO, 2009g).

Sustainable policies should be based on open debate and social dialogue. Political leaders have a responsibility to inform and educate the public on the implications and consequences of migration. Policies should be transparent and coherent, yet administered sufficiently flexibly to allow policy-makers to learn from experience.

5.3.6 Evidence- or data-based policies

Good policy requires good data. Thus, policy should be based on the most up-to-date evidence and information about labour market needs and migrant worker profiles, including their origin, citizenship, age and sex composition, education and skills, qualifications, labour force participation, sectors of work, treatment and conditions of work, and extent of integration. Unfortunately, most of this information is lacking in many countries. In most cases, the number of workers in irregular status and their characteristics are anybody's guess. For example, estimates of persons in irregular status in the Russian Federation vary from 5 million to 15 million – an enormous range of numbers. On the other hand, countries with strict controls on foreign admissions, such as Australia and Canada, have better estimates of their immigrant populations.

The ILO's experience with managing an online international migration database has shown that many countries lack the capacity to generate good data (Wickramasekara and Hoffman, 2002). As former UN Secretary-General Kofi Annan commented, "There is a need to build the capacity of developing countries to generate, collect and disseminate data on international migration, as well as to train personnel to conduct systematic and comprehensive research on the policy relevant aspects of international migration and development" (UN, 2006, pp. 20–21). Fortunately, given this need, there is currently a renewed interest in the issue of data collection in the context of promoting linkages between migration and development, and a major effort is now being made to improve statistics

on remittances, particularly by the World Bank (Ratha and Shaw, 2007). The ILO and other international organizations have also issued guidelines on the collection of migration statistics, including on remittances (Bilsborrow et al., 1997; Hoffmann and Lawrence, 1996; UN, 1998b).

5.4 Migration policies in origin countries

Countries of origin, particularly developing countries with large numbers of migrant workers leaving, are generally confronted with the dilemma of how to promote overseas employment opportunities for their nationals while also protecting their national workers abroad (Wickramasekara, 2002). In the face of bleak employment prospects at home and the economic gains from foreign exchange remittances, some countries would like more of their national workers to emigrate. At the same time, they realize that they cannot turn a blind eye to the rampant abuses of basic human rights that can be suffered by their nationals abroad by focusing too much on promotion and too little on protection.

This policy dilemma is now being faced by a number of South Asian countries that send workers to the Gulf region, where widespread and blatant abuse and exploitation of foreign workers continues. Recent dialogue between the Gulf destination countries and Asian labour source countries indicates that both sides are beginning to recognize this issue and attempt to make some incremental improvements (Abu Dhabi Dialogue, 2008; ILO and UAE, 2008). In the Philippines, the Republic Act 8042, The Migrant Workers and Overseas Filipinos Act of 1995, states that “the State does not promote overseas employment as a means to sustain economic growth and achieve national development”. It further provides that the State will deploy overseas Filipino workers only to countries where the rights of Filipino migrant workers are protected. But even while the 1995 Act downplays the dependence on overseas migration as a national policy, the Philippines continues to promote overseas employment, as seen in the increasing numbers of Filipinos migrating abroad, all too often to abusive conditions.

The recent National Policy on Labour Migration of Sri Lanka balances protection considerations and recognition of the importance of migration for development. It comprehensively addresses the labour migration process from a rights-based approach. It focuses on three key areas: good governance of labour migration; protection and empowerment of migrant workers and their families; and linking migration and development processes (for the text, see Sri Lanka Ministry of Foreign Employment, Promotion and Welfare, 2008).

5.4.1 Objectives of migration policies

While political, economic and social circumstances vary immensely among countries of origin, migration presents several common policy challenges for all of them. These include promoting employment, protecting and promoting the well-being of their nationals abroad, and maximizing the developmental impact of migration. Figure 5.1 provides a schematic chart of the policies and measures that have been adopted by various countries to protect their workers seeking employment opportunities abroad, mapped under three major objectives.

A selection of important current issues relating to these challenges will be discussed in the following sections. More details on the various issues involved can be found in the ILO Multilateral Framework on Labour Migration (reproduced in Appendix I to this book) and in a number of manuals produced by the ILO (ILO, 2003e, 2005b, 2007c; OSCE, IOM and ILO, 2007).

5.4.2 Governance of migration in origin countries

The governance of migration in origin countries is mainly guided by the objectives listed above. An increasing number of countries are developing policies, legislation and structures to promote foreign employment for their nationals and generate remittances, while providing safeguards to protect migrants. While job creation at home is ultimately the preferable option, some countries acknowledge that overseas employment is a valuable part of their national development strategy, enabling them to benefit from global employment opportunities and generate foreign exchange. Overseas employment administration for these purposes requires a number of steps which have been spelled out in the ILO Multilateral Framework on Labour Migration and in other ILO manuals and handbooks. Origin countries should have a legal and regulatory framework for the orderly migration of nationals for work abroad and their protection.

Some countries, such as the Philippines and Sri Lanka, have chosen to establish specialized agencies under their ministries of labour for this purpose, while others have created special separate ministries. The Philippines provides a good model of overseas employment governance by a specialized agency within the Department of Labour (ILO, 2005b). Bangladesh, India and Sri Lanka have created special ministries to handle foreign employment and the welfare of citizens abroad. In many developing countries, these matters form part of the function of the traditional ministries of labour; in some other countries, the responsibility for migration has been assigned to ministries of foreign affairs

Figure 5.1 Foreign employment policy instruments and measures, by objective

Objective 1. Promote employment	
Foreign market development	Labour supply management
<ul style="list-style-type: none"> ● Establishing diplomatic relations ● Strengthening placement services, public and private ● Promotions and marketing missions ● Market information and research ● Bilateral agreements 	<ul style="list-style-type: none"> ● Labour registry ● Corporate export of services ● Restrictions/policies against “brain drain”
Objective 2. Protect and promote the well-being of migrants	
Standard setting and enforcement	Supervision of private recruitment
<ul style="list-style-type: none"> ● Minimum standards for employment contracts ● Exit control measures ● Bilateral agreements including social security ● Restrictions on exit of selected categories of workers, especially minors and young women 	<ul style="list-style-type: none"> ● Licensing of recruitment firms ● Performance guarantees and penalties ● Limits on recruitment fees ● Measures against illegal recruitment and clandestine migration
Support services	
<ul style="list-style-type: none"> ● Information and counselling services prior to departure ● Labour attaché services on-site ● Social insurance ● Community facilities and centres for workers abroad 	<ul style="list-style-type: none"> ● Support services for families left behind ● Returnee training and employment assistance ● Emergency evacuation or repatriation
Objective 3. Maximize developmental impact of labour migration	
Remittances	Return of talents and skills
<ul style="list-style-type: none"> ● Foreign exchange market policies ● Remittances policies and services 	<ul style="list-style-type: none"> ● Special placement services and incentives ● Bilateral training agreements ● Mobilizing transnational communities
Migrants' savings and investments	
<ul style="list-style-type: none"> ● Special financial instruments ● Information and support services to small investors ● Housing programmes for migrants 	

Source: ILO, 1997.

or interior or home ministries, where security considerations may predominate over labour market issues. The separation of overseas employment from ministries of labour often has the undesirable effect of treating overseas migration as completely separate from labour market and decent work issues. The ILO Multilateral Framework on Labour Migration takes this into consideration by urging governments to provide “labour ministries with a key role in policy formulation, elaboration, management and administration of labour migration to ensure that labour and employment policy considerations are taken into account” (guideline 4.6). There should be consultation with social partners to address specific needs of the labour market and specific vulnerabilities of certain groups of migrant workers, such as women.

In developing countries, major issues in governance relate to coordinating labour migration functions across different government ministries and departments, regulating the placement services dominated by private sector agencies, reducing the costs of migration to workers, and negotiating with destination countries for access to job opportunities and protection of workers. As discussed in the following section, the regulation of private recruitment agencies is closely related to worker protection. In many developing countries migration costs are high, as a result of such factors as excessive fees levied by recruitment agencies, costly bureaucratic procedures and corrupt practices of administrators. The undesirable alliance between local agents and foreign employment agencies, as occurs in migration to the Gulf region, results in high migration costs being passed on to migrant workers. A major task of good governance is to identify these issues and reduce the costs of migration for individual workers, not only for their sakes, but because it will increase their savings and remittances, benefiting their countries as well.

5.4.3 Promoting the protection and well-being of migrant workers

Protection of migrant workers is an important consideration for policy-makers in both origin and destination countries. Clearly, protection of migrant workers’ human and labour rights should begin in the country of origin. Adequate preparation for the conditions of work abroad and information about their rights will be conducive to a better experience for migrant workers in destination countries. A protection package by origin countries for their nationals should normally consist of the following: ratification of international standards; pre-departure orientation and information; regulation of private recruitment agencies; provision

of adequate consular support functions; negotiation of model employment contracts; establishment of bilateral agreements and memoranda of understanding with destination countries; engagement of social partners and civil society to provide support to migrant workers; provision of welfare funds and welfare programmes for families left behind; and aid in reintegration for those returning.

Ratification of international Conventions on migrant workers by countries of origin provides a strong signal that they are concerned about the protection of their citizens, both in the domestic arena and internationally, and constitutes an important step towards such protection. Wider ratification by origin countries may raise their moral standing when attempting to convince destination countries that the latter should abide by the standards of protection set out in these instruments. Where Conventions are not ratified, principles and guidelines contained in the non-binding ILO Multilateral Framework on Labour Migration can guide the implementation of policies for the protection of workers.

Countries of origin have little control over the terms and conditions of employment of their nationals in other countries once they have departed. But they can at least try to ensure that migrant workers are well informed before they depart, so that they do not accept disadvantageous employment offers in ignorance of the risks involved. Prospective migrant workers should be informed about such matters as the living and working conditions they are likely to face, the culture and pertinent law in the countries to which they intend to migrate, and the general cost of living there.

While most countries permit their citizens to accept offers of employment in foreign countries, only a few have laws or regulations empowering the authorities to intervene in the contracts of individuals. However, the extent of abuses suffered by their workers abroad has brought some governments under immense public pressure to regulate labour migration and provide more protection. This calls for bilateral and regional cooperation. Some regional integration agreements provide a useful framework for promoting freer circulation of labour under orderly processes.

One approach that has recently become popular is the life-cycle approach to the protection of workers, which covers the pre-departure period, transit, the stay abroad and return. While origin and destination countries have a shared responsibility to protect the rights of migrant workers through all these stages, their particular responsibilities differ, both because the migration experience changes at each stage, and because countries have more ability to exercise supervision over migrant workers in their own countries and much less ability to control what takes place in others. The second Global Forum for Migration and Development, held in Manila in 2008, promoted the concept of shared responsibility in addressing

this issue (GFMD, 2008). Strictly speaking, this approach is best suited to those migrant workers who do not settle permanently in the destination country, that is, those involved in circular migration or temporary migration. Those migrant workers who are permanent or long-term residents in destination countries should receive protection and equal treatment on a par with native workers.

Better information, better protection

The ILO Migration for Employment Convention (Revised), 1949 (No. 97), provides that “each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information” (Article 2), and “undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration” (Article 3). The ILO Multilateral Framework on Labour Migration has provided specific guidelines under the theme “Migration process”.

It is primarily the responsibility of origin countries to protect migrant workers during the pre-departure stage when migrants are still within their borders. The period during which individuals decide whether or not to migrate for work is crucial. It is most important that reliable and accurate information be provided before they take important steps towards migrating, such as paying fees to recruiters. Origin countries should provide concrete assistance in finding employment, if possible, as well as information concerning, among other things, the cost of obtaining jobs, the migration process, and actual terms and conditions of work in the destination country.

Origin countries should pay attention to educating and warning all potential migrants, in particular women, about the special problems they could face as migrant workers, such as trafficking, and about the conditions of certain forms of work held predominantly by women, such as domestic work. Citizens should also be educated on how to migrate under regular conditions and under conditions which protect their human rights. Both government and civil society organizations can perform these functions. They should provide information wherever private recruiters, traffickers and smugglers search for persons to transport across borders for work, whether in cities, small towns or the countryside. There are many good examples of pre-departure education. For instance, in Tajikistan, an Information Resource Centre for Migrant Workers provides information to migrants on travel, documentation, admission and employment in other countries, including on the risks involved (OSCE, IOM and ILO, 2007, p. 54).

Fair recruitment practices

While only a few countries now require that recruitment for foreign jobs be carried out through public employment agencies, most have authorities that are empowered to review and approve work contracts, prosecute violators of recruitment regulations, and arbitrate in disputes between migrant workers and foreign employers or recruitment agents. Most of these authorities also have the power to enter into agreements with foreign employers or to recruit nationals for employment abroad.

One option is to provide model contracts that can minimize disputes and problems, especially if the contracts are realistic and endorsed by the authorities in the destination country. The authorities in origin countries can use such contracts to ensure that, before they sign them, migrants fully understand their rights and obligations, and can require that all contracts be approved by a competent authority, preferably the ministry of labour. It is the ILO's position that model contracts should be "skills-specific and country specific, based on a proper understanding and in-depth knowledge of the working and living conditions of migrant workers, as well as the culture, traditions and legislation of the destination country. ILO Conventions and Recommendations provide important guidelines for the standards to be adopted in such employment contracts" (ILO, 2003e, Booklet 3, p. 32).

Of the countries that responded to the ILO's 2003 ILM Survey, 35 stated that they had specific measures in place regulating contractual provisions for migrant workers leaving their countries. Many governments in Latin America, while not having a system of licensing private recruitment agencies, do have legal means to prosecute them for recruitment malpractices.

To make these measures more effective, however, the authorities should also take measures to prevent their nationals from being subjected to abuse in countries that do not respect their standards. Thus, some countries have established consular services in countries where a large number of their citizens work, with labour attachés and both male and female staff whom migrant workers may contact for assistance. The consular and embassy staff can operate outreach projects to certain groups of migrant workers who are particularly vulnerable to abuse, such as women or those who are isolated, especially domestic workers. Consular services can provide emergency assistance, especially when their citizens have nowhere else to turn. They can also facilitate the systematic transmission of information regarding abusive employers and industries to officials at home, who can then take measures to prevent more of their citizens migrating to work for them.

Private recruitment agencies are growing in number and importance in many parts of the world and are increasingly influencing migration movements.

Governments must recognize their increasing influence over the labour migration process and fulfil their responsibility to establish clearly defined and enforceable regulatory frameworks governing them, in accordance with internationally recognized standards and in consultation with relevant national stakeholders (ILO, 2007c).

The most important policy instrument for instilling order in the industry is to require every private recruitment agency to obtain a licence from the competent authority, and most countries of origin that have large numbers of migrants departing for work in other countries do indeed have licensing systems. By setting stringent conditions for obtaining a licence, the authorities can limit recruitment to companies that have the resources and necessary information to find good employment opportunities, and can suspend or cancel licences for violations of government regulations. Some governments limit the validity of a licence to a very short period: for example, the new Foreign Employment Act of Nepal requires licences to be renewed every year. While well intentioned, this can produce undesired consequences by attracting too many recruiters who are interested only in quick profits and disappear after cheating migrant workers.

Successful administration should be backed up with appropriate legislation. One significant innovation is a law in the Philippines establishing that, in the case of a violation of an employment contract, the recruiters and the foreign employer are jointly liable. This can be difficult to enforce in the destination country. However, destination countries can play their part by enacting legislation which makes employers jointly liable with recruiters. When both origin and destination countries enact such legislation, everyone in the recruitment and employment chain can be held responsible wherever they operate. Portugal provides an example: here the law makes recruiters and employers jointly responsible for migrant workers' pay, though it applies only in respect of those in irregular status.¹ In the Philippines, recruiters are also required to put up large performance bonds. This provides insurance for potential migrant workers who have paid recruitment fees only to find that no jobs exist, or whose employers fail to pay wages. Such measures put the onus on the recruiter to take care when choosing foreign employers and have made it much easier for the Philippine Overseas Employment Administration to settle workers' financial claims.

Perhaps the most promising way to better regulate contractors who hire large numbers of migrants is to enact joint liability laws, under which the beneficiary of migrants' labour is held jointly liable with the contractor (the intermediary) for paying wages and abiding by labour laws. In most cases, the beneficiary

¹ Portuguese Ministry of Internal Administration Law Decree No. 34/2003, 25 Feb. 2003.

of the work done by workers hired through contractors is the most stable entity in the business relationship. If these beneficiaries are liable for violations committed by the contractor, they have an incentive to check those contractors more carefully. In short, the beneficiary could no longer escape liability by claiming that not it but the subcontractor is the employer. In the United States, courts have established a series of indicators of joint liability that include whether or not the business operator who hired the contractor has sufficient control over the workers brought to the business by that contractor.

Enforcement has often proved difficult, however. Moreover, compliance tends to decline when there is a large wage differential between countries of origin and destination and when there is a period of high unemployment at home. Compliance also depends on the levels of education among workers and the vigilance of the public. At a recent meeting convened in Abu Dhabi, the participants recognized the joint responsibility of countries of origin and destination to enforce compliance with national law and regulations by recruitment agencies and other parties engaged in the recruitment process, in order to protect workers. For instance, Partnership 3 of the Abu Dhabi Declaration relates to “Preventing illegal recruitment practices and promoting welfare and protection measures for contractual workers, supportive of their well being and preventing their exploitation at origin and destination” (Abu Dhabi Dialogue, 2008). A recent regional symposium on labour migration in Asia considered the role of recruitment agencies and came up with the following recommendations: (1) develop a code of conduct for recruitment agencies in South Asian Association for Regional Cooperation (SAARC) countries, taking into account existing practices; (2) simplify the recruitment process by reducing layers of bureaucracy between employers and workers, for example by requiring demand letters directly from employers, instead of intermediaries; (3) provide on-site services and personnel, in particular labour attachés, to verify job offers and monitor the welfare of migrant workers; (4) provide more information necessary for sound decisions on overseas employment; and (5) increase cooperation between origin and destination countries to curb clandestine practices on both sides of the border (ILO, 2008b).

Continuing action by the ILO in this area includes promoting ratification of the Private Employment Agencies Convention, 1997 (No. 181), and conducting training courses for recruitment agents, government officials and other stakeholders on better recruitment practices. This is being done by the ILO’s Forced Labour Programme, regional technical cooperation projects, and the Skills Programme and its employment services. The ILO has also produced a manual on private employment agencies which is used in training programmes (ILO, 2007c).

Maximizing development impacts

Labour migration is increasingly recognized as an important contributor to growth and development in countries of origin and in destination country economies and societies. Nonetheless, deliberate policy measures, including incentives and regulation, are required to realize or maximize these benefits. While much recent attention has focused on remittances, the issues that should be addressed are considerably wider (ILO, 2007a).

The ILO Multilateral Framework on Labour Migration recommends that labour migration be integrated into the mainstream of national employment, labour market and development policy (guideline 15.1). This is consistent with statements made by a number of other agencies and donors, such as the UK DFID and the World Bank, as well as regional entities, such as the European Commission and the African Union, that have made commitments to promote the integration of migration issues into development planning and programming. According to the DFID policy paper on migration, “DFID will work with partner governments, donors and civil society including trade unions, to encourage the inclusion of migration in country-led plans that address poverty reduction and development” (UK DFID, 2007, p. 12). The African Union Migration Policy Framework on Migration in Africa encourages “AU Member States to integrate Migration and Development policies, particularly Poverty Reduction Strategy Papers ... in their National Development Plans” (AU, 2006, p. 31).

The first step in maximizing development impacts is to ensure that the importance of migration is reflected in national development plans, Poverty Reduction Strategy Papers (PRSPs) and the ILO’s Decent Work Country Programmes (DWCPs). The ILO is now focusing its assistance to member States on promoting decent work as a key component of national development strategies. Out of about 50 DWCPs developed thus far, about 30 contain references to migration, and about 15 include migration as a substantive component. Migration may also be assigned as a subtopic of a broader issue, such as employment or social protection (Lucas, 2008). However, given the specific nature of the DWCP, the range of issues addressed with respect to migration is generally confined to those with a fairly direct impact on labour, whereas migration also affects fiscal and financial policies, human resource policies, and trade and investment policies.

The cross-cutting nature of migration poses difficulties for its effective integration into strategic thinking and the planning process. Yet for countries experiencing a high level of migration, the cross-cutting effects of migration and remittances can profoundly shape the nature and implications of economic development. It is also critical to recognize that the strategic issues impacting on and impacted on by migration extend well beyond issues of managing migration and

incentives to remit. Among existing global efforts, the PRSP and DWCP appear to be natural candidates to take a leading role in this effort, with the PRSP offering the advantage of ties with the aid and loan programmes of the World Bank and International Monetary Fund. Yet whichever vehicle takes the lead, some broadening of scope may be required – from migrant rights, labour market institutions and social outcomes, through the role of remittances, to trade and macroeconomic management (Lucas, 2008).

Recent debates on the role of international migration in development have focused on three areas, discussed above in Chapter 2 – namely, return and circular migration, remittances and transnational communities – all of which can contribute to development in origin countries. Return migrants bring back human capital, in the form of skills and knowledge, and financial and social capital, in the form of contacts and access to networks. Policies are needed to facilitate migrant workers' proper reintegration into labour markets and societies in their home countries. Such policies should include measures to make productive use of the savings, acquired skills and networks of returning migrants. Because not all migrant workers return, transnational communities represent another potential development resource to countries of origin (Kuznetsov, 2006). They contribute to home country development through the transfer of skills, technology and knowledge, capital and investments, and through their ability to influence positive policy changes. The ILO Multilateral Framework on Labour Migration calls for the promotion of linkages between transnational communities and business initiatives.

5.5 Governance and regulation of labour migration in destination countries

5.5.1 Objectives of migration policies

Just as in relation to countries of origin, social, economic and political circumstances can vary considerably among countries of destination. Most of them, however, share some important objectives in their approaches to migration policy, such as regulating the labour market, including by admitting migrant workers according to labour market needs and controlling irregular migration; maximizing the benefits of migration for the destination country; and minimizing any adverse social, political or economic effects from the admission of migrant workers. Public perceptions of migrant workers and migration can have a significant impact on

the formulation of migration policies, as policy-makers and legislators strive to retain political support.

The governance of migration in destination countries must not only respond to those countries' own needs and demands, but must also take into account the protection of migrant workers' rights. Governments must therefore address a number of interrelated policy requirements in regulating the labour market, ensuring the protection of migrant and national workers, and supporting integration. The following areas are particularly significant for the governance and regulation of migration in host countries:

- admission policies for the employment of migrants, including better opportunities for legal migration;
- labour market regulation, including with regard to access to employment, mobility of migrant workers, and recognition of their qualifications;
- protection of migrant (and native) workers in the employment context;
- addressing irregular migration, including regularization measures, as appropriate;
- facilitating social cohesion, particularly through preventing discrimination and facilitating integration;
- social protection and welfare, including improving access to social security, health care, education and housing; and
- promoting migration–development linkages in support of origin countries.

The sections below discuss a selection of issues in governance and regulation relating to these areas.

5.5.2 Admission policies

The principle of state sovereignty over immigration means that States essentially decide who enters their territory, who stays, who can work and who should leave, within the framework of internationally recognized norms. As the ILO Multilateral Framework on Labour Migration states, “All States have the sovereign right to develop their own policies to manage labour migration. International labour standards and other international instruments, as well as guidelines, as appropriate, should play an important role to make these policies coherent, effective and fair” (principle 4). Immigration policies have long been tied to addressing labour market needs in destination countries. Since the 1990s, thanks

to the great progress in ICT, governments of numerous industrialized countries have been looking to immigration to meet skill shortages, thereby resurrecting the debate over how successfully States can align migration policies with the short- and long-term needs of their economies.

The main objectives usually presented as reasons for increasing the supply of workers via immigration are:

- supporting strategic industries, that is, those industries that have strategic importance and might be lost if skilled personnel are unavailable or the industry is relocated abroad;
- compensating for workforces that are shrinking due to population ageing and decline;
- filling low-wage and low-skilled jobs in sectors such as health care where native workers are unavailable or unwilling to take them;
- meeting temporary demands for workers during periods of economic expansion or for seasonal needs in agriculture and construction;
- building a global workforce and training foreign workers for branches or subsidiaries abroad; and
- avoiding inflation by curbing wage increases in particular industries, occupations or areas that could have spillover effects in other labour markets or lead to rising consumer prices.

These factors show why countries might choose to open their borders, but do not necessarily shed light on how many migrants they should admit. Planning for immigration to meet labour market requirements may take any of several different tracks. Selective immigration policies have been common in recent decades. Traditional immigration countries, such as Australia and Canada, not only recruit immigrants for specific jobs or for immediate labour market scarcities, but also choose them on the basis of their long-term capacity to integrate in the labour market, so that those who pass points tests for admission are free to choose and change jobs as they wish. European countries are slowly considering moving to a similar system, and the United Kingdom has already made significant moves in this direction (UK Home Office, 2008). The European Commission's 2005 policy plan on legal migration and the recent Blue Card Directive are belated attempts to attract skilled workers in the light of the emerging need to maintain competitiveness (European Commission, 2005a, 2007c).

Other countries direct their efforts to matching foreign workers to immediate labour market needs. This is a complex undertaking, since it is difficult

to ascertain labour scarcity for each and every occupation at a specific point in time and for each region within a country. As a result, governments generally use simple labour market tests to determine where scarcity exists. Such tests allow agencies considerable latitude in administering labour-market-based migration policies. In other cases, countries take a laissez-faire approach. Some put the onus on employers to prove that no native workers are available for a particular assignment, requiring them to show that they have made efforts to recruit qualified native workers but were unsuccessful. Fulfilling such requirements can be expensive and time-consuming. In some cases, such as in the United States, the employer simply attests that the workers are needed and that the prevailing wage will be paid, and inspections generally take place only when complaints of non-compliance have been made. According to the OECD, a number of European countries, including France, Germany and the United Kingdom, have lifted labour market testing for a wide range of occupations (OECD, 2007a, p. 97).

5.5.3 Increasing opportunities for legal migration, especially for low-skilled workers

The demand for labour in destination countries cuts across all skill categories from low- to high-skilled workers. The European Commission's policy plan on legal migration clearly recognizes this fact:

With regard to economic immigration, the current situation and prospects of EU labour markets can be broadly described as a “need” scenario. Some Member States already experience substantial labour and skills shortages in certain sectors of the economy, which cannot be filled within the national labour markets. This phenomenon concerns the full range of qualifications – from unskilled workers to top academic professionals. (European Commission, 2005a)

Yet the policy plan seems to have ignored this point when formulating its policy measures on admissions, which focus on skilled worker admissions (with the exception of seasonal workers). As a recent OECD study points out, “As shortages and mismatches across the skills spectrum intensify, recognizing the human capital of all immigrants so as to employ it more smartly, even strategically, must become a priority.” It also states that “the new system should not be thought of as an immigration system at all: instead, it should be conceptualized as an emerging system of international labour mobility” (Dayton-Johnson et al., 2007, pp. 22, 12).

In particular, many barriers exist to the mobility of low- and semi-skilled persons, despite observed labour market demand for such workers in many developed countries and the surplus of such workers in developing countries (see IOM, 2008; UNDP, 2009; Wickramasekara, 2008a). There is a growing consensus that legal avenues for labour migration should be expanded. The GCIM, the ILO, the World Bank and the IOM have called for the expansion of legal migration opportunities through temporary and circular migration programmes (Castles, 2006a, 2006b). The ILO Multilateral Framework states that “Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends” (principle 5). The 2007 GFMD claims to have “enabled a shift of the migration and development paradigm by promoting legal migration as an opportunity for development of both origin and destination countries, rather than as a threat” (GFMD, 2007, p. 2). The UN Secretary-General’s Report to the UN High-level Dialogue on International Migration and Development in 2006 noted: “There is a need for States to develop forward-looking policies that take realistic account of their long-term structural demand for both low-skilled and highly skilled workers.” It added: “Low-skilled migration has the largest potential to reduce the depth and severity of poverty in communities of origin” (UN, 2006, pp. 13, 17). Nigel Harris emphatically pointed out the results of this policy of restricted immigration:

In the relationships between the developed North and the developing South, the biggest failure has not been the decline in aid programmes, which are trivial in the sum of things, or the failure to open markets quickly enough, or transfer technology, but in consistently denying the right to work to the willing and eager workers of the developing countries. In doing this, the developed countries have reduced the prosperity both of their own people and the Third World. (Harris, 2002, p. 130)

Interestingly, the GCIM used the term “essential workers” to refer to both low-skilled and highly skilled workers (GCIM, 2005). There is now an increasing consensus in the international community in favour of expanding opportunities for migration of low-skilled workers. More recently, the OECD road-map on labour migration and the UNDP *Human Development Report 2009* have made a case for greater admissions of low-skilled workers (OECD, 2009a; UNDP, 2009).

As noted above, the recent proliferation of temporary migration programmes, such as those discussed in Chapter 1, and the emphasis on the migration–development nexus, have prompted policy-makers and planners to look into ways of promoting new programmes of this kind. The bottom line is that there

are insufficient legal avenues for migration, especially for low-skilled workers; yet many countries are not willing to accept low-skilled migrant workers on a permanent basis, and so look instead to temporary programmes.

The major challenges in formulating temporary migration programmes lie in ensuring that they are indeed temporary and that they protect migrant workers' rights. On the first count, a number of safeguards have been attempted. These include entering into bilateral labour agreements which place a large part of the responsibility on origin countries; this may be exercised by, for example, withholding a portion of the wages or social security contributions and paying them only upon departure or return; offering incentives in the form of the chance to re-apply for repeat migration after returning; and adopting stricter enforcement measures involving biometric and other checks. Despite such safeguards, destination countries continue to have concerns about temporary migration programmes, as reflected in the limited opportunities made available for low-skilled workers.

There is also rising interest in circular migration. The potential of circular migration has been raised by the ILO in the context of policy options to address skilled migration.² There does seem to be a good case for this option in that it does not deprive origin countries of their human capital permanently. Further, it also promotes intellectual cross-fertilization and ensures regular remittance flows to source countries. Migrants involved in such programmes can form transnational links that contribute to their home countries through periodic return, knowledge transfer and investments. Destination countries, for their part, may favour circular migration on the grounds that it reduces fear about the risk of permanent settlement or concerns about integration.

The recent interest in temporary and circular migration in the context of the migration–development debate, however, pertains mostly to expanding legal avenues for low-skilled workers. In this regard, circulation programmes are said to contribute to poverty alleviation (GFMD, 2007; Vertovec, 2007). Thus, the ILO Multilateral Framework on Labour Migration recommends the adoption of “policies to encourage circular and return migration and reintegration into the country of origin, including by promoting temporary labour migration schemes and circulation-friendly visa policies” (guideline 15.8). However, the anticipated net developmental “benefits” of temporary migration programmes can be achieved only if some fundamental standards are met. There must be effective and enforceable protection mechanisms to ensure equality of treatment and access to decent work opportunities for migrant workers; abuses must be prevented at

² The ILO came out in favour of circular migration for skilled migrants a few years ago. See Wickramasekara (2003).

the recruitment stage and in the workplace; and there must be suitable mechanisms to facilitate the transfer and productive use of remittances.

Despite the benefits, there are some valid concerns about the nature of temporary and circulation migration programmes. Temporary workers often suffer from a number of problems, such as low wages, poorer working conditions, lack of access to vocational training, limited or no protection from lay-off and expulsion, lack of opportunity to change employer, lack of social security entitlements despite making contributions, lack of family unification, fragile residence status and limited integration options (OSCE, IOM and ILO, 2007; Wickramasekara, 2007d).

Special efforts should be made to prevent temporary migration schemes from resulting in limitations on equal access to labour and human rights for migrant workers vis-à-vis native workers. This relates in particular to the principles of equality of opportunity and treatment and non-discrimination, including the right to equal pay for equal work, to decent and safe conditions of work, and to the right of association. Of particular concern is the all-too-common practice of employers withholding migrant workers' passports in complete breach of internationally recognized human rights standards. Some limitations on the enjoyment of rights may be reasonable, at least for a limited period of time, such as the right to family reunification and the immediate enjoyment of social security and social protection benefits. However, there are others that should never be compromised, such as the fundamental labour rights of freedom of association and collective bargaining. The ILO Multilateral Framework has laid down clear guidelines for temporary migrant workers:

- ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and national workers, and that workers in temporary schemes enjoy the rights referred to in principles 8 and 9 of the Framework (guideline 5.5);³
- ensuring that restrictions on the rights of temporary migrant workers do not exceed relevant international standards (guideline 9.7).

As regards the concept of circular migration, it has been shown that current immigration and visa regimes in developed countries pose significant barriers to circulation. In a number of countries, permanent residents lose the right of return after six months' or one year's stay outside the country where they have obtained permanent residence. Circulation-friendly visa systems should be provided and

³ Principles 8 and 9 relate to the human and labour rights of migrant workers.

more liberal rights of return made available to diaspora migrant communities. The European Commission's Communication on migration and development (2005b) has proposed the introduction of flexible multi-entry visa systems. Lack of policy coherence between immigration and development policies is another problem. The goal of immigration authorities is generally to prevent migration or return to the destination country, whereas circulation is an essential component of development-friendly migration policies. Hidden agendas designed to promote return migration may also prevent genuine partnerships.

The OECD Development Centre has identified the following components of a policy to promote circular migration: issuing multi-use, multi-annual work permits; lowering the cost of re-entry and offering flexible procedures for the re-admission of workers; transferring pension and social security contributions to the home country; and entitling foreign students enrolled in universities to remain in the destination country for a fixed time to seek work there (Dayton-Johnson et al., 2007).

5.5.4 Regulating labour market access, mobility, and recognition of qualifications

Labour market regulation concerns access to employment and occupation in the destination country, whether related to the migrant worker's first job or a subsequent job if he or she becomes unemployed or chooses to move to another employer. It also entails upholding minimum decent work conditions for all workers and enforcing labour law.

Providing migrant workers with free access to the labour market is an important step, which can play a vital role in promoting the integration of migrant workers and their families in the destination country. ILO Convention No. 143 urges a liberal approach to this issue, in effect allowing migrant workers to access the national labour market by permitting them to change employers after they have worked two years for the employer for whom they were initially admitted to work. It also stipulates that migrant workers who have lost their jobs should be allowed sufficient time to find alternative jobs.

Unfortunately, national legislation in many countries contains restrictions on the free choice of employment by migrant workers. These restrictions may directly limit their access to employment by defining the circumstances in which they may change jobs or by establishing preferences for the employment of native workers over non-natives. Of the 93 countries that responded to the ILO's 2003 ILM Survey, 19 did not allow a change of employer under any circumstance.

Another 19 countries allowed a change of employer at any time, as long as it was in the same branch of economic activity, or allowed a change after a certain number of years of legal employment (ILO, 2004d). Restrictions on changing jobs are a characteristic feature of the temporary labour migration schemes that are now becoming increasingly popular. Because of the initial costs incurred by employers in bringing in workers, it is unlikely that they would support changes permitting their workers to leave for another employer.

In addition, admission and immigration rules can either overtly or covertly discriminate against women migrant workers because of the gender division of labour in many countries of origin and destination. Persistent occupational gender segregation may be indirectly reflected in admission rules, and women may end up being eligible as autonomous migrants only for certain categories of jobs. Such rules should be re-evaluated to avoid confining women migrants to low-skilled jobs, for example in domestic service, entertainment and labour-intensive factory work.

The issue of the international recognition of skills and qualifications of migrant workers is gaining increasing attention in the policy debate, as noted in Chapter 3 above. The failure of destination countries to recognize the diplomas and qualifications of many migrants represents a waste of the educational skills and talents that migrant workers bring to destination countries. Many migrant workers, especially women, sacrifice themselves in occupations for which they are over-qualified. For example, a large number of skilled women migrant workers enter domestic work.

The recognition of qualifications obtained abroad, to ensure that migrant workers entering through regular channels can access employment on equal terms with native workers, is thus an important policy goal. ILO instruments provide some guidance in this area. Convention No. 143 states that “a Member may ... after appropriate consultation with the representative organizations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas” (Article 14). The ILO Multilateral Framework on Labour Migration states that “an orderly and equitable process of labour migration should be promoted in both origin and destination countries” (principle 12) that should include policies “promoting the recognition and accreditation of migrant workers’ skills and qualifications and, where that is not possible, providing a means to have their skills and qualifications recognized” (guideline 12.6).

Several options should be explored when addressing this issue. One option is to use trade arrangements, which have the potential to increase the portability of skills, as they provide a framework and procedures to encourage recognition and to improve developing countries’ access to recognition schemes (Shah, Long and

Windle, 2007). While this option has potential, in practice its potential has yet to be realized (ILO, 2009d). Mutual recognition agreements (MRAs) are another option. These are formal agreements between origin and destination countries which focus on the reciprocal recognition of certifications and competences of migrant workers. While a wide range of MRAs exists, mainly in the area of regulated professions, the capacity of many developing countries to participate in bilateral or multilateral MRAs tends to be limited. This may be because training in the professions is sometimes considered inadequate by destination countries, because developing countries lack national recognition systems as a basis for mutual recognition, or because they lack professional bodies with the capacity to undertake the lengthy and complex negotiations involved. Building capacities in developing countries to develop skills recognition systems and to negotiate MRAs are therefore important policy initiatives. Closer cooperation between immigration authorities, labour ministries, professional bodies and industry is necessary.

5.5.5 Protection of migrant workers

As noted in Chapter 4, there are three fundamental notions that characterize the protection extended to migrant workers and members of their families in international norms:

- universal human rights apply to all migrants, regardless of status;
- equality of treatment applies between migrant workers in regular status and native workers in employment and occupation; and
- international labour standards on treatment and conditions at work, such as occupational safety and health, maximum hours of work, minimum wages, non-discrimination, freedom of association and maternity leave, apply to all workers.

Equality of treatment in employment for authorized migrant workers is a central premise of international standards and is today reflected in the national law of many countries. Tolerance of inequalities in treatment between native and foreign workers encourages exploitation of foreign workers and facilitates substitution of native workers by less protected non-native workers. This can contribute to expanding dual labour markets and informal employment, lowering wages and conditions of work generally, and ultimately provoking conflict between native and foreign workers and their respective communities. A number of issues relating to the working conditions of migrant workers are highlighted in Chapter 3 above.

Policy responses to these challenges across the world leave much to be desired. A Eurofound study points out that, “in a majority of EU countries, there is increasing awareness of the crucial role played by migrant workers for economic growth. Unfortunately, there seems to be much less interest within the public debate in the disadvantaged working conditions of these workers” (Eurofound, 2007, p. 140). This especially applies to occupational safety and health, as migrant workers have often been invisible in national safety and health policies and statistics. Policies do not take into adequate consideration the multicultural nature and diversity of the workforce (AFL-CIO, 2005; Wickramasekara, 2007e, 2008c). Labour inspection systems operating under budgetary and staff constraints have largely failed to keep up with changing patterns of work and workplace challenges confronting migrant workers. Vulnerable groups such as female domestic workers are excluded from the application of labour law in some countries (ILO, 2008c).

5.5.6 Labour inspection and enforcement

Simply enacting laws and regulations to protect migrant workers is not enough; these measures must be implemented through effective labour inspection and enforcement. This monitoring is crucial to enforcing equality of treatment and decent work conditions for migrant workers, which is particularly important in areas such as agriculture, construction, domestic work and sectors of “irregular” employment. It is no surprise that a lack of labour inspection in sectors and workplaces with large numbers of migrant workers is associated with higher incidences of exploitation and abuse and their informal employment. ILO Conventions Nos. 81 and 129 provide the basic normative guidance for national law and policy regarding labour inspections.

Labour inspection targeted at the sectors and workplaces where migrant workers are concentrated, including in the informal economy, is thus crucial to ensuring that they have decent working conditions and their employers provide at least the minimum protections. Government officials performing inspections should be attentive to important issues such as language differences and communication difficulties. Effective labour inspection and enforcement helps prevent unfair competition between employers who play by the rules and those who do not. It reduces the incentive to hire and exploit migrant workers in irregular status who are afraid to assert their rights.

It is essential to keep labour inspection and enforcement separate and distinct from immigration inspection and enforcement. According to the ILO CEACR, “the primary duty of labour inspectors is to protect workers and not to enforce

immigration law” (ILO, 2006d, para. 78). Unfortunately, some countries require labour inspection services to handle immigration control issues as well. Linking the two areas undermines the effectiveness of both, particularly labour law enforcement. Migrant workers in irregular status generally avoid involvement in labour inspection for fear of discovery and possible deportation. This, of course, is one of the main reasons they are vulnerable to abuse and exploitation by their employers.

5.5.7 The right to join unions and voice complaints

One of the most effective ways of preventing the exploitation of migrant workers is by giving them the right to join a trade union – a right which is too often denied them. In recent years, trade unions have begun to pay much more attention to organizing migrant workers, campaigning for their rights and providing them with direct support. They are also increasingly engaging in international co-operation on policies to further the rights of migrant workers. Major policy shifts and extensive organizing drives among migrant workers have taken place in recent years by mainstream trade unions and national confederations across Europe, as well as in the Americas and Asia.

In December 2006, the ITUC adopted an Action Plan on Migrant Workers which focuses on four priorities: protection of rights, unionization, sustainable development and awareness raising. The Plan sets out the specific steps to be taken at national, regional and international levels, both within the trade union movement and in partnership with NGOs and other civil society actors (ITUC, 2006). National labour confederations in Argentina, Belgium, Canada, France, Germany, Ireland, Italy, Mauritius, Mexico, the Netherlands, Portugal, the Republic of Korea, South Africa, Spain, Sweden, the United Kingdom and the United States, among others, now have full-time national staff dedicated to handling issues to do with migrant workers and anti-discrimination work. All of them are active in policy advocacy for the improved protection of rights and decent working conditions for migrants (Taran and Demaret, 2006).

Migrant workers in some parts of the globe still face significant challenges in exercising their rights, with some countries denying them the right to organize unions, join unions or engage in other collective action to further their rights. While few countries in the Gulf region have legalized trade unions even for native workers (Bahrain and Oman are exceptions), the migrant workers who engage in union or collective activity are punished more severely than native workers simply because of their migrant status. For example, in 2007, 4,000 Indian workers went on strike in the United Arab Emirates to protest at their low wages and poor

working conditions: the Government's response was to force them back to work under the threat of imprisonment and deportation, while refusing to address the causes of their complaints (ITUC, CSI and IGB, 2007). Similarly, in July 2008, after South Asian workers, including Bangladeshis, in Kuwait engaged in a strike and held mass demonstrations to demand better pay and working conditions, the Government deported over 1,129 Bangladeshi workers (Bdnews24.com, 2008; Migrant Forum in Asia, n.d.).

In 2009, trade unions from Sri Lanka and their counterparts in Bahrain, Jordan and Kuwait signed three separate bilateral cooperation agreements on the protection of the rights of Sri Lankan migrant workers in the three countries.⁴ These agreements state the signatories' commitment to certain key principles, including that the ILO Multilateral Framework applies equally to all migrant workers, and their commitment to undertake actions to promote migrant workers' rights. These trade union agreements represent good practice in promoting the protection and rights of migrant workers.

In Malaysia, although the labour law ostensibly permits migrant workers to join trade unions, this right is cancelled out by Immigration Department rules. The Immigration Department issues work permits under the Immigration Act which stipulate a series of conditions, including a prohibition on the joining of any association.⁵

Migrant workers in particularly dangerous jobs can also benefit from trade union representation. The European agricultural workers' unions have urged the promotion of "virtuous recruitment formulas", like those in France under which unions and employer representatives have begun creating seasonal work centres to assist and train seasonal and migrant workers (cited in Renaut, 2003).

5.5.8 Addressing irregular migration

Because irregular migration is a widespread phenomenon affecting most destination countries, it is a major policy issue. The ILO view is that it cannot be considered independently of regular migration and that it should be treated as part of the broader Decent Work Agenda supported by all ILO member States. Migrants in irregular status are vulnerable to the worst forms of abuse and exploitation, making this a particularly significant policy area for countries of both origin and

⁴ For more information on these trade union agreements, see the ILO's good practices database on labour migration policies and programmes, at: <http://www.ilo.org/dyn/migpracticeadmin/migmmain.home> (accessed 4 Jan. 2010).

⁵ Based on information provided by the Malaysian Trade Union Congress.

destination. There are currently serious gaps, in both policy and practice, in the protection of the rights of migrants in irregular status in a number of countries. Some policy responses to irregular migration have proved ineffective, in particular the tightening of border controls and visa policies, which can have the effect of making smuggling and trafficking more lucrative without necessarily doing much to reduce irregular migration (Cornelius, 2005; Wickramasekara, 2005b).

As set out in Chapter 4 above, migrant workers in irregular status are protected by a number of international instruments, including international human rights instruments and other international measures, ILO Conventions and Recommendations covering all workers, and provisions contained in specific Conventions and Recommendations on migrant workers.

The ILO Multilateral Framework on Labour Migration contains a number of principles and guidelines regarding irregular migration and the treatment of migrant workers in irregular status. It emphasizes that a comprehensive approach to irregular migration requires a combination of measures, including expanded opportunities for and access to legal migration, enhanced law enforcement, strengthened labour inspection to reduce incentives for irregular employment, and the establishment of a legal and administrative environment that is conducive to legal migration (see e.g. guidelines 4.4, 11.1). Of course, none of these alone will be sufficient.

Good practices, based on international norms and experience in various countries, that should form the cornerstone of strategies and policies to address irregular migration, can be listed as follows:

- Approach irregular migration in a comprehensive manner, looking at root causes, the needs of workers for protection, and the accountability of all actors involved; adopt a broad range of policies covering preventive and control policies and employer sanctions based on cooperation among all stakeholders, including countries of origin and destination.
- Base policy on internationally accepted norms and instruments, promoting a rights-based approach as elaborated in the ILO Multilateral Framework on Labour Migration.
- Ensure respect for basic human rights and all labour rights in the workplace for migrant workers in irregular status.
- Treat irregular migration as a labour market and decent work conditions issue, rather than only a legal/security issue.
- Expand legal migration opportunities and options for low-skilled workers in line with labour market needs.

- Address root causes of irregular migration by promoting decent work in countries of origin to reduce migration pressures.
- Regulate and monitor recruitment processes across origin and destination countries.
- Address irregular employment and undeclared work in destination countries, which act as magnets for migrants in irregular status.
- Adopt a broad-based consultative process among all stakeholders in finding solutions to the issue of irregular migration by promoting industry–government cooperation and consultation with unions, NGOs and other civil society actors.
- Disseminate information and education to employers regarding hiring workers in irregular status, and to potential migrants on the risks and dangers of irregular migration.
- Strengthen labour market institutions, such as labour inspection systems and labour administrations, to bring employers into compliance with labour law.
- Promote bilateral and regional cooperation, as recommended in ILO Convention No. 143 and the 1990 International Convention, to reduce irregular migration and make migration a driver for development.⁶

The Parliamentary Assembly of the Council of Europe, in its Recommendation on migrants in irregular employment in the agricultural sector of southern European countries, called on member States to establish an effective system of migration management for labour in agriculture (Council of Europe, 2003b). This, it said, should include fair and viable channels for the recruitment of seasonal migrant workers, with work permits giving full access to social security and other rights, and appropriate legal frameworks within which employers of clandestine workers in agriculture and their recruiters can be held to account and sanctioned. It also called for ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, which will be discussed in Chapter 6 below.

Some governments, faced with large numbers of migrants in irregular status, have chosen to declare amnesties through which migrants can either leave the country without penalty or attempt to regularize their status. This is an internationally recommended good practice to reduce irregular migration. ILO Convention No. 143 provides that member States have the option to give persons

⁶ This section draws upon Wickramasekara (2005b). The Platform for International Cooperation on Undocumented Migrants has also highlighted good practices: see PICUM (2005).

who are residing or working in irregular status within the country the right to stay and to take up documented employment. However, when regularization exercises are repeated, the credibility of government action in controlling irregular migration may be questioned by the public.

Recent amnesties have been carried out, for example, in countries of southern Europe – Greece, Italy, Portugal and Spain, – which contain key ports of entry for migrants from across the Mediterranean. Experiences in Italy, Spain, the Bolivarian Republic of Venezuela and elsewhere suggest that regularizing the status of workers whom a State cannot send back home can be a beneficial policy option not only for the migrant workers involved but also for the destination country as a whole. Spain carried out a bold regularization exercise in 2005, providing 690,000 undocumented workers with regular status, which caused some concern among other EU Member States but was judged to offer a useful example (Arango and Jachimowicz, 2005; Council of Europe, 2007, para. 32, p. 12).

An alternative to amnesties is to have a permanent national authority with the power to regularize the status of unauthorized migrants who submit petitions and fulfil certain criteria. In this context, a principle that seems to have wide implicit resonance in the regularization policies of many countries is that of “earned adjustment”. A conversion to regular status for migrant workers in irregular status is earned if they meet certain minimum conditions – for example, they must be gainfully employed, not have violated any laws other than those relating to unauthorized or clandestine entry, and have made an effort to integrate by, for example, learning the local language. Such a provision is especially important for those countries that may be averse to regularization in principle, such as Germany.

In 2008 the French EU Presidency proposed measures to prevent Member States from using “mass regularization” programmes as part of its proposed common European Pact on Immigration and Asylum, endorsed by EU governments in October that year (Open Europe, 2008). This cannot be defended on grounds of labour market efficiency (since demand for labour is the cause of large irregular migrant populations), historical experience or migrant rights. It will only accentuate exploitation of workers in irregular status and force them to go underground, merely prolonging their stays.

5.5.9 Facilitating social cohesion

Social cohesion in destination countries is facilitated considerably when attempts are made to eliminate discrimination against migrant workers and their families. As emphasized in Chapter 3, discrimination produces differential treatment in

labour markets, denies equal opportunity, provokes conflict within the working population and undermines social cohesion. The ILO Multilateral Framework on Labour Migration addresses the need to eliminate all forms of discrimination against migrant workers in employment and occupation (guideline 8.4.4).

Appropriate measures to assist the integration of migrants in society and provide possibilities for family reunification also play an important role in preventing the marginalization of migrants and promoting social cohesion. The European Commission commented in 2008 that “the positive potential of immigration can only be realized if integration into host societies is successful. This requires an approach which does not only look at the benefit for the host society but also takes account of the interests of the immigrants” (European Commission, 2008, p. 3). Integration has many dimensions, including economic, social, cultural, legal and political. The complex nature of integration calls for a multifaceted response from a number of actors. Since some of the issues related to the integration of migrant workers have been considered in earlier chapters, this section will focus on recommendations for addressing those issues with the aim of achieving successful integration.

There is a consensus that the integration of migrants should be a two-way process, involving both strengthened efforts from destination countries and efforts by migrants themselves. This implies, on the one hand, that it is the responsibility of the host society to ensure that the formal rights of migrants are met in such a way that the individual has the opportunity to participate in economic, social, cultural and civil life. It also implies, on the other hand, that migrants will respect the fundamental norms and values of the destination society and participate actively in the integration process, although without having to relinquish their own identity (European Council, 2003). The ILO Multilateral Framework states that “Governments and social partners, in consultation, should promote social integration and inclusion, while respecting cultural diversity, preventing discrimination against migrant workers and taking measures to combat racism and xenophobia” (principle 14). The ILO, the European Commission and the OECD have made a number of recommendations regarding the integration of immigrants, many of which address similar concerns (European Commission, 2008; ILO, 2006a; OECD, 2007b). The OECD has argued for the fullest participation of immigrants in the political and social life of their new country and is developing the notion of “EU Multicultural Citizenship” as a long-term holistic framework (OECD, 2007d).

Discrimination, racism and xenophobia pose considerable problems for migrant workers in the countries in which they work and inhibit their successful integration. Several measures are necessary to ameliorate this situation, including

promoting and implementing anti-discrimination legislation and policies; establishing or strengthening specialized bodies on equality and non-discrimination for migrant workers; conducting periodic gender-sensitive data collection and analysis on these issues; and implementing policies and programmes to prevent and combat racism and xenophobia. The Durban programme of action, following the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, recommended that governments elaborate and implement national plans of action on racism, discrimination and xenophobia. Box 5.1 summarizes the 11 common basic principles for integration of migrants advocated by the EU.

Access to the labour market is certainly crucial for integration. Current EU statistics reveal that, although the situation differs among Member States, in many countries the unemployment rates for immigrants are higher than those for EU nationals (European Commission, 2008, p. 3), indicating incomplete labour market integration. To address these issues, governments should consider improving the labour market position of migrant workers through education and vocational training, working with social partners and migrant worker associations to ensure better representation and participation in economic, social and political life, and encouraging migrant participation in trade unions and work committees (Taran and Editing Group of the European Committee on Migration, 2008). It is also important to guarantee all migrant workers equal treatment with native workers in respect of working conditions. In a Communication on a common integration policy for Europe, the European Commission suggested that the EU and its Member States should

foster diversity management in the work place and render advancement opportunities available also for legally residing and working third-country nationals. Policy efforts should aim to ensure a social ladder for all workers in the EU, guarantee fundamental social rights and favour good labour standards and social cohesion. Within this context due attention should be paid to the participation of immigrant women in the labour market and to immigrants who are furthest from the labour market. (European Commission, 2008, p. 7)

Other central issues for integration are transferability of skills and qualifications acquired in the origin country to the destination country, as discussed above, and the need for migrant workers to speak the language of the country in which they live and work. Further suggestions for better integration of migrant workers include providing integration programmes for newly arrived immigrants, including vocational training and educational opportunities, and language

Box 5.1 Common basic principles for immigrant integration policy in the EU

1. Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States.
2. Integration implies respect for the basic values of the European Union.
3. Employment is a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible.
4. Basic knowledge of the host society's language, history and institutions is indispensable to integration; enabling immigrants to acquire this basic knowledge is essential to successful integration.
5. Efforts in education are critical in preparing immigrants, and particularly their descendants, to become more successful and more active participants in society.
6. Access for immigrants to institutions, as well as to public and private goods and services, on a basis equal to national citizens and in a non-discriminatory way is a critical foundation for better integration.
7. Frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration. Shared forums, intercultural dialogue, education about immigrants and immigrant cultures, and stimulating living conditions in urban environments enhance the interactions between immigrants and Member State citizens.
8. The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law.
9. The participation of immigrants in the democratic process and in the formulation of integration policies and measures, especially at the local level, supports their integration.
10. Mainstreaming integration policies and measures in all relevant policy portfolios and levels of government and public services is an important consideration in public policy formation and implementation.
11. Developing clear goals, indicators and evaluation mechanisms is necessary to adjust policy, evaluate progress on integration and to make the exchange of information more effective.

Source: European Council, 2004.

and cultural orientation courses. This can be facilitated by creating national or regional centres for integration. Other measures include introducing better links between training and employment; providing opportunities for apprenticeships and lifelong training schemes, especially for vulnerable groups; establishing common standards for the recognition of degrees and qualifications held by

immigrants in partnership with sending countries, including the right to appeal against non-recognition; and providing welcome programmes for immigrants in destination countries.

An additional significant challenge is the integration of immigrants' children, as they are often disadvantaged in terms of educational attainment and employment opportunities. The OECD has noted that immigrant children lag two years behind native children in schooling and experience lower employment outcomes (OECD, 2006b). Their integration into the national education system must be facilitated. Measures to establish contacts between adult children of immigrants and employers via such means as company fairs, internship programmes, mentoring and apprenticeships should be developed, and measures to improve their knowledge of the functioning of the labour market should be adopted.

The ILO situation testing research described earlier has had a significant impact in the countries where it was conducted. For example, in Belgium the ILO study was credited with shaping national legislation that put into effect the EU Directive on racism (European Council, 2000). Campaigns against discrimination were established at regional and federal levels by the three national trade union federations, and the national federation of employers adopted a code of practice on anti-discrimination for its constituents. Prompted by the research outcome, both regional and federal authorities in Belgium adopted administrative and legal measures to combat discrimination. The national labour inspectorate added discrimination criteria to its monitoring activity and included it in training given to inspectors.

The ILO High-level Tripartite Meeting on Achieving Equality in Employment for Migrant Workers, held in Geneva in March 2000, examined the findings and implications of ILO discrimination research, developed a framework and inventory of measures and mechanisms to combat discrimination and promote equality of opportunity, identified an initial listing of best practice measures replicable elsewhere, and elaborated a set of recommendations for future follow-up activity (Taran, McClure and Zegers de Beijl, 2000).

The ILO Global Report issued in May 2007 spotlighted discrimination issues affecting migrant workers. In November that year, on the basis of research, experience and activity over the previous four years, the ILO Governing Body adopted a new ILO Action Plan on the elimination of discrimination in employment and occupation at its 300th Session. This new plan includes a particular focus on capacity building and supporting social partner organizations in tackling workplace discrimination, in particular regarding workers of immigrant origin.

5.5.10 *Maximizing development benefits: A shared responsibility*

Recent debates on the migration–development nexus have made it clear that policies to maximize the development benefits of international migration require joint responses. The UN Secretary-General’s report for the UN High-level Dialogue on International Migration and Development formulated this in terms of “co-development”, although this term had previously been used by European countries in a different context. The GFMD aims to enhance inter-State dialogue and cooperation and to foster practical outcomes on international migration and development issues between countries of origin and destination. It is founded on the recognition of joint and shared responsibility between these two groups of countries.

Policies and practices in destination countries can affect development in origin countries in a number of ways. Two particularly significant policy areas are remittances and the admission of skilled workers. Table 5.1 summarizes the main elements of the respective roles of origin and destination countries in respect of migration and development. The table deals with both overall policy in this area and its main components: remittances, return, circular migration, and the engagement of diaspora communities in the migration process (as well as the “brain drain”, discussed in the next section). It is clear that the success of origin country policies in harnessing development benefits is to a large extent determined by destination country policies. As pointed out earlier, protection of migrants’ rights is crucial to remittances and other contributions they make. Growing cooperation in the area of migration and development has been reflected in recent multilateral processes, such as the UN High-level Dialogue on Migration and the GFMD, and in growing donor interest in promoting migration and development linkages.

There is a consensus that sound macroeconomic policies, political stability and improvements in the investment climate are prerequisites for making the best use of remittances in origin countries. Formalizing money transfers by channelling them through the formal banking system is also believed to be central to enhancing their long-term development impact (World Bank, 2006a). The members of the Roundtable on remittances and other diaspora options in the first GFMD in 2007 agreed that improving the formalization of transfers offers opportunities to leverage the development impact of remittances by providing individuals with the options of making savings and investments or supporting local development projects (GFMD, 2007).

Table 5.1 Maximizing benefits from labour migration: A shared responsibility

Item	Source countries	Destination countries
Overall policy	Integrate and mainstream migration issues into national employment, labour market, development and poverty alleviation policies and frameworks	Support capacity of source countries to integrate migration into development and poverty alleviation frameworks
	Ensure coherence and coordination of policies among different ministries/agencies	Ensure policy coherence between migration, aid and trade policies
	Engage in consultative processes involving all stakeholders including migrant associations and diaspora communities	Document and disseminate the contribution of labour migration and migrant workers to host countries
		Expand legal avenues for admission of developing country nationals, especially low-skilled, with adequate safeguards for their protection
Remittances	Provide an enabling policy environment for financial inflows and their use	Ensure good working conditions, especially adequate wages and their payment on time
	Provide incentives for migrant savings and utilization of remittances for productive investments	Lower remittance transfer costs through regulating financial intermediaries and encouraging competition
		Ensure access of all migrant workers to remittance channels, irrespective of status Provide information on safe and low-cost remittance channels
Return migration and circulation	Accord proper recognition to returners	Promote co-development initiatives
	Introduce systems for monitoring return and circular migration	Introduce innovative circular migration policies
	Provide access to advisory channels for investment options	Implement multi-entry and flexible visa systems
	Provide information to returned migrants on available savings and investment options	Promote portability of special security entitlements
Minimizing brain drain	See box 5.2	See box 5.2

Item	Source countries	Destination countries
Engaging transnational communities	Recognize diasporas in national policy and dual citizenship rights	Assist in mapping source country transnational communities
	Promote and provide incentives for enterprise development, transnational business initiatives and trade	Promote and provide incentives for enterprise development and transnational business initiatives by migrants
	Facilitate the transfer of capital, skills and technology by migrant workers	Support promising diaspora organizations
	Launch diaspora day	Promote recognition of skills of migrants Consult diaspora groups in formulating outreach policies
	Promote linkages and networking through support to home town associations, diaspora organizations and digital networks	Use diaspora expertise in technical cooperation projects
	Establish advisory bodies with prominent members of the diaspora Establish outreach policies for the diaspora	Introduce flexible visa policies, dual citizenship arrangements and extended rights of return

Source: Expanded version of table provided in Wickramasekara, 2003.

5.5.11 Addressing brain drain issues

Significant destination countries in Europe and North America, as well as Australia, have adopted selective migration policies to attract skilled workers from developing countries, as discussed in Chapter 2. These policies have an adverse impact on source countries in the form of brain drain. As noted above, the issue has received much attention in the light of the human resource crisis in health services, especially in Africa. In its pioneering study of skilled migration and its impact on developing countries in 2001, the ILO identified a series of policy options relating to high-skilled emigration, summarized as “the Six Rs” and shown in box 5.2.

The most promising of these options appear to be the return, remittance and retention options (1, 5, 6A and 6B). Reparation (compensation) and restriction

Box 5.2 Policy responses to high skilled emigration: The “Six Rs”

1. Return of migrants to their origin country

The return of emigrants is one sure way for source countries to cultivate human capital, especially when there is value added from working abroad. Permanent return tends to be the focus of most such policies (kindred temporary return programmes are included under point 6 below).

2. Restriction of international mobility

Many developing countries have restrictive emigration policies that make it difficult for their nationals to take jobs abroad. Almost all countries restrict the immigration of foreign nationals to protect their domestic workers from competition.

3. Recruitment of international migrants

If there are domestic shortages of skilled workers, for any reason, why not court foreign workers? For example, the information technology revolution sparked a worldwide competition for workers; new policies worldwide ease numerical and “protective” regulations on admissions.

4. Reparation for loss of human capital (tax)

A favourite, but never-implemented, economic prescription in the 1970s, is that either developed countries compensate source countries, or emigrants pay taxes, to deal with externalities created by the immediate loss of human capital.

5. Resourcing expatriates (diaspora options)

Skilled emigrants abroad can be a significant resource, especially if continuing contact between academic and private sector institutions is fostered. Government and private sector initiatives seek to increase communications, knowledge transfer, remittances and investment.

6A. Retention through educational policies

Creating a highly educated workforce begins with strengthening domestic educational institutions. A viable system encourages graduates to stay with the system, retains people and ensures that the source country sees a return on its original investment in education.

6B. Retention through economic development

Giving people a reason to stay (or return) is doubtless the most effective policy for reducing emigration and the surest long-term means of boosting average human capital, as well as economic growth.

Source: Lowell and Findlay, 2002.

are not feasible options in the current context of open market policies and free markets (Wickramasekara, 2003, 2008b). Retention is a long-term option and may represent a vicious circle, since few developing countries can create the

conditions necessary to match the conditions offered in developed countries. Return migration also has limits. A more appropriate concept is a policy of circulation, which applies to both temporary movements and transnational communities (Wickramasekara, 2003). This has regained prominence in recent debates, with the EU, OECD and GFMD promoting it as an option (OECD, 2007d).

Given the recent emphasis on migration and development, many destination countries are re-examining their role with regard to migration. The European Commission has taken a number of steps in this direction, and the United Kingdom, through its Department for International Development, has promoted the idea of poverty alleviation through migration policies. A recent OECD report (Dayton-Johnson et al., 2007) has urged governments in receiving countries “to look at their migration policies through a development lens” and proposed a package consisting of the following components:

- Innovative circularity schemes should manage migration flows more effectively without crippling social services in sending countries.
- EU Member States should continue developing guidelines for recruitment of highly skilled workers from developing countries.
- EU Member States should enter into strategic partnerships with selected countries of origin.
- EU Member States should encourage and support regional schemes among developing countries.
- EU Member States should take concerted steps to lower the costs of transfers through formal channels while European banks and financial institutions, in cooperation with financial institutions in developing countries, should take the lead in extending financial services to poor rural communities (where many migrants’ families live). This array of initiatives must be a true public-private partnership.
- EU Member States should deepen co-development initiatives that harness the resources of transnational diaspora networks to promote development of migrants’ home countries.
- EU Member States should use partnership arrangements to link recruitment with capacity building and development in sending countries.
- At the national level, inter-ministerial initiatives must be established to promote coordination of development and migration policies.
- At the level of the Commission, stronger systematic consultations must be put in place across all relevant EC directorates.

- EU trade policy should be crafted with attention to its impact upon labour mobility.
- EU and Member States' security policies must recognize the broad nature of insecurity and the relationship between insecurity and labour mobility.

5.6 Conclusions

This chapter has shown that sound labour migration policy rests on identifying long-term interests, anchoring policies on respect for basic human rights, and having an effective mechanism for achieving broad social consensus. Governments will have to make clear the options or choices open to their countries, along with their long-term implications for the economy and society. There are difficult trade-offs to be made, and some degree of conflict is unavoidable in any society today. Governments, together with social partners, have to argue the rational economic case for migration. They must also ensure that migration does not lead to the exploitation of migrant workers or the marginalization of weaker segments of the labour market, such as older workers or the less skilled, among whom are earlier migrants. Migration must be, and be seen as, an advantageous proposition for all.

Since migration directly affects the interests of both workers and employers, achieving broad social consensus can be facilitated by establishing tripartite bodies that include both partners to assist governments in formulating and implementing labour migration policy. The tasks of identifying requirements in the labour market and deciding how best to fill gaps, of combating discrimination and promoting the integration of immigrants, and of informing the general public on the impact and consequences of labour migration, are best carried out with the participation of employers' and workers' organizations.

While labour migration has the potential to generate positive development benefits, as highlighted above, it should not be regarded as an alternative to sound policies for home country development. As the GCIM has emphasized, the long-term solution to low incomes, unemployment and poverty in home countries is to be found through rapid growth and development, which will serve to generate decent work opportunities so that people migrate out of choice and not necessity. The 1994 ICPD observed that "The long term manageability of international migration hinges on making the option to remain in one's country a viable one for all people" (UN, 1995, Ch. 10, para. 10.1).

The plan of action for migrant workers contained in the 2004 ILC resolution has defined the broad agenda for the ILO's activities on labour migration.

One major component of the ILO plan of action is “support for implementation of the ILO Global Employment Agenda at national level” with the objective of creating decent jobs at home to reduce migration pressures. The ILO Decent Work Country Programmes address decent work deficits that should eventually allow workers to exercise the right to work in their own countries. They also incorporate migration and development issues as needed in specific contexts.

The global community has increasingly recognized the crucial role of migrant rights in promoting the development benefits of migration. The realization of these gains and their equitable distribution is crucially dependent on mainstreaming migrant rights in migration and development policies. Wider application of international labour standards and other relevant instruments protecting migrant workers – another component of the 2004 ILO plan of action for migrant workers – is therefore crucial to maximizing the development benefits of migration in today’s globalized world.

A number of effective approaches and good practices for the governance of migration have been developed worldwide in origin and destination countries, and some of these have been highlighted in this chapter. Further, international instruments and materials developed by organizations including the ILO provide practical, useful guidance for States and relevant stakeholders. However, as this chapter has made clear, significant challenges inhibiting effective governance persist in many countries of origin and destination. It is recommended that all States base their migration policies and practice on international norms, learn from past mistakes and the good practices of other States, engage in social dialogue and adopt a cooperative approach to the governance of migration. The ultimate goal of migration policies and governance should be the promotion of development in countries of both origin and destination, and the protection of the rights of all migrant workers and their families.

6.1 Introduction

Dialogue and cooperation among countries involved in labour migration processes are essential to ensuring that international labour migration benefits all the stakeholders involved: that is, destination and origin countries, employers, workers' organizations and migrant workers themselves. Clearly there are limits to what the government of an origin country can do to protect its migrant workers without the active cooperation of the destination countries in which they work. In addition to protecting and ensuring the welfare of migrant workers, international cooperation is essential to expanding organized labour migration, curbing irregular movement and maximizing the development benefits of international migration. All States, of course, have the sovereign right to determine their own migration policies. However, closer cooperation among them, for example through bilateral agreements and multi-lateral treaties, can contribute to more effective labour migration processes and employment promotion, leading to poverty reduction. As then UN Secretary-General Kofi Annan stated, "Only through cooperation – bilateral, regional, and global – can we build the partnerships between receiver and sender countries that are in the interests of both; explore innovations to make migration a driver of development; fight smugglers and traffickers effectively; and agree on common standards for the treatment of immigrants and the management of migration" (Annan, 2004).

Existing unilateral approaches to managing and governing migration are proving inadequate to cope with the rising mobility of people across borders for tourism, work, business, study or asylum. The continually growing number of people in irregular status is evidence of that failure. This chapter will show that, while many elements of migration policy will certainly remain in the domain of individual States, there is a clear need for more multilateral efforts in governing migration.

Many of the concerns illustrated here were highlighted in the resolution and conclusions on migrant workers adopted at the 2004 session of the ILC in Geneva. The ILO Multilateral Framework on Labour Migration presents detailed guidelines suggesting how governments, in consultation with employers' and workers' organizations, might productively "engage in international cooperation ... and ... promote coherence of labour migration policies at the international and regional levels" (ILO, 2006a, p. 17). The World Commission on the Social Dimension of Globalization had earlier raised some of these issues and had noted the absence of a multilateral framework for cross-border migration, a gap which – for labour migration – has now been filled (WCSDG, 2004).

6.2 Forms of international cooperation

Both origin and destination countries are increasingly beginning to realize that they have few ways of influencing migration unilaterally. This realization, though not always explicitly acknowledged, has resulted in a host of cooperative efforts on the governance of migration. Most of these efforts are taking place at the bilateral level, many at the regional level and some at the global level. Such cooperation deserves to be strengthened, as it has significant potential. International cooperation can consist of a variety of measures, some facilitative, some regulatory and others remedial. As part of regional economic integration, countries can enter into agreements for the free movement of labour at the same time as they are reducing barriers to free trade. Origin and destination countries can also enter into bilateral agreements regarding recruitment for employment and conditions of employment, and they can cooperate in the management of return programmes.

Formal mechanisms, or agreements, for international cooperation on labour migration are essentially legally binding treaty commitments into which States have entered at the bilateral, regional or global level. These agreements may take the form of treaties solely concerned with cooperation, as is the case

with the bilateral labour agreements that were discussed above and will be touched upon again below.¹ They may also take the form of broader agreements, such as the regional and international Conventions relating to the protection of migrant workers, which also include provisions on intergovernmental cooperation.

The various forms of formal cooperation can be interlinked. For example, a regional or international agreement will sometimes place obligations on contracting parties to cooperate at the bilateral level, or at least encourage them to do so. This is a common approach in regional and international treaties on the protection of migrant workers and social security provisions for them.

6.3 Global regulation of migration

Promotion of a normative framework for national policy and international cooperation in the area of international labour migration remains a fundamental task. As discussed in Chapter 4, there is a need for an international regime based on the rule of law that establishes common parameters for all, clear lines of accountability, and mechanisms for reporting and monitoring.

The three international Conventions on migrant workers all contain important provisions dealing with intergovernmental cooperation. The framers of ILO Conventions Nos. 97 and 143 envisaged such cooperation and provided for the reciprocal exchange of information on national policies, laws and regulations; migration for employment; the conditions of work and livelihood of migrant workers; and misleading propaganda. Convention No. 143 additionally provides for cooperation between States, with the specific aims of suppressing clandestine movements of migrants for employment; acting against the organizers of the illicit movement of migrant workers and the employers of migrant workers who have entered without authorization; and ensuring that the perpetrators and organizers of labour trafficking can be prosecuted, regardless of the country in which they exercise their activities.

¹ Formal bilateral cooperation can also take place on a deeper level, working towards integration of labour markets. For example, in 1996 Belarus and the Russian Federation initiated negotiations to establish equal rights for their citizens in respect of employment, wages, and other social and labour guarantees. As a result, citizens of one contracting party are not considered “foreigners” in the territory of the other, they do not need to obtain a work permit, and they can freely change their jobs or places of residence. See the Treaty between the Republic of Belarus and the Russian Federation on Equal Rights for Their Citizens, which came into force on 22 July 1999.

The International Convention on the Rights of All Migrant Workers and Members of Their Families explicitly recognizes that a human rights protection framework cannot be effectively applied without consultation and cooperation between countries. This requires international consultation and cooperation at the bilateral, regional and multilateral levels, as well as government consultation and cooperation with pertinent stakeholders, including employers and trade unions. Thus, consultative and cooperative processes on labour migration and acceptance of legally binding standards on the protection of the rights of migrant workers and their families are viewed as mutually reinforcing, with the potential to benefit both the States concerned and migrant workers and their families. The International Convention requests States parties to:

- undertake “an exchange of information, consultation and co-operation with the competent authorities of other States Parties involved in ... migration” (Article 65(1)(b));
- “co-operate as appropriate in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin when they decide to return or their authorization of residence or employment expires or when they are in the State of employment in an irregular situation” (Article 67(1));
- “concerning migrant workers and members of their families in a regular situation ... co-operate ... with a view to promoting adequate economic conditions for their resettlement and to facilitating their durable social and cultural reintegration in the State of origin” (Article 67(2)).

More informal consultation and cooperation at the global level has occurred through several recent processes, including the Berne Initiative, the ILO General Discussion on Migrant Workers at the 92nd Session of the ILC, the Global Commission on International Development, the UN High-level Dialogue on International Migration and Development, and the Global Forum for Migration and Development, the third meeting of which was held in Athens in November 2009.

In June 2001, the Berne Initiative was launched by the Swiss Government, with a secretariat provided by the IOM. It was a state-owned consultative process with the objective of obtaining better management of migration at the national, regional and global levels through enhanced cooperation between States. The process assisted governments in sharing their respective policy priorities and identifying their longer-term interests in migration, with a view to developing a common orientation on its management. A main outcome of the Berne Initiative

was the International Agenda for Migration Management (IAMM), a non-binding, broad policy framework on migration management at the international level. The IAMM sets out a number of common understandings and effective practices for a “planned, balanced and comprehensive” approach to the management of migration, including in relation to labour migration and the human rights of migrants. However, the IAMM is not the outcome of a negotiated process among States and therefore does not constitute a form of “soft” law (Wickramasekara, 2004).

In December 2003, the Global Commission on International Migration (GCIM) was launched by the UN Secretary-General and a number of governments. It comprised 19 independent commissioners with a mandate to provide a framework for the formulation of a coherent, comprehensive and global response to the issue of international migration. Its October 2005 report, presented to then UN Secretary-General Kofi Annan, UN member States and other stakeholders, stated that the international community had failed to realize the full potential of migration and had not risen to the many opportunities and challenges it presents. The Commission stressed the need for greater coherence, cooperation and capacity to achieve more effective governance of international migration. The report provides a comprehensive analysis of key global policy issues in the field of international migration, and presents six principles for action and 33 related recommendations to guide the formulation of migration policies at national and global levels.²

The Global Migration Group (GMG) is an inter-agency group established by the UN Secretary-General in 2006 which meets at the level of heads of agencies.³ It aims to promote the wider application of all relevant international and regional instruments and norms relating to migration. It further aims to provide stronger and more coherent leadership to improve the overall effectiveness of the UN and international community’s policy and operational response to the opportunities and challenges presented by international migration. Objectives include establishing a comprehensive and coherent approach in the overall institutional response to international migration, promoting interest, dialogue and debate on migration-related issues, and improving inter-agency cooperation and collaboration.

The 2006 UN High-level Dialogue on International Migration and Development is the event closest to a global summit on international migration

² See the GCIM website at <http://www.gcim.org/en/> and final report at <http://www.gcim.org/en/finalreport.html> (accessed 4 Jan. 2010).

³ See the GMG website at: <http://www.globalmigrationgroup.org> (accessed 4 Jan. 2010).

that has taken place so far. The Dialogue focused entirely on the issue of migration and development. The themes discussed included the effects of international migration on economic and social development; measures to ensure respect for and protection of the human rights of all migrants, and to prevent and combat smuggling of migrants and trafficking in human beings; multidimensional aspects of international migration and development, including remittances; and promoting capacity building, the building of partnerships and sharing of best practices at all levels. It had not been intended that the Dialogue would produce a political declaration or negotiated outcome, other than a chairperson's summary. Rather, the main outcome was the launching of the GFMD as a follow-up mechanism.

The GFMD is a consultative, state-led initiative that addresses the specific issue of migration and development. Unlike the GMG, this process is outside the UN system, with individual governments taking the lead in organizing the Forum. In 2007, the Government of Belgium hosted its first meeting in Brussels. Representatives attended from 155 UN member States, several of which later announced the launching of projects based on Forum discussions. The second Forum in 2008 was hosted by the Government of the Philippines.

The stated intent of the GFMD is “to enhance the positive impact of migration on development (and vice versa) by elaborating a more consistent policy approach among governments, identifying new instruments and best practices, exchanging know-how and experience about innovative tactics and methods and, finally, establishing cooperative links between the various actors involved”. One goal is “to bring together government expertise from all regions to enhance dialogue, cooperation and partnership in the areas of migration and development”. The process does not directly involve social partners and civil society.⁴

The ILO's unique tripartite structure provides a distinctive and enduring forum for international consultation and cooperation on labour migration. Consultative processes involving representatives of the two parties most affected by migration – employers and workers – are a major pillar of the ILO approach, both nationally and globally. As recognized in the ILO Multilateral Framework on Labour Migration, structures and mechanisms for regular social dialogue are necessary in order for representative employers' and workers' organizations, and civil society and migrant groups, to be meaningfully involved in the formulation and implementation of migration policy.

⁴ See the GFMD website at: <http://www.gfmd-fmmd.org> (accessed 4 Jan. 2010).

6.4 Regional economic integration and free movement of labour

Labour migration is facilitated to varying degrees by regional integration processes. These processes are usually driven by economic factors, such as the establishment of free trade arrangements between countries in the region with a view to optimizing the scale and potential of markets and economic opportunities. They normally include provisions to facilitate the movement of nationals among participating member States or contracting parties for the purposes of employment and residence. Such arrangements may range from extensive free movement regimes applicable to all categories of persons, including workers, as in the EU, to more limited provisions focusing on the movement of business visitors, professionals, other highly skilled persons and service providers, as under the North American Free Trade Agreement (NAFTA). The legal frameworks of the EU and the Economic Community of West African States (ECOWAS) allow for free circulation, establishment and access to the labour market for nationals of member countries. In this type of multi-lateral agreement, migration is treated as a key variable of the integration process.

Although international migration flows are becoming increasingly inter-continental, the largest flows probably remain those between countries in the same region. In the United States, a high proportion of migrants still come from Mexico and Central America. In Europe, migrants from non-EU countries tend to come from the Balkans, Eastern Europe, the Maghreb and Turkey. In Asia, some of the largest flows are from Afghanistan to the Islamic Republic of Iran and Pakistan, from Myanmar to Thailand, and from Indonesia to Malaysia. In Africa, the most active migration systems are those between South Africa and its neighbours, between the countries of Central Africa, and between the countries of West Africa, where there are some 3 million migrant workers.

The EU forms the most extensive area with free movement of labour, but agreements have also been concluded in many other regions. There are agreements between members of the Nordic Community for both skilled and low-skilled labour; between Australia and New Zealand under the Australia–New Zealand Closer Economic Relations Trade Agreement (ANZCERTA); and between Canada, Mexico and the United States for skilled labour under NAFTA. Provisions for the free movement of persons and access to labour markets have been established in treaty instruments between the member States of the Andean Community; among the six member States of the Central African Economic and Monetary Community (CAEMC); among Burundi, Kenya, Rwanda, Uganda and the United Republic of Tanzania in the East African Community (EAC); among the 14 member States of ECOWAS; and among the Caribbean countries for skilled labour under the Caribbean Community (CARICOM) (Fuchs and Straubhaar, 2003).

These agreements generally provide for progressive harmonization of labour policies, with a view to eventually giving fully equal treatment to the nationals of member States. However, even though some treaty protocols, for example in CAEMC and ECOWAS, date back as far as 30 years, the agreements listed above remain far from fully implemented by member countries. The reasons for this generally include any or all of the following: a lack of national implementing legislation, administrative barriers, or apparent absence of political will. The 2005 Draft Protocol on the Facilitation of Movement of Persons among the 14 member countries of the Southern African Development Community (SADC) has, at the end of 2009, still not come into force as it has yet to be ratified by two-thirds of its members.

A few of these formal agreements or proposals draw on relevant international standards, in particular ILO Conventions Nos. 97 and 143, which have been ratified by some members of these regional groupings. Several, however, have not drawn on the experience incorporated into international standards, thereby risking both repeating the mistakes that these standards were designed to avoid and putting into place legal measures that undermine existing norms.

In Asia, the Association of Southeast Asian Nations (ASEAN) adopted the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers in March 2007 (ASEAN, 2007). This document is significant in that it accords well with the ILO Multilateral Framework on Labour Migration by focusing on the protection and promotion of rights. It places obligations on origin States, destination States and ASEAN, and recognizes the contributions of migrant workers to the societies and economies of both origin and destination countries. The aim is to intensify efforts to protect the fundamental human rights of migrant workers and to promote their decent, humane, productive, dignified and remunerative employment. The Declaration calls for the development of an ASEAN instrument on the protection and promotion of the rights of migrant workers.

In the Mercado Común del Sur (MERCOSUR) area, an agreement on residence for nationals of States parties was adopted in December 2002. Interest in further advancing the integration process prompted Argentina's unilateral decision in February 2004 to suspend expulsions of migrants in irregular status originating from neighbouring countries. This affected about 700,000 persons from Bolivia, Brazil, Chile, Paraguay and Uruguay. Box 6.1 provides more information on the process of regional integration and free movement in the Andean Community and MERCOSUR.

These agreements reflect recognition of the economic and social advantages of integrating labour markets. In providing a normative framework for the treatment of migrant workers, they also establish a basis for safeguarding their rights, especially where mechanisms for mutual reporting and monitoring can be agreed

Box 6.1 Regional integration and free movement in South America: The Andean Community and MERCOSUR

The members of the Andean Community, Bolivia, Colombia, Ecuador and Peru, have agreed to work together to ensure that their inhabitants can move freely through the subregion, whether for purposes of tourism or work, or for a change of residence. The Andean Labour Migration Instrument (Decision 545) was signed in 2003, with the main objective of establishing provisions that progressively and gradually permit the unhampered movement and temporary residence of Andean nationals in the subregion for employment purposes as wage workers. The unhampered movement of people is one of the conditions for the gradual formation of the Andean Common Market, which was inaugurated at the end of December 2005.

The members of MERCOSUR (Southern Common Market), Argentina, Brazil, Paraguay and Uruguay, signed the Agreement on Residence for Nationals of MERCOSUR States, Bolivia and Chile on 6 December 2002. The Agreement permits nationals of one signatory State to obtain legal residence in another signatory State, if they wish. By presenting documentation including accreditation of their nationality, petitioners can obtain temporary residence for a maximum period of two years, which can then be transformed into permanent residence. The Agreement provides for the right to family reunification and equal treatment of migrants with natives concerning all civil, social, cultural and economic rights.

upon. For this reason, regional agreements on migration may have a more immediate impact on how many people move, and under what conditions, than international treaties or conventions. Improving the management of migration should therefore include adopting or strengthening measures to ensure more orderly movements between neighbouring States.

If governments are to make regional agreements work, they have to harmonize policies and standards. But they also have to ensure that gatekeepers and administrators on the ground do not use their discretionary powers to defeat the policy objective. According to an ECOWAS executive secretariat report in 2000, nearly all the organization's member States maintain numerous checkpoints and subject citizens to administrative harassment (Adepoju, 2006). Some countries have expelled migrant workers, in violation of agreements. A widespread problem is the lack of a common system for recognizing professional qualifications. Some countries retain barriers to entry into certain professions, requiring migrants who were not educated in the destination country to pass tests to obtain the requisite licences. While countries certainly have important interests in maintaining professional standards, there may be cases where it is possible to recognize qualifications by removing hurdles that are not actually necessary.

Regional economic integration is expected eventually to bring about a greater convergence of wages, prices and other factors of production within regions,

which in itself will reduce the incentive for migration. This has clearly happened in the EU, which guarantees freedom of movement, equal treatment and the portability of social welfare benefits (Molle, 1994, Ch. 9). Hence, while regional economic integration opens up greater possibilities for the free movement of labour, it also tends to reduce the need for such movements.

6.5 Bilateral migration agreements

Bilateral agreements between origin and destination countries can be a significant means of providing minimum standards and rights for migrant workers. Origin countries can negotiate for greater rights, particularly for less-skilled workers, which conform to international standards, with guarantees of compliance provided by the agreements. By providing access to regular migration and the formal labour market, such agreements can reduce exploitation. These agreements can contain provisions on the cooperative management of pre-departure and return, social security and pension portability, dispute settlement procedures, and remedies for violation of rights. The ILO's ILM Survey revealed that a large number of countries have entered into such agreements. It is important that bilateral accords operate within a multilateral context of international standards and that the bilateral and multilateral levels are mutually supportive.

Bilateral agreements have long served to manage migration flows and resolve associated issues between two countries. Following the global economic downturn in the 1970s, however, many of these agreements lapsed, to be replaced by much looser framework agreements, memoranda of understanding (MOUs), and declarations of mutual cooperation on the contracting and protection of foreign workers (Abella, 1997). Since the 1990s there has been a global upsurge in bilateral accords, although the practice varies in different regions.⁵ For example, of the 168 bilateral agreements reached in Latin America in the second half of the twentieth century, half were concluded during the 1990s.⁶

⁵ In Latin America, the number of bilateral agreements has doubled over the past decade, but countries in Asia, with the exception of the Philippines, seem to have a greater resistance to entering into such agreements. See IOM (2003).

⁶ Between 1991 and 2000, 35 bilateral agreements were signed between Latin American countries – five for regularization, five labour conventions, 13 for free circulation and 12 for return. During the same period, 47 bilateral agreements were signed between Latin American countries and other countries – nine for re-admission, one for regularization, five labour agreements, 18 for free circulation, 11 for return and three for migrant protection. The agreements for return include extradition treaties. See IOM (2003), p. 178.

Various OECD countries are currently party to 176 bilateral agreements with countries from all regions of the world. As a result of the opening up of borders in Central and Eastern Europe, the number of bilateral treaties increased fivefold at the beginning of the 1990s (OECD, 2004, p. 12). The ILO's 2003 ILM Survey also indicates considerable use of bilateral agreements by Central and Eastern European States and by the Commonwealth of Independent States (CIS). These were not only between States in the region or with neighbouring States of the EU, but also with countries in southern Europe, such as Portugal and Spain (see box 6.2), as well as with countries on other continents (Geronimi, 2004).

In Asia, a number of countries of origin and destination have entered into looser MOUs. Malaysia, the Republic of Korea and Thailand have introduced such measures to govern temporary admissions (Wickramasekara, 2006b).

Bilateral agreements following ILO and other international models have proved effective in managing migratory flows. In fact, as noted in Chapter 4, the Migration for Employment Recommendation (Revised), 1949 (No. 86), includes an Annex with a model agreement on temporary and permanent migration of workers, which contains clauses on the regulation of migratory flows, working and living conditions, and social security. The ILO's 2003 ILM Survey found that Recommendation No. 86 has been widely used by States as a model,⁷ and that even States that have not ratified the ILO instruments have been interested in using it as a model.⁸

6.6 International cooperation involving social partners

Social partners have a key role in promoting and shaping international cooperation on migration. Not only are they major agents of social, economic and political change at home, but they also operate international forums that can be used to initiate or orchestrate cooperation between States. It must be recognized that migration management by States, particularly without the active engagement of social partners, is necessarily limited. Authorities find it difficult to ensure conformity with any objectives, whether they pertain to migration or other policy areas. Rather than simply trying to manage people, a better approach is to involve them in making the policies that affect them.

⁷ For example, it has been used by Argentina, Austria, Barbados, Colombia, Cyprus, Ecuador, France, Guatemala, Kenya, Lebanon, Mauritius, Myanmar, Portugal, Republic of Korea, Rwanda, Tajikistan, the United Arab Emirates and Uruguay.

⁸ These States are Albania, Eritrea, Honduras, Kazakhstan, Madagascar, Poland, Slovakia and Togo.

Box 6.2 Bilateral agreements concluded by Spain

As part of its migration policy, in 2001 Spain adopted a “Global Programme” to regulate the admission and residence of foreign nationals (the GRECO programme). The programme comprises five measures:

1. approval of criteria for the admission of immigrants;
2. calculation of the need for temporary or permanent workers;
3. determination of the countries with which to negotiate agreements;
4. management of all aspects of migration; and
5. establishment of mechanisms to select and, as necessary, train foreign workers in the source countries, with contributions from the social partners and NGOs.

Spain has subsequently concluded eight bilateral agreements, with Morocco (1999), Colombia, the Dominican Republic and Ecuador (2001), Poland and Romania (2002), and Bulgaria and Guinea-Bissau (2003). In addition, more than 40 other States have asked to sign bilateral migration agreements with Spain. Some of these countries, such as Argentina and Mexico, have a large number of Spaniards living in their territories.

The agreement with Ecuador, for example, is intended to cover the whole of the migration process. This spans pre-selection of workers, the system of communicating job offers, selection and recruitment of workers in the origin country, special provisions for temporary workers, the organization of travel, guarantees of labour conditions and rights at the destination, the possibility of family reunification, and provisions for return. To coordinate requests by Ecuadorean nationals who wish to work in Spain, the Ecuadorean authorities, in collaboration with the IOM, have set up a technical unit for the selection of migrant workers.

Source: Geronimi, Cachón and Texidó, 2004.

Social partner organizations, that is, employer associations and trade unions, increasingly engage in international policy dialogue and consultation on labour migration. The perspectives of these key representative groups are crucial to the elaboration and implementation of credible, viable and sustainable labour migration policy and practice at the national as well as the global level.

6.6.1 Trade union confederations

Social partner organizations have expanded their international cooperation to support more orderly labour migration and ensure fair treatment for migrant workers. The major global and regional trade union confederations have established consultative processes to facilitate common policy stances and practical inter-union cooperation. The new International Trade Union Confederation (ITUC), which

came into being in the second half of 2006, united the member federations of the International Confederation of Free Trade Unions and the World Confederation of Labour into a single global body that represents most of the world's organized workers. It convened the first global consultation on trade unions and migrant workers in Brussels in December 2006.⁹ Advocacy and services addressing migrant workers feature as one of the ITUC's five main thematic priorities. Reflecting increasing concern from national affiliates, sectoral global union federations such as Public Services International (PSI: the global confederation of government and public service worker unions), the International Union of Food and Agricultural Workers (IUF) and the International Federation of Building and Wood Workers (IFBWW) also give specific attention to issues of migrant workers, particularly those in irregular status, who experience the most abuse and have the least protection.

In 2004, in Africa, the leaders of the national trade union federations of some 40 countries adopted a plan of action under the auspices of the regional ICFTU Afro Federation. It called for African trade unions to put pressure on governments to adopt laws protecting migrant workers, to negotiate with employers to improve working conditions, and to organize the unorganized, including migrant workers in irregular status. The International Confederation of Arab Trade Unions (ICATU) has given increasing attention to developing co-operation on labour migration and migrant workers in the Arab world. One of its fundamental objectives is to “guarantee the rights of Arab migrant workers in foreign countries and foreign workers in the Arab countries”.¹⁰

6.6.2 Employer/private sector consultations

Labour migration issues feature prominently on the agendas of international employer organizations, particularly the International Organization of Employers (IOE) and Business Europe. Migration is one of the policy areas of the IOE, which serves as secretariat for the Employers' group at the ILO and participated in the drafting of the ILO Multilateral Framework on Labour Migration. The IOE worked closely with the GCIM and continues to track the liberalization of cross-border movement of professional, managerial and technical personnel through the World Trade Organization (WTO) consultative process.¹¹

⁹ For a global overview of trade union views and activities, see ILO (2002e).

¹⁰ See the ICATU website at: <http://www.icatu56.org> (accessed 4 Jan. 2010).

¹¹ See the IOE website at: <http://www.ioe-emp.org/en/policy-areas/migration/index.html> (accessed 4 Jan. 2010).

Business Europe, the newly renamed organization of employers in Europe formerly known as UNICE, convenes a committee on migration and diversity issues to facilitate dialogue and exchange of perspectives among member national federations of businesses and employers. Business Europe regularly contributes considered guidance and recommendations from its constituents to the EU on immigration and diversity issues.¹²

6.6.3 Tripartite policy coordination

Since 2002, the ILO has convened regional tripartite consultations on labour migration policy and capacity building in Central Africa, East Africa, the Maghreb, southern Africa and West Africa. Each of these consultations involved executive-level delegates from the most representative national employer and trade union confederations and government ministries concerned with labour and employment, and often included the participation of ministers themselves. In most cases, delegates from regional economic integration mechanisms – for example, CAEMC, EAC, ECOWAS, SADC – also participated. Each of these drew up tripartite plans of action or policy “road-maps”, which have guided subsequent activity at the national and subregional levels, including the formation of national tripartite/inter-ministerial consultative committees on labour migration policy.

Recent tripartite consultations on labour migration in and among East and West Africa, Europe and Maghreb countries developed joint policy recommendations between government, employer and trade union delegates. These policy guidelines emphasize the need for better national labour migration data and statistics, the adoption of national legislation based on international norms to guide policy, and the strengthening of administrative institutions for labour migration. A 2006 Africa–Europe dialogue on labour migration in Brussels drew up a “road-map” for mainstreaming tripartite cooperation on labour migration regulation both within countries and between Africa and Europe. A sequel event in Rabat in May 2006 established links and lines of cooperation between social partners and governments among European, Maghreb and West African countries. Both events emphasized expectations of more regular and more formal dialogues between the different regions with the full participation of social partner stakeholders.¹³

¹² Numerous documents are available on “archives pages” (search by “immigration”) of the Business Europe website at: <http://www.business-europe.eu/content/default.asp?pageid=426> (accessed 4 Jan. 2010).

¹³ See conference reports, recommendations and other documents at: <http://migration-africa.ilo.org> (accessed 4 Jan. 2010).

6.7 Conclusions

Governing migration is inherently a multilateral issue. International dialogue and cooperation are thus essential for obtaining an orderly and regulated approach to labour migration. Today's global scale of migration flows and the global reach of migration networks provide even more compelling reasons for countries to expand and concurrently develop international, regional and bilateral cooperation through formal and informal mechanisms. Because very many cross-border movements occur within regional spaces, there is particular value in consolidating and implementing regional migration agreements and processes for regulating migration and protecting workers within those spaces.

While international relations often set the context for migration patterns, migration policy choices, by their very nature, reflect values and priorities within and across societies. One of the major challenges in setting multilateral directions for migration policy is arriving at a consensus of values and priorities widely shared among source and destination countries which can support a framework for joint action. The existing international normative instruments on migration, particularly the ILO and international Conventions on migrant workers, articulate a set of shared values, rooted in universal principles, that can serve as a basis for international dialogue and cooperation on migration.

International consultation on labour migration should thus remain anchored by these principles, and must take into account the interests of all stakeholders – governments at all levels (central, regional and local), migrant workers, social partners (employers and trade unions), and civil society.

PART III

Conclusions and future directions

Conclusions and the way forward

7

The preceding chapters have highlighted a number of important issues underlying current labour migration trends and patterns. This analysis should contribute to the reshaping of approaches and the formulation of appropriate policies that can effectively regulate migration in a globalizing world, in line with the ILO's constitutional mandate for the "protection of the interests of workers when employed in countries other than their own".

Principle 4 of the ILO Multilateral Framework on Labour Migration states: "All States have the sovereign right to develop their own policies to manage labour migration. International labour standards and other international instruments, as well as guidelines, as appropriate, should play an important role to make these policies coherent, effective and fair." The ILO Multilateral Framework has identified the elements of a rights-based approach to labour migration:

- ensuring coherence between labour migration, decent work, employment and other national policies;
- formulating and implementing labour migration policies guided by international labour standards and other relevant international instruments and multilateral agreements concerning migrant workers;
- addressing specific vulnerabilities faced by certain groups of migrant workers, including workers in irregular status; and
- ensuring that labour migration policies are gender-sensitive.

7.1 The changing nature of migration flows and their implications for policy

Labour migration today is characterized by diversity in origin and destination situations, and in the forms, statuses, directions and durations of the migration experience. Whereas most participants in previous streams of migration were embarking on relatively long-term or permanent emigration and immigration, temporary forms of migration are now becoming more popular. Migration for seasonal work, skilled migration, student migration, women migrating on their own for employment, forced migration (as a result of armed conflict, persecution or environmental disasters), and migration in irregular situations through trafficking and other means are all becoming increasingly prominent elements of the picture.

Migration flows have also grown in complexity with movements taking place in and among all regions of the world. Migration today is certainly not primarily a “South–North” movement; on the contrary, it is much more evenly divided among three major directions: North–North, South–South and South–North, with a significant but proportionately smaller North–South movement.

Migration today is largely about labour migration, since most global migrants are economically active, and thus engaged in the world of work. This includes those individuals whose initial motivations to migrate may have been to flee persecution as refugees or to join families elsewhere. A salient implication of this fact is that policy and practice need first and foremost to address migration as an employment and labour market issue, related to economic performance and productivity in destination countries. Thus, protecting workers – migrant and native alike – in the workplace assumes primary importance. Policy needs to acknowledge that measures to control or regulate migration have fundamental impacts on labour markets and, ultimately, economic performance and social well-being, in particular in destination countries.

The logic and phenomena of globalization are clearly driving forces in migration today. Globalization has extended the mobility of capital, goods, services and technology, inevitably leading to demands for greater mobility of labour to follow capital and technology where new needs arise. While migrant numbers have grown over time, they nonetheless have remained a relatively small and constant proportion of the world’s population – about 3 per cent since the 1960s – reflecting the uneven impact of globalization on mobility of capital, goods and services on the one hand and labour mobility on the other.

Although migrants from developing countries work in almost every type of job, they tend to be concentrated at the bottom and top of the employment ladder,

with those at the bottom often doing the demeaning, dangerous and degrading tasks that are increasingly categorized as “migrant jobs”. In contrast, highly skilled migrants, such as information and computer technology specialists and health-care professionals, are not only welcomed but actively sought in competition with other developed countries.

Despite the all-too-real phenomenon of “off-shoring” economic activity and therefore employment, much work simply cannot be relocated: this includes jobs in agriculture, construction, health care, hotels and restaurants, and a wide range of services. Furthermore, most small and medium-sized businesses with limited resources do not have the option of off-shoring their activity.

While the current global economic crisis may reduce the demand for migrant workers to some extent, the reduction is likely to be partial, because not all sectors will be equally affected, and the fall in demand will clearly be temporary. The underlying demographic, technological and skill needs are more structural in nature, and are likely to be accentuated in a recovery period.

Temporary and circular migration programmes are promoted as enabling destination countries to meet labour shortages while avoiding difficulties arising with permanent migration, such as the challenge of integration. Such programmes are perceived as more likely to be tolerated by citizens in destination countries. It is said that origin countries can benefit from the remittances of temporary migrant workers and from the knowledge and skills they may bring back when they return. Temporary and circular migration have also often been described as more favourable to development, since they do not result in a permanent loss of skills.

However, temporary regimes will simply be inadequate to fill many needs for foreign skills and labour. For jobs involving skills beyond entry level, adaptation takes time, and employers may be unwilling to invest in recruiting and training workers only to see them depart just when they become truly “up to speed” and productive. And, as certain European skilled recruitment programmes have found, highly skilled candidates will go elsewhere if the opportunity to bring families and obtain work permits for a substantial period of time are denied.

The OECD examined the issue of temporary migration programmes in detail in its *International Migration Outlook 2008*, and concluded that it was unrealistic to expect temporary schemes to be the “cornerstone of any future labour migration policy” (OECD, 2008, p. 20). According to the OECD Secretary-General Angel Gurría, “Constructing a country’s migration policy on the assumption that labour immigrants will only stay for a short time is not the way to go. It is neither efficient nor workable” (Gurría, 2008). Thus, temporary migration programmes cannot replace other migration systems and must coexist with them.

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Moreover, the current promotion of temporary migration programmes is often associated with a misplaced discourse of trading off rights in exchange for increased access to job opportunities in destination countries. Yet lower protection and inferior working conditions for temporary migrant workers will result in unfair competition for native workers, and thereby undermine both their employment opportunities and general social cohesion. The Multilateral Framework on Labour Migration has clearly stated the need to ensure that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and native workers, as well as other workplace rights.

While the share of female migrants as a proportion of total migration has increased modestly in recent decades, the role of women has significantly changed, justifying a perception of the “feminization” of migrant labour. Whereas in the past many women migrated as family members, today most adult migrant women work, and many migrate independently from male family members for employment on their own.

Migration opportunities for employment affect men and women differently. The structure of demand for migrant workers in destination countries is defined by the labour market segmentation in these countries; and many of the opportunities available are for precisely the low-skilled jobs considered suitable for women. The feminization of international labour migration, together with the existence of sex-disaggregated labour markets and the fact that most job opportunities for women migrants are in unregulated sectors (agriculture, domestic work, the sex industry), contribute to greater discrimination against female workers. Female migrants are thus marginalized even further, and are more often left with no option but irregular migration and exposed to the worst forms of abuse. The ILO Multilateral Framework guideline 4.5 urges States to ensure that “labour migration policies are gender-sensitive and address the problems and particular abuses women often face in the migration process”.

Irregular migration and the situation of migrant workers in irregular status remains a major unresolved issue. This book has shown that these workers – who often provide much-needed labour to the economies of destination countries – are among the most disadvantaged and exploited. The phenomenon of considerable numbers of migrant workers in irregular status is a strong indication that the demand for foreign labour is not matched by the supply that destination countries are willing to admit into their territories by legal means. Migrant workers in irregular status are therefore serving as the buffer between the political demands for closed borders and the economic realities existing in destination countries.

Evidence suggests that, in some situations, there may be a deliberate link between policies and practices of excluding migrants from legal and social protection while apparently tolerating their presence in precarious situations that ensure that they remain low-paid, docile and flexible.

With few options available for regular migration in the face of strong pull and push pressures, irregular migration channels have become the only alternative, presenting lucrative “business” opportunities for helping people to arrange travel, obtain documents, cross borders and find jobs in destination countries. The flow of low-skilled migrants to more developed regions is channelled by clandestine means precisely because of the non-existence of regular migration categories allowing for their documented entry into destination countries. Once they are in host countries, they remain confined to jobs in the unorganized or informal economy, in irregular work and under exploitative conditions of employment.

7.2 Migration and development: Issues and key challenges

The evidence set out in this book highlights the fact that migrant workers make significant contributions both to promoting development and poverty reduction in their countries of origin and in supporting the economic activity, prosperity and well-being of the destination countries in which they work.

The key challenges noted in previous chapters, particularly Chapter 5, may be briefly summarized here.

There is a lack of adequate information and research on the precise mechanisms through which migration affects growth and development. While considerable attention has been focused on the issue of remittances, other aspects of the migration–development nexus have not received the same emphasis. There is still much controversy surrounding remittances and their interaction with development and poverty alleviation.

International cooperation is needed to better promote legal avenues for migration. This issue is being discussed at regional and international levels. There is increasing structural demand for low-skilled workers, primarily in services, and a strong complementarity between low-skilled and highly skilled workers, so that demand for the latter creates demand for the former (for example, software engineers creating materials for export will give rise to a need for personnel to pack and transport the goods). The ILO Multilateral Framework recognized this in principle 5: “Expanding avenues for regular labour migration should be

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considered, taking into account labour market needs and demographic trends.” Expansion of legal avenues needs to address the demand for both low-skilled and high-skilled workers. Today’s restrictive immigration policies, however, place many barriers on migration of low-skilled workers. Such policies do not reflect actual labour market needs (for details, see Wickramasekara, 2008a). Several regional and global forums are addressing this issue. As noted earlier, the European Commission has recently issued several Communications on legal migration, circular migration and mobility partnerships, and migration and development. Some bilateral circular migration programmes have been initiated, for example by Mauritius. Since its first meeting in 2007, the GMFD has made a case for temporary labour migration programmes.

Brain drain is a key challenge for countries of origin. The departure of educated and skilled workers and professionals can reduce the skill pool at home, which can have a measurable negative impact on development. The unregulated migration of health professionals has had especially harmful effects in some home countries, where already poorly staffed health-care services have suffered more as a consequence of large-scale departures of doctors and nurses. While it is difficult to prevent people from pursuing better opportunities, the challenge is to promote brain gain and brain circulation mechanisms which can reduce such losses.

Policy coherence between different ministries and agencies concerned with migration, both within particular countries and between States at regional and international levels, is a major issue in promoting migration–development linkages. For instance, while circular migration is encouraged by the EU and other destination countries, many national visa regimes in practice discourage circulation. A recent OECD study has amply brought out the importance of coherence among the migration, trade and security policies of its member countries for development outcomes in developing countries. It also pointed to various possibilities for increasing coherent integration of policies dealing with trade, aid and migration (OECD, 2007d).

Given the obstacles to promoting multilateral agreements on labour mobility, one promising area is the consolidation, expansion and implementation of labour circulation mechanisms in regional economic integration schemes. The expanded membership of the EU is gradually bringing more countries into what is already the world’s largest, oldest and most successful experience of regional labour mobility and circulation. However, in other formal regional integration enterprises, including the Andean Community, the CIS, the EAC, ECOWAS, MERCOSUR and the SADC, efforts to increase labour mobility and create freer circulation have been limited to date.

The development benefits of labour migration always depend upon the degree to which migrant workers are protected and empowered by the countries from which they come and those in which they work. Indeed, development gains from labour migration and the protection of the rights of migrant workers are inseparable. It is important, therefore, that policies addressing the linkages between migration and development take a rights-based approach.

A significant parallel challenge is to address the political resistance to immigration that persists in destination countries, even despite the demonstrated need for migrant workers' contributions. The rights of migrant workers must be protected through policies that address discrimination, racism and xenophobia. At the same time, public consensus on the need for migrant workers should be built up by social dialogue.

Better enforcement and implementation of international standards on labour migration are needed. It has long been evident that market mechanisms alone are insufficient to regulate migration and ensure the protection of vulnerable migrant workers. Ratification and implementation of the relevant Conventions on migrant workers can set the foundations for policy and practice. Where Conventions have not been ratified, these instruments can still serve as a source of legal principles and guidelines for policy. As discussed, the ILO Multilateral Framework on Labour Migration is a valuable resource in this respect. The challenge is to create better awareness of this tool among both the ILO's constituents and other international organizations.

7.3 The international normative framework: The foundation of the rights-based approach

Migrant workers have the dignity inherent in all human beings, and are entitled to the full range of universal human and labour rights enshrined in international instruments.

It has long been evident that market mechanisms alone are insufficient to regulate migration and ensure protection of vulnerable migrant workers. While essential norms for ensuring protection of migrant rights are found in the fundamental human rights instruments that define basic, universal human rights and explicitly extend them to vulnerable groups worldwide (noted in UN, 2000), the need for specific norms prompted the creation of international instruments explicitly focused on migrant workers, as discussed in Chapter 4. The formulation of international legal standards on migrant workers was based on the recognition

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that increasing international mobility of workers required explicit legal regulation to ensure the protection of workers and their families who were not covered as citizens in their countries of employment, and that international cooperation and accountability among States needed to be encouraged and focused by a common normative framework.

The evidence presented in this book demonstrates that a rights-based approach to migration is not only an ethical and human rights imperative; it is also essential to realizing the benefits of labour migration for home and host countries, as well as to migrants. Finally, it is required to maintain social cohesion.

Another important challenge concerns migrants in irregular status who have been trafficked and smuggled across borders. Those who are trafficked are, by definition, in abusive and dangerous situations. But even those who willingly use the services of smugglers are subject to abuse and hazardous work situations.

Preoccupation with state security concerns, increased xenophobia, the limited legal avenues for migration in the face of large supplies of low-skilled labour, and the current global financial and economic crisis are factors which accentuate protection challenges.

Chapter 4 has discussed the four ILO instruments explicitly defining the application of human and labour rights to migrant workers: the Migration for Employment Convention (Revised), 1949 (No. 97), and its accompanying Recommendation, the Migration for Employment Recommendation (Revised), 1949 (No. 86); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and its accompanying Recommendation, the Migrant Workers Recommendation, 1975 (No. 151). It has also covered the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The protections for migrant workers and members of their families in existing international law, embodied in these instruments, may be summarized in terms of three fundamental notions:

- Universal human rights and core labour rights apply to all migrants, regardless of their status.
- There should be equality of treatment and non-discrimination between migrant workers regularly admitted and native workers in the realm of employment and work.
- The broad array of international standards providing protection in treatment and conditions at work – employment, labour inspection, occupational safety and health, working hours, wage protection, social security and maternity,

among other areas – apply to regular migrant workers. This includes standards covering specific sectors such as agriculture, construction, and hotels and restaurants.

These instruments provide comprehensive value-based definitions and legal bases for national policy and practice regarding migrant workers and their family members. In doing so, they serve as tools to improve national legislation. They lay out a comprehensive agenda for national policy and for consultation and cooperation among States. They include provisions intended to prevent and eliminate exploitation of migrants, thus reinforcing the ILO's Decent Work Agenda. The extensive, detailed and complementary text contained in these instruments provides specific normative language that can be directly incorporated into national legislation, thus reducing ambiguities in interpretation and implementation of these international standards.

As of July 2009, 82 countries had ratified one or more of these three complementary standards.¹ International standards and national legislation based on them provide the necessary foundations and requirements for governing migration and ensuring protection of migrant workers. Ratification has to be supported by enforcement through appropriate mechanisms. Clearly articulated policy, institutional mechanisms and practical measures are required to realize legislative principles and effective governance.

The ILO Multilateral Framework on Labour Migration synthesizes a comprehensive set of policy principles deriving from these instruments and rights, and provides a broad set of guidelines for the practical implementation of these principles in migration policy, institutions and measures. It addresses some of the protection gaps in the instruments for certain categories of migrant workers: women migrant workers, migrant workers in irregular status and temporary migrant workers. Even if States are reluctant to ratify binding Conventions, they can draw upon the principles and guidelines of the non-binding ILO Multilateral Framework in addressing many policy issues.

¹ The ILO Migration for Employment Convention, 1949 (No. 97), has been ratified by 48 countries, and the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), by 23 countries; the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has been ratified by 40 countries and signed by 15 others. A number of States have ratified both of the ILO Conventions; several have ratified one or both ILO Conventions plus the 1990 International Convention on Migrant Workers.

7.4 Governing migration at the national and international levels

A desirable international order for decent work and labour migration will be one in which, on the one hand, there will be sufficient decent work where people live, so that they migrate by choice and not by necessity; and one in which, on the other, those who migrate to other countries for work will enjoy full labour and human rights and will be free from exploitation. The preceding chapters of this book have suggested action to move towards achieving these goals.

Measures towards an improved labour migration regime should include:

- recognition of mutual benefits to both origin and destination countries;
- adoption of a broad agenda of development and decent work for all;
- transparent migration policies in line with labour market needs;
- protection of migrant workers' rights in line with international instruments;
- adoption of circulation- and mobility-friendly labour migration policies;
- promotion of bilateral, regional and international cooperation; and
- formulation of policy on the basis of reliable information and data.

The policy objective should be much more than ensuring “safe” and “orderly” or “humane” migration. The objective of promoting “migration in conditions of dignity, equity, security and justice” mentioned in the recently formulated National Labour Migration Policy in Sri Lanka captures this broader vision (Sri Lanka Ministry of Foreign Employment, Promotion and Welfare, 2008).

The evidence presented in this book reinforces the approach and agenda for the governance of migration laid out in the resolution and conclusions on a fair deal for migrant workers adopted at the ILC in 2004. The resolution affirms that effective, credible and enforceable “national policy and practice regarding labour migration and the protection of migrant workers requires a sound legal foundation based on the rule of national and international law”.

7.4.1 Policy directions at the national level

Articulation of an explicit national policy framework, strategy and/or action plan on migration is a natural first step towards defining a regime of migration governance. A national framework would usually spell out objectives for policy and action, including economic, developmental, social and political goals, as well as

that of upholding and implementing the law.² A policy framework would normally also identify the implementation measures and the requisite administrative structures to carry them out, supervise them and evaluate them, as well as designate or identify the roles and responsibilities of different branches of government and of other stakeholders, particularly social partners.

Protection of rights can only be realized when these rights are recognized in law, and therefore become legally and politically identifiable, actionable and enforceable. The first and essential step to putting in place an effective migration regime is adopting legislation that spells out rights and obligations, based on the relevant international standards. The second step is to enforce the legislation through effective labour administration and inspection procedures. Third, access to justice and effective remedies should be provided by the creation of efficient and accessible channels through which all migrant workers can lodge complaints and seek remedy without discrimination, intimidation or retaliation: these might take the form of human rights commissions, tribunals and ombudsman systems.

It is therefore important to put in place mechanisms of labour administration and inspection that minimize exploitation in the workplace. The absence of worksite monitoring, particularly in sectors where migrants are concentrated, such as agriculture, construction, domestic service and sex work, expands the space in which forced or compulsory labour can thrive. These disparities in monitoring and any lack of regulation permit migrants to be exploited in unfair competition with native workers, resulting in the risks of undermining prevailing wage and working conditions and fostering antagonism between migrants and native workers.

7.4.2 More effective international cooperation

By definition, governance of international labour migration requires dialogue and cooperation among governments, social partners and other stakeholders at the international level. From the outset, cooperation on upholding the rights and dignity of migrant workers is a shared responsibility. Enhancing the contributions of migrants to both host and home countries is also dependent on international cooperation, in ensuring accessible channels for regular migration between origin and destination countries, guaranteeing protection of migrants, facilitating safe

² For this approach, see Government of Pakistan (2009); Sri Lanka Ministry of Foreign Employment, Promotion and Welfare (2008).

Conclusions

and inexpensive transfer of remittances, encouraging the return of talent to home countries, and facilitating the opportunities for trade and exchange between home and host countries.

While there are a growing number of initiatives for intergovernmental dialogue on migration policy and cooperation, there are few forums for international consultation involving the key stakeholders for labour migration: employers and workers themselves, and the organizations that represent them. The General Discussion on Migrant Workers at the 2004 session of the ILC and the development of the ILO Multilateral Framework in 2005 highlighted the significance of tripartite consultation and demonstrated the success that can be achieved when these three key actors are brought together.

Social partners themselves have increasingly engaged in international dialogue and cooperation on labour migration. The major global and regional trade union confederations have established consultative processes to facilitate common policy positions and inter-union cooperation. Some sectoral union federations are giving specific attention to migrant worker issues. International employer organizations are similarly featuring labour migration issues on their agendas. The ILO has facilitated tripartite consultations on labour migration policy and capacity building in a number of regional contexts. This work could usefully be replicated at the global level.

Recent global initiatives have seen an emerging convergence of views in several areas:

- enhanced international cooperation;
- expanding legal avenues for migration;
- promoting migration–development linkages, particularly in the area of remittances;
- protection of migrant rights;
- gender-sensitive migration policies; and
- creation of decent work opportunities in home countries to reduce migration pressures (see Wickramasekara, 2009).

At the same time, there are major areas of divergence. The first concerns the creation of a new global agency for international migration, especially within the UN system. It is unlikely that States will be willing to cede a part of their sovereignty over immigration matters in the foreseeable future. The extent of liberalization of the global labour market continues to be a matter of controversy, given past experience with guest-worker programmes. Irregular migration, especially the

rights of migrant workers in irregular status, and the approach to regularization programmes, also remain very controversial.

Nevertheless, one should not underrate the broadening areas of convergence and the imperatives of demography, global development and environmental factors in working towards a global governance framework as a long-term goal. The recent global financial and economic crisis has highlighted the weaknesses of the global governance of the international financial system, and has paved the way for serious discussions of institutional reform. It is a good context in which to deliberate on global migration governance issues as well (Wickramasekara, 2009).

7.5 The way forward: The role of the ILO

With regard to labour migration and the protection of workers, the ILC resolution summed up what the ILO's constituents expect from it:

The ILO's mandate in the world of work as well as its competencies and unique tripartite structure entrust it with special responsibilities regarding migrant workers. Decent work is at the heart of this. The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration, and can work towards eliminating identifiable detrimental aspects of labour migration in collaboration with other international organizations. (ILO, 2004a, para. 1)

The Office has approached the protection of migrant workers through policy advice to constituents on labour migration policy, technical cooperation, research and advocacy. In conformity with the resolution, its approach to protection has included all the elements envisioned in the ILO plan of action for migrant workers.

The findings in this book sustain and reinforce the analysis and policy agenda agreed to by the ILO tripartite membership at the ILC in 2004. This global forum, involving representation at ministerial level along with leadership of the most representative employer and trade union organizations, reaffirmed the broad role and responsibility of the ILO in addressing labour migration. It called for significantly expanded ILO activity in support of member countries across the spectrum of concerns. This included policy guidance, promotion of standards, support for the employment agenda, improving social protection, increased technical cooperation and capacity building, enhanced involvement of social partners, expansion of knowledge bases and databases, and increased international cooperation.

Conclusions

The challenge remains to sustain and further advance activity with a strategic vision, recognizing that migration is today a cutting-edge issue for labour relations, for conditions of work, for employment, and for social cohesion in many countries.

The ILO's mandate positions it as one of the leading parties in the international debate on migration and development. The ILO has an accumulated knowledge base and expertise in issues of importance to all aspects of labour migration policy and the protection of migrant workers: supervision of implementation of international legal commitments; employment and decent work; creation of sustainable enterprises; skill provision and recognition; social security; occupational safety and health; conditions of work; labour administration and inspection; social dialogue; and labour statistics. Validation of tripartite participation in migration policy and dialogue is a unique and essential facet that the ILO alone can bring to many international discussions. The normative function of the ILO and its mandate on issues of employment and labour markets, social protection and social dialogue confer upon it unique advantages and expertise for complementary work with other international organizations and agencies, as well as regional ones.

The current global financial and economic crisis highlights the role that the ILO should play in the international arena in looking at the integration of employment and financial policies. As stated in the ILO Declaration on Social Justice for a Fair Globalization (ILO, 2008d), the ILO's mandate confers on it "the responsibility to examine and consider all international economic and financial policies in the light of the fundamental objective of social justice", as trade and financial market policy both affect employment and decent work. *The global plan for recovery and reform*, the communiqué from the London Summit of the Group of 20 countries, called upon the ILO to assess the actions taken and those required for the future in respect of the human dimension of the crisis, especially in relation to employment generation, focusing on the most vulnerable (Group of 20, 2009).

International migration is going to increase, not decrease, in the twenty-first century. Global demographic trends, widening disparities in incomes, human security and rights across countries, increasing migrant networks, and environmental and climate changes make this a certainty. There is consequently a long unfinished agenda before the international community in making migration work for development and in providing a fair deal to migrant workers. The International Labour Organization has a unique role to play in addressing these challenges and promoting a fair deal for all migrant workers in the new millennium, in line with its rights-based approach and in partnership with all other stakeholders. As the Commission on Global Governance (1995) pointed out, there is no alternative to working together and using collective power to create a better world.

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Appendix I

ILO Multilateral Framework on Labour Migration

Non-binding principles and guidelines for a rights-based approach to labour migration, adopted by the Tripartite Meeting of Experts on the ILO Multilateral Framework on Labour Migration (Geneva, 31 October–2 November 2005)

Preface

Migration for employment and its linkages with development has now emerged as a global issue which affects most nations in the world. It is high on the international, regional and national policy agendas. Through their labour, migrant workers contribute to growth and development in their countries of employment. Countries of origin greatly benefit from their remittances and the skills acquired during their migration experience. Yet the migration process also poses serious challenges. Many migrant workers, especially low-skilled workers, experience serious abuse and exploitation. Women, increasingly migrating on their own and now accounting for almost half of all international migrants, face specific protection problems. In the face of rising barriers to cross-border labour mobility, the growth of irregular migration, and trafficking and smuggling of human beings constitute major challenges to protection of human and labour rights.

With the expansion and mounting complexity of labour migration, the international community requires new tools to govern it, in addition to the international instruments developed over the last few decades. The International Labour Organization (ILO), with its tripartite structure (governments, employers

and workers), its mandate on labour issues, its competence on standard setting, and its long-standing experience in promoting social justice in and through the world of work, has an obligation and unique role to play in developing principles and guidelines for governments, social partners and other stakeholders in labour migration policy and practice.

It was in this context that, in recent years, the ILO promoted a wide-ranging dialogue. For example, the World Commission on the Social Dimension of Globalization – convened by the ILO and composed of eminent personalities of diverse backgrounds – noted that the absence of a multilateral framework to govern cross-border movements had given rise to a number of collateral problems including exploitation of migrant workers, growth in irregular migration, rise in trafficking of human beings, and brain drain from developing countries. In 2004, the 92nd Session of the International Labour Conference undertook a General Discussion on Migrant Workers and adopted, by consensus, a resolution on a fair deal for migrant workers in the global economy, which called for an ILO plan of action on labour migration. The resolution noted: “The rising mobility of people in search of opportunities and decent work and human security has been commanding the attention of policy-makers and prompting dialogue for multilateral cooperation in practically every region of the world. [...] The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration” (para. 1).

The centrepiece of the plan of action has been the development of a rights-based Multilateral Framework on Labour Migration. The ILO convened a tripartite meeting of experts, which met in Geneva from 31 October to 2 November 2005, and debated and adopted the ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration. The ILO Governing Body at its 295th Session in March 2006 decided that the Framework should be published and disseminated.

The Multilateral Framework on Labour Migration represents a considered response to widespread demands for practical guidance and action with a view to maximizing the benefits of labour migration for all parties.

The Framework:

- addresses the major issues faced by migration policy-makers at national, regional and international levels;
- is a comprehensive collection of principles, guidelines and best practices on labour migration policy, derived from relevant international instruments and a global review of labour migration policies and practices of ILO constituents;

- addresses the important themes of decent work for all, governance of migration, protection of migrant workers, promoting migration and development linkages, and expanding international cooperation;
- is a non-binding framework which clearly recognizes the sovereign right of all nations to determine their own migration policies;
- accepts the crucial role of social partners, social dialogue and tripartism in labour migration policy;
- advocates gender-sensitive migration policies that address the special problems faced by women migrant workers.

The Framework will be useful to governments, employers' and workers' organizations and all those who are involved in the development, strengthening, implementation and evaluation of national, regional and international labour migration policies and practices. The ILO plans to regularly update the compilation of best practices contained in Annex II in partnership with its constituents, and stands ready to offer its expert assistance and guidance in promoting the Framework.

JUAN SOMAVIA
Director-General
International Labour Organization

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Preamble

The Tripartite Meeting of Experts,

Recalling that the International Labour Organization has long sought to improve the working and social conditions of men and women employed in countries other than their own;

Considering that the ILO, with its unique tripartite structure, its competence, and its long-standing experience in the social field, has an essential role to play in evolving principles for the guidance of governments and of workers' and employers' organizations;

Bearing in mind the need to promote the Decent Work Agenda and create jobs where people live, as emphasized in the ILO Global Employment Agenda;

Taking into account the programmes and activities on migration of the United Nations, relevant specialized agencies and the International Organization for Migration;

Recording the contributions of the World Commission on the Social Dimension of Globalization and the Global Commission on International Migration;

Recalling that the ILO convened a Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration in 1997;

Having undertaken a general discussion based on an integrated approach on labour migration at the 92nd Session of the International Labour Conference in 2004 on the basis of Report VI, *Towards a fair deal for migrant workers in a global economy*, which culminated in the unanimous adoption by the ILC of a resolution and conclusions directing that the ILO and its constituents, in partnership with other relevant international organizations, carry out a plan of action for migrant workers;

Considering that the plan of action proposed by the International Labour Conference includes the development of a non-binding multilateral

¹ Not reproduced here. Available at: http://www.ilo.org/public/english/protection/migrant/download/multilat_fwkc_en.pdf (accessed 4 Mar. 2010).

framework for a rights-based approach to labour migration, which takes into account labour market needs, the sovereign right of all nations to determine their own migration policies, and relevant action for a wider application of international labour standards and other instruments relevant to migrant workers;

Considering that the non-binding multilateral framework is also aimed at enhancing cooperation between the ILO and other relevant international organizations, in particular in the context of its cooperation with the Geneva Migration Group and regional organizations, for the furtherance of the plan of action and in order to promote coherence in international labour migration policies;

Hereby asks the Governing Body to take note of the following Framework, which may be cited as the ILO Multilateral Framework on Labour Migration, Non-binding principles and guidelines for a rights-based approach to labour migration, and invites governments of States Members of the ILO, employers' and workers' organizations, as well as relevant international organizations, to promote and respect its contents.

Introduction

1. Migration for employment is an important global issue, which now affects most countries in the world. Two major labour market forces are in operation today that result in increased migration for work – many people of working age either cannot find employment or cannot find employment adequate to support themselves and their families in their own countries, while some other countries have a shortage of workers to fill positions in various sectors of their economies. Other factors include demographic change, socio-economic and political crises, and widening wage gaps within, as well as between, developed and developing countries. There is consequently much movement across borders for employment, with women independently migrating for work in considerably greater numbers than in the past and now comprising about half of all migrant workers.
2. Labour migration can have many beneficial elements for those countries which send and receive migrant workers, as well as for the workers themselves. It can assist both origin and destination countries in economic growth and development. While acknowledging the sovereign right of States to develop

their own labour and migration policies, it is important to direct attention to the need to adopt coherent and comprehensive national policies to effectively manage labour migration and to protect migrant workers. Special attention should be given to the multiple disadvantages and discrimination often faced by migrant workers on the basis of gender, race and migrant status. Further, issues related to the movement of workers across national borders cannot be effectively addressed when countries act in isolation; hence, international cooperation in managing labour migration can be valuable in addressing national interests.

3. This non-binding ILO Multilateral Framework gives effect to the resolution and conclusions on a fair deal for migrant workers in a global economy, adopted by the 92nd Session of the International Labour Conference in 2004. Paragraph 23 of the conclusions states:

In order to assist member States to develop more effective labour migration policies, the tripartite constituents have agreed to develop a non-binding multilateral framework for a rights-based approach to labour migration which takes account of national labour market needs. Such a framework will be drawn from, and based on, available information on policy and best practices in countries engaged in international labour migration, existing proposals to enhance the economic benefits of labour migration, relevant international labour standards, the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up, and other relevant international instruments. (See Annex I.)

Account should be taken in particular of the underlying principles of the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and of accompanying Recommendations Nos. 86 and 151. If these Conventions have been ratified, they should be fully respected.

4. The ILO Multilateral Framework comprises non-binding principles and guidelines for labour migration. It is derived from extensive research, as well as compilation and review of labour migration practices in all regions of the world. It has been drawn from principles contained in relevant international instruments and international and regional policy guidelines, including the International Agenda for Migration Management. Governments and the social partners are invited to give effect to the principles and guidelines therein. The Framework includes examples of best practices in Annex II.

Relevant instruments that relate to the principles are referenced below under the principles. The provisions of the Framework shall not limit or otherwise affect obligations arising out of the ratification of any ILO Convention. It is designed to provide practical guidance to governments and to employers' and workers' organizations with regard to the development, strengthening and implementation of national and international labour migration policies. It can also guide other parties interested in labour migration issues.

5. In the broader context of commitment to promoting decent work for all, the Multilateral Framework aims to foster cooperation and consultation among and between the tripartite constituents of the ILO and the Office, and in partnership with other international organizations, to assist them in implementing more effective policies on labour migration, including on rights, employment and protection of migrant workers.

I. Decent work

1. (a) **Opportunities for all men and women of working age, including migrant workers, to obtain decent and productive work in conditions of freedom, equity, security and human dignity should be promoted.**
- (b) **The ILO Decent Work Agenda promotes access for all to freely chosen employment, the recognition of fundamental rights at work, an income to enable people to meet their basic economic, social and family needs and responsibilities and an adequate level of social protection for the workers and family members.**

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principles:

- 1.1. developing and implementing economic and social policies that create decent and productive work in accordance with principles 1(a) and (b) of this Framework;
- 1.2. supporting the implementation of the Global Employment Agenda at the national level.

II. Means for international cooperation on labour migration

2. **Governments, in consultation with employers' and workers' organizations, should engage in international cooperation to promote managed migration for employment purposes.² Governments and employers' and workers' organizations should work with the ILO to promote coherence of labour migration policies at the international and regional levels based on the guidelines set out below. The ILO should promote dialogue with other relevant international organizations with a view to developing a coordinated approach on labour migration based on the non-binding ILO Multilateral Framework on Labour Migration.**

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 2.1. developing the exchange of information between and among governments on labour migration issues;
- 2.2. developing intergovernmental dialogue and cooperation on labour migration policy, in consultation with the social partners and civil society and migrant worker organizations;
- 2.3. promoting, where appropriate, bilateral and multilateral agreements between destination and origin countries addressing different aspects of labour migration, such as admission procedures, flows, family reunification possibilities, integration policy and return, including in particular gender-specific trends;
- 2.4. promoting development assistance to projects and programmes generating or increasing opportunities for decent work for women and men in developing countries;
- 2.5. establishing mechanisms for tripartite consultations at regional, international and multilateral levels;
- 2.6. promoting bilateral and multilateral agreements between workers' organizations in origin and destination countries providing for the exchange of information and transfer of membership;
- 2.7. promoting the role of the ILO as a leading agency on labour migration, including in its interaction with other regional or international bodies involved directly or indirectly in labour migration issues.

² Convention No. 97 (Art. 10) and Recommendation No. 86.

III. Global knowledge base

- 3. Knowledge and information are critical to formulate, implement and evaluate labour migration policy and practice, and therefore its collection and application should be given priority.**

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 3.1. improving government capacity and structures for collecting and analysing labour migration data, including sex-disaggregated and other data, and applying it to labour migration policy;
- 3.2. encouraging and facilitating the international exchange of labour migration data, such as by contributing to the International Labour Migration database;
- 3.3. promoting and supporting research on labour migration issues, including the impact of emigration on countries of origin, as well as the contribution of immigration to countries of destination, and disseminating it;
- 3.4. developing bilateral and multilateral exchange of labour market information;
- 3.5. collecting and exchanging profiles of good practices on labour migration on a continuing basis.

IV. Effective management of labour migration

- 4. All States have the sovereign right to develop their own policies to manage labour migration. International labour standards and other international instruments, as well as guidelines, as appropriate, should play an important role to make these policies coherent, effective and fair.³**

³ 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); Employment Policy Convention, 1964 (No. 122).

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 4.1. formulating and implementing coherent, comprehensive, consistent and transparent policies to effectively manage labour migration in a way that is beneficial to all migrant workers and members of their families and to origin and destination countries;
- 4.2. 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;
- 4.3. formulating and implementing national and, where appropriate, regional and multilateral labour migration policies all guided by international labour standards and other relevant international instruments and multilateral agreements concerning migrant workers;
- 4.4. implementing policies that ensure that specific vulnerabilities faced by certain groups of migrant workers, including workers in an irregular situation, are addressed;
- 4.5. ensuring that labour migration policies are gender-sensitive and address the problems and particular abuses women often face in the migration process;
- 4.6. providing labour ministries with a key role in policy formulation, elaboration, management and administration of labour migration to ensure that labour and employment policy considerations are taken into account;
- 4.7. establishing a mechanism to ensure coordination and consultation among all ministries, authorities and bodies involved with labour migration;
- 4.8. ensuring that specific structures and mechanisms within these ministries have the necessary competencies and capacities to develop, formulate and implement labour migration policies, including, where possible, a special unit for issues involving migrant workers;
- 4.9. ensuring that the relevant ministries have adequate financial and other resources to carry out labour migration policies;
- 4.10. establishing tripartite procedures to ensure that employers' and workers' organizations are consulted on labour migration issues and their views taken into account.

5. Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends.⁴

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 5.1. establishing systems and structures for periodic, objective labour market analyses that take into account gender issues and that include:
 - 5.1.1. sectoral, occupational and regional dimensions of labour shortages and their causes, and relevant issues of labour supply;
 - 5.1.2. shortages of skilled workers in both origin and destination countries, including in the public, health and education sectors;
 - 5.1.3. long-term impact of demographic trends, especially ageing and population growth, on the demand for and supply of labour;
- 5.2. establishing transparent policies for the admission, employment and residence of migrant workers based on clear criteria, including labour market needs;
- 5.3. where appropriate, establishing policies and procedures to facilitate the movement of migrant workers through bilateral, regional or multilateral agreements;
- 5.4. promoting labour mobility within regional integration schemes;
- 5.5. ensuring that temporary work schemes respond to established labour market needs, and that these schemes respect the principle of equal treatment between migrant and national workers, and that workers in temporary schemes enjoy the rights referred to in principles 8 and 9 of this Framework.

6. Social dialogue is essential to the development of sound labour migration policy and should be promoted and implemented.⁵

⁴ Conventions Nos. 97 and 143 and Recommendations Nos. 86 and 151.

⁵ Convention No. 143 (Arts. 2.2, 4, 7, 12(a), 12(e) and 14(b)); Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); Recommendation No. 86 (Paras. 4.2 and 19); Recommendation No. 151 (Paras. 4, 6(b), 7(1), 9, 14, 25(2) and 29).

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 6.1. establishing or strengthening national procedures of social dialogue to ensure consultation on all aspects of labour migration, including on the preparation of educational programmes and materials and provision of services and assistance to migrant workers and those considering migrating for work, both men and women, who may have different needs;
 - 6.2. facilitating the participation of employers' and workers' organizations in relevant international, regional, national and other forums, including through the establishment of tripartite consultative procedures;
 - 6.3. promoting dialogue and consultation with employers' organizations on practical opportunities and challenges they confront in the employment of foreign workers;
 - 6.4. promoting dialogue and consultation with workers' organizations on particular concerns posed by labour migration and their role in assisting migrant workers;
 - 6.5. involving both men and women migrant workers in dialogue and consultation.
- 7. Governments and social partners should consult with civil society and migrant associations on labour migration policy.**

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 7.1. with the social partners, identifying important civil society and migrant associations that promote the rights and welfare of migrant workers for consultation and support;
- 7.2. encouraging networking among social partners, civil society and migrant associations.

V. Protection of migrant workers

- 8. The human rights of all migrant workers, regardless of their status, should be promoted and protected. In particular, all migrant workers should benefit from the principles and rights in the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which are reflected in the eight fundamental ILO Conventions,⁶ and the relevant United Nations human rights Conventions.**

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 8.1. governments should ensure that national laws and practice that promote and protect human rights apply to all migrant workers and that they are respected by all concerned;
- 8.2. information should be provided to migrant workers on their human rights and obligations and assisting them with defending their rights;
- 8.3. governments should provide effective enforcement mechanisms for the protection of migrant workers' human rights and provide training on human rights to all government officials involved in migration;
- 8.4. legislation and policies should be adopted, implemented and enforced to:
 - 8.4.1. guarantee both men and women migrant workers the right to freedom of association, in accordance with Convention No. 87, and when they join trade unions the right to hold office in those organizations, provide them with protection against discrimination on the grounds of their trade union activities, in accordance with Convention No. 98, and ensure compliance by employers' and workers' organizations with these rights;
 - 8.4.2. protect migrant workers from conditions of forced labour, including debt bondage and trafficking, particularly migrant workers in an irregular situation or other groups of migrant workers who are particularly vulnerable to such conditions;

⁶ Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).

- 8.4.3. ensure respect of the minimum age for admission to employment, in accordance with Convention No. 138, and effectively prohibit the worst forms of child labour, including trafficking and forced labour of migrant children and children of migrant workers, in accordance with Convention No. 182;
- 8.4.4. eliminate all forms of discrimination against migrant workers in employment and occupation.

9. (a) **All international labour standards apply to migrant workers, unless otherwise stated. National laws and regulations concerning labour migration and the protection of migrant workers should be guided by relevant international labour standards and other relevant international and regional instruments.**
- (b) **The protection of migrant workers requires a sound legal foundation based on international law. In formulating national law and policies concerning the protection of migrant workers, governments should be guided by the underlying principles of the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations Nos. 86 and 151, particularly those concerning equality of treatment between nationals and migrant workers in a regular situation and minimum standards of protection for all migrant workers. The principles contained in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should also be taken into account. If these Conventions have been ratified, they should be fully implemented.**
- (c) **National law and policies should also be guided by other relevant ILO standards in the areas of employment, labour inspection, social security, maternity protection, protection of wages, occupational safety and health, as well as in such sectors as agriculture, construction and hotels and restaurants.⁷**

⁷ Of particular relevance are the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); Labour Inspection Convention, 1947 (No. 81); Labour Clauses (Public Contracts) Convention, 1949 (No. 94); Protection of Wages Convention, 1949 (No. 95); Social Security (Minimum Standards) Convention, 1952 (No. 102); Plantations Convention, 1958 (No. 110); Equality of Treatment (Social Security) Convention, 1962 (No. 118); Employment Policy Convention, 1964 (No. 122); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Minimum Wage Fixing Convention, 1970 (No. 131); Nursing Personnel Convention, 1977 (No. 149); Occupational Safety and Health Convention, 1981 (No. 155); Maintenance of Social Security Rights Convention, 1982 (No. 157); Occupational Health Services Convention, 1985 (No. 161); Safety and Health in Construction Convention, 1988 (No. 167); Working

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principles:

- 9.1. taking account of the ILO Conventions and other international instruments relevant to migrant workers, in particular the underlying principles of the ILO Conventions Nos. 97 and 143 and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, fully respecting them where they have been ratified and considering ratification and implementation of their provisions where they have not yet been ratified;
- 9.2. adopting measures to ensure that all migrant workers benefit from the provisions of all relevant international labour standards in accordance with principles 8 and 9 of this Framework;
- 9.3. adopting and implementing a national policy that promotes and aims to ensure equality of treatment of regular migrant workers and nationals in respect of national labour laws and practice and access to applicable social protections in accordance with Convention No. 97;
- 9.4. adopting measures to ensure that migrant workers lawfully within the country enjoy equal treatment with nationals regarding employment and training opportunities after a reasonable period of employment, and, upon loss of their employment, are allowed sufficient time to find other work in accordance with Convention No. 143 and its Recommendation No. 151;
- 9.5. adopting measures to ensure that all migrant workers who leave the country of employment are entitled to any outstanding remuneration and benefits which may be due in respect of employment and as applicable are given a reasonable period of time to remain in the country to seek a remedy for unpaid wages;
- 9.6. adopting measures to ensure that migrant workers admitted on a permanent basis are allowed to stay in the country in case of incapacity to work;
- 9.7. ensuring that restrictions on the rights of temporary migrant workers do not exceed relevant international standards;
- 9.8. adopting measures to ensure that national labour legislation and social laws and regulations cover all male and female migrant workers, including domestic workers and other vulnerable groups, in particular in the areas of

Conditions (Hotels and Restaurants) Convention, 1991 (No. 172); Safety and Health in Mines Convention, 1995 (No. 176); Maternity Protection Convention, 2000 (No. 183); and Safety and Health in Agriculture Convention, 2001 (No. 184).

- employment, maternity protection, wages, occupational safety and health and other conditions of work, in accordance with relevant ILO instruments;
- 9.9. entering into bilateral, regional or multilateral agreements to provide social security coverage and benefits, as well as portability of social security entitlements, to regular migrant workers and, as appropriate, to migrant workers in an irregular situation;
 - 9.10. adopting measures to ensure that migrant workers and accompanying members of their families are provided with access to health care and, at a minimum, with access to emergency medical care, and that regular migrant workers and accompanying members of their families receive the same treatment as nationals with regard to the provision of medical care;
 - 9.11. adopting measures to ensure that all migrant workers are paid their wages directly to them on a regular basis, that they have the freedom to dispose of their wages as they wish, and that all their wages are paid upon the termination of employment in conformity with relevant ILO instruments, in accordance with national law and practice;
 - 9.12. adopting measures to ensure in law and in practice that all migrant workers benefit from equality of treatment with national workers regarding safety and health protection, including measures to address the specific risks in certain occupations and sectors, particularly agriculture, construction, mines, hotels and restaurants, domestic work, and addressing the specific risks faced by women and, where applicable, promoting opportunities in the workplace;
 - 9.13. adopting measures to transform informal economy activities into formal activities and to ensure that migrant workers in these activities benefit from the rights referred to in principles 8 and 9 of this Framework;
 - 9.14. employers' and workers' organizations should integrate the specific concerns of men and women migrant workers in collective bargaining processes and social dialogue.

10. The rights of all migrant workers which are referred to in principles 8 and 9 of this Framework should be protected by the effective application and enforcement of national laws and regulations in accordance with international labour standards and applicable regional instruments.⁸

⁸ Of particular relevance are the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and Conventions Nos. 97 and 143.

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 10.1. extending labour inspection to all workplaces where migrant workers are employed, in order to effectively monitor their working conditions and supervise compliance with employment contracts;
- 10.2. ensuring that the labour inspectorate or relevant competent authorities have the necessary resources and that labour inspection staff is adequately trained in addressing migrant workers' rights and in the different needs of men and women migrant workers;
- 10.3. promoting the establishment of written employment contracts to serve as the basis for determining obligations and responsibilities and a mechanism for the registration of such contracts where this is necessary for the protection of migrant workers;
- 10.4. promoting and discussing the Multilateral Framework by the ILO with other international organizations to ensure that the principle of equal treatment of migrant workers with national workers and the implementation of rights as referred to in principles 8 and 9 of this Framework are not undermined in their policies and programmes;
- 10.5. providing for effective remedies to all migrant workers for violation of their rights, and creating effective and accessible channels for all migrant workers to lodge complaints and seek remedy without discrimination, intimidation or retaliation;
- 10.6. providing for remedies from any or all persons and entities involved in the recruitment and employment of migrant workers for violation of their rights;
- 10.7. providing effective sanctions and penalties for all those responsible for violating migrant workers' rights;
- 10.8. providing information to migrant workers on their rights and assisting them with defending their rights;
- 10.9. providing information to employers' and workers' organizations concerning the rights of migrant workers;
- 10.10. providing interpretation and translation services for migrant workers during administrative and legal proceedings, if necessary;
- 10.11. offering legal services, in accordance with national law and practice, to migrant workers involved in legal proceedings related to employment and migration.

VI. Prevention of and protection against abusive migration practices

11. Governments should formulate and implement, in consultation with the social partners, measures to prevent abusive practices, migrant smuggling and trafficking in persons; they should also work towards preventing irregular labour migration.⁹

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 11.1. adopting and implementing legislation and policies to prevent irregular labour migration and eliminate abusive migration conditions, including the trafficking of men and women migrant workers;
- 11.2. intensifying measures aimed at detecting and identifying abusive practices against migrant workers, including physical or sexual harassment or violence, restriction of movement, debt bondage, forced labour, withholding, underpayment or delayed payment of wages and benefits, retention of passports or identity or travel documents and threat of denunciation to authorities, particularly in those sectors that are outside the usual avenues of regulation and protection, such as domestic work;
- 11.3. implementing effective and accessible remedies for workers whose rights have been violated, regardless of their migration status, including remedies for breach of employment contracts, such as financial compensation;
- 11.4. imposing sanctions and penalties against individuals and entities responsible for abusive practices against migrant workers;
- 11.5. adopting measures to encourage migrant workers and trafficking victims to denounce abuse, exploitation and violation of their rights, taking account of the special circumstances of women and children and to this effect establishing mechanisms for migrant workers to lodge complaints and seek remedies without intimidation or retaliation;
- 11.6. prohibiting the retention of the identity documents of migrant workers;
- 11.7. creating and strengthening channels or structures for information exchange and international cooperation to address abusive migration conditions;

⁹ Conventions Nos. 29, 105, 138 and 182; Convention No. 97 (Annex I, Arts. 3 and 8 and Annex II, Art. 13); Convention No. 143, Part I; 1990 International Convention (Art. 21).

- 11.8. disseminating information on trafficking to warn potential victims of its dangers and raise public awareness on the issue;
- 11.9. assisting and protecting victims of trafficking and other abusive migration conditions, with particular attention to the specific needs of women and children;
- 11.10. adopting policies to address the root causes and impact of trafficking in persons with particular attention to gender-related issues;
- 11.11. encouraging the elimination of misleading propaganda relating to labour migration.

VII. Migration process

- 12. An orderly and equitable process of labour migration should be promoted in both origin and destination countries to guide men and women migrant workers through all stages of migration, in particular, planning and preparing for labour migration, transit, arrival and reception, return and reintegration.¹⁰**

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 12.1. facilitating migrant workers' departure, journey and reception by providing, in a language they understand, information, training and assistance prior to their departure and on arrival concerning the migration process, their rights and the general conditions of life and work in the destination country;
- 12.2. wherever possible facilitate migrant workers' return by providing information, training and assistance prior to their departure and on arrival in their home country concerning the return process, the journey and reintegration;
- 12.3. simplifying administrative procedures involved in the migration process and reducing processing costs to migrant workers and employers;
- 12.4. promoting the participation of employers' and workers' organizations and other relevant non-governmental organizations in disseminating information to migrant workers;

¹⁰ Convention No. 97 and Recommendation No. 86; Convention No. 110 (Arts. 18 and 26.1(i)).

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- 12.5. networking between workers' organizations in origin and destination countries to ensure that migrant workers are informed of their rights and are provided with assistance throughout the migration process;
- 12.6. promoting the recognition and accreditation of migrant workers' skills and qualifications and, where that is not possible, providing a means to have their skills and qualifications recognized;
- 12.7. providing interpretation and translation services, if necessary, to assist migrant workers in administrative and legal processes;
- 12.8. establishing effective consular services in countries of destination with, where possible, both female and male staff to provide information and assistance to women and men migrant workers;
- 12.9. facilitating the movement of migrant workers between the country in which they work and their home country to enable them to maintain family and social ties;
- 12.10. considering the establishment of a welfare fund to assist migrant workers and their families, for example, in the case of illness, injury, repatriation, abuse or death;
- 12.11. ensuring that migrant workers are not required to undergo discriminatory medical examinations.

13. Governments in both origin and destination countries should give due consideration to licensing and supervising recruitment and placement services for migrant workers in accordance with the Private Employment Agencies Convention, 1997 (No. 181), and its Recommendation (No. 188).

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 13.1. providing that recruitment and placement services operate in accordance with a standardized system of licensing or certification established in consultation with employers' and workers' organizations;
- 13.2. providing that recruitment and placement services respect migrant workers' fundamental principles and rights;
- 13.3. ensuring that migrant workers receive understandable and enforceable employment contracts;
- 13.4. providing arrangements to ensure that recruitment and placement services do not recruit, place or employ workers in jobs which involve unacceptable

- hazards or risks or abusive or discriminatory treatment of any kind and informing migrant workers in a language they understand of the nature of the position offered and the terms and conditions of employment;
- 13.5. working to implement legislation and policies containing effective enforcement mechanisms and sanctions to deter unethical practices, including provisions for the prohibition of private employment agencies engaging in unethical practices and the suspension or withdrawal of their licences in case of violation;
 - 13.6. consider establishing a system of protection, such as insurance or bond, to be paid by the recruitment agencies, to compensate migrant workers for any monetary losses resulting from the failure of a recruitment or contracting agency to meet its obligations to them;
 - 13.7. providing that fees or other charges for recruitment and placement are not borne directly or indirectly by migrant workers;
 - 13.8. providing incentives for recruitment and placement services that meet recognized criteria for good performance.

VIII. Social integration and inclusion

- 14. Governments and social partners, in consultation, should promote social integration and inclusion, while respecting cultural diversity, preventing discrimination against migrant workers and taking measures to combat racism and xenophobia.¹¹**

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 14.1. promoting and implementing anti-discrimination legislation and policies, establishing or strengthening specialized bodies on equality and non-discrimination for migrant workers and conducting periodic gender-sensitive data collection and analysis on these issues;

¹¹ Convention No. 143 (Arts. 10, 12 and 13); Recommendation No. 151 (Paras. 7.1(c) and 13–16); Recommendation No. 86 (Para. 15).

Appendix I

- 14.2. implementing policies and programmes to prevent and combat racism and xenophobia against migrant workers, taking into account relevant recommendations in the Programme of Action adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, South Africa, 2001);
- 14.3. improving the labour market position of migrant workers, for example, through the provision of vocational training and educational opportunities;
- 14.4. given the particular problems faced by irregular migrant workers or other vulnerable migrant workers as a result of their status, considering the implementation of policy options referred to in Convention No. 143 and its accompanying Recommendation No. 151;
- 14.5. creating national or regional centres to develop and implement measures to facilitate the integration of migrant workers and their families, in consultation with the social partners and representatives of migrant workers;
- 14.6. working with the social partners and migrant worker associations to ensure better representation and participation in economic, social and political life;
- 14.7. providing language and cultural orientation courses relating to countries of origin and destination;
- 14.8. facilitating the creation and reinforcement of community support networks;
- 14.9. promoting public education and awareness-raising campaigns regarding the contributions migrant workers make to the countries in which they are employed, in order to facilitate their integration into society;
- 14.10. facilitating the reunification of family members of migrant workers as far as possible, in accordance with national laws and practice;
- 14.11. working towards ensuring that the children of migrant workers born in destination countries have the right to birth registration and to a nationality in order to prevent them from becoming stateless in accordance with the United Nations Convention on the Rights of the Child (1989);
- 14.12. facilitating the integration of migrant workers' children into the national education system;
- 14.13. allowing migrant workers to participate in political activities after a period of legal residence in the country, in accordance with national conditions.

IX. Migration and development

15. 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.

Guidelines

The following guidelines may prove valuable in giving practical effect to the above principle:

- 15.1. integrating and mainstreaming labour migration in national employment, labour market and development policy;
- 15.2. expanding analyses of the contribution of labour migration and migrant workers to the economies of destination countries, including employment creation, capital formation, social security coverage and social welfare;
- 15.3. promoting the positive role of labour migration in advancing or deepening regional integration;
- 15.4. promoting and providing incentives for enterprise creation and development, including transnational business initiatives and micro-enterprise development by men and women migrant workers in origin and destination countries;
- 15.5. providing incentives to promote the productive investment of remittances in the countries of origin;
- 15.6. reducing the costs of remittance transfers, including by facilitating accessible financial services, reducing transaction fees, providing tax incentives and promoting greater competition between financial institutions;
- 15.7. adopting measures to mitigate the loss of workers with critical skills, including by establishing guidelines for ethical recruitment;
- 15.8. adopting policies to encourage circular and return migration and reintegration into the country of origin, including by promoting temporary labour migration schemes and circulation-friendly visa policies;
- 15.9. facilitating the transfer of capital, skills and technology by migrant workers, including through providing incentives to them;
- 15.10. promoting linkages with transnational communities and business initiatives.

Follow-up

1. With reference to paragraph 35 of the conclusions of the General Discussion on Migrant Workers at the 92nd Session of the International Labour Conference in 2004, the Governing Body should be urged to periodically review the progress made in the implementation of the Multilateral Framework as part of the plan of action.
2. The ILO's participation in relevant international forums should be used to promote this Multilateral Framework as a basis for partnership to achieve coherence.

Annex I. List of international labour Conventions and Recommendations referred to in the ILO Multilateral Framework on Labour Migration

Fundamental Conventions

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
Forced Labour Convention, 1930 (No. 29)
Abolition of Forced Labour Convention, 1957 (No. 105)
Equal Remuneration Convention, 1951 (No. 100)
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Minimum Age Convention, 1973 (No. 138)
Worst Forms of Child Labour Convention, 1999 (No. 182)

Migrant-specific instruments

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)

Other ILO Conventions

Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
 Labour Inspection Convention, 1947 (No. 81)
 Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
 Protection of Wages Convention, 1949 (No. 95)
 Social Security (Minimum Standards) Convention, 1952 (No. 102)
 Plantations Convention, 1958 (No. 110)
 Equality of Treatment (Social Security) Convention, 1962 (No. 118)
 Employment Policy Convention, 1964 (No. 122)
 Labour Inspection (Agriculture) Convention, 1969 (No. 129)
 Minimum Wage Fixing Convention, 1970 (No. 131)
 Tripartite Consultation (International Labour Standards) Convention, 1976
 (No. 144)
 Nursing Personnel Convention, 1977 (No. 149)
 Occupational Safety and Health Convention, 1981 (No. 155)
 Maintenance of Social Security Rights Convention, 1982 (No. 157)
 Occupational Health Services Convention, 1985 (No. 161)
 Safety and Health in Construction Convention, 1988 (No. 167)
 Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
 Safety and Health in Mines Convention, 1995 (No. 176)
 Private Employment Agencies Convention, 1997 (No. 181)
 Maternity Protection Convention, 2000 (No. 183)
 Safety and Health in Agriculture Convention, 2001 (No. 184)

United Nations Convention

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

Appendix II

Signature and ratification of international instruments on migration/migrants' rights, as at 30 July 2009

Summary of status:

- ILO Migration for Employment Convention (Revised), 1949 (No. 97):
49 ratifications
- ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143):
23 ratifications
- International Convention on the Protection of the Rights of All Migrant
Workers and Members of Their Families (ICRMW), 1990: 42 States parties;
15 non-ratifying signatories

Eighty-two States have ratified one or more of these three instruments.

Appendix II

State	ILO Convention No. 97 ratified	ILO Convention No. 143 ratified	ICRMW	
			Ratification (r) or accession (a)	Signature
Albania	2 Mar. 2005	12 Sep. 2006	5 June 2007 (r)	
Algeria	19 Oct. 1962		21 Apr. 2005 (a)	
Argentina			23 Feb. 2007 (r)	10 Aug. 2004
Armenia	27 Jan. 2006	27 Jan. 2006		
Azerbaijan			11 Jan. 1999 (a)	
Bahamas	25 May 1976			
Bangladesh				7 Oct. 1998
Barbados	8 May 1967			
Belgium	27 July 1953			
Belize	15 Dec. 1983		14 Nov. 2001 (a)	
Benin		11 June 1980		15 Sep. 2005
Bolivia			12 Oct. 2000 (a)	
Bosnia & Herzegovina	2 June 1993	2 June 1993	13 Dec. 1996 (a)	
Brazil	18 June 1965			
Burkina Faso	9 June 1961	9 Dec. 1977	26 Nov. 2003 (r)	16 Nov. 2001
Cambodia				27 Sep. 2004
Cameroon	3 Sep. 1962	4 July 1978		
Cape Verde			16 Sep. 1997 (a)	
Chile			21 Mar. 2005 (r)	24 Sep. 1993
Colombia			24 May 1995 (r)	
Comoros				22 Sep. 2000
Congo (Brazzaville)				29 Sep. 2008
Cuba	29 Apr. 1952			
Cyprus	23 Sep. 1960	28 June 1977		
Dominica	28 Feb. 1983			
Ecuador	5 Apr. 1978		6 Feb. 2002 (a)	
Egypt			19 Feb. 1993 (a)	
El Salvador			14 Mar. 2003 (r)	13 Sep. 2002
France	29 Mar. 1954			
Gabon				15 Dec. 2004
Germany	22 June 1959			
Ghana			8 Sep. 2000 (a)	

State	ILO Convention No. 97 ratified	ILO Convention No. 143 ratified	ICRMW	
			Ratification (r) or accession (a)	Signature
Grenada	9 July 1979			
Guatemala	13 Feb. 1952		14 Mar. 2003 (r)	7 Sep. 2000
Guinea		5 June 1978	8 Sep. 2000 (a)	
Guinea-Bissau				12 Sep. 2000
Guyana	8 June 1966			15 Sep. 2005
Honduras			11 Aug. 2005 (r)	
Hong Kong (China SAR) ^a	22 Jan. 1951			
Indonesia				22 Sep. 2004
Israel	30 Mar. 1953			
Italy	22 Oct. 1952	23 June 1981		
Jamaica	22 Dec. 1962		25 Sep. 2008 (r)	25 Sep. 2008
Kenya	30 Nov. 1965	9 Apr. 1979		
Kyrgyzstan	10 Sep. 2008		29 Sep. 2003 (a)	
Lesotho			16 Sep. 2005 (r)	24 Sep. 2004
Liberia				22 Sep. 2004
Libyan Arab Jamahiriya			18 June 2004 (a)	
Madagascar	14 June 2001			
Malawi	22 Mar. 1965			
Malaysia (Sabah)	3 Mar. 1964			
Mali			6 June 2003 (a)	
Mauritania			22 Jan. 2007 (a)	
Mauritius	2 Dec. 1969			
Mexico			8 Mar. 1999 (r)	22 May 1991
Moldova, Rep. of	12 Dec. 2005			
Montenegro	3 June 2006	3 June 2006		23 Oct. 2006
Morocco			21 June 1993 (r)	15 Aug. 1991
Netherlands	20 May 1952			
New Zealand	10 Nov. 1950			
Nicaragua			26 Oct. 2005 (a)	
Niger			18 Mar. 2009 (a)	
Nigeria	17 Oct. 1960		27 July 2009 (a)	
Norway	17 Feb. 1955	24 Jan. 1979		
Paraguay			23 Sep. 2008 (r)	13 Sep. 2000
Peru			14 Sep. 2005 (r)	22 Sep. 2004
Philippines	21 Apr. 2009	14 Sep. 2006	5 July 1995 (r)	15 Nov. 1993
Portugal	12 Dec. 1978	12 Dec. 1978		

Appendix II

State	ILO Convention No. 97 ratified	ILO Convention No. 143 ratified	ICRMW	
			Ratification (r) or accession (a)	Signature
Rwanda			15 Dec. 2008 (a)	
Saint Lucia	14 May 1980			
San Marino		23 May 1985		
Sao Tome & Principe				6 Sep. 2000
Senegal			9 June 1999 (a)	
Serbia	24 Nov. 2000	24 Nov. 2000		11 Nov. 2004
Seychelles			15 Dec. 1994 (a)	
Sierra Leone				15 Sep. 2000
Slovenia	29 May 1992	29 May 1992		
Spain	21 Mar. 1967			
Sri Lanka			11 Mar. 1996 (a)	
Sweden		28 Dec. 1982		
Syrian Arab Republic			2 June 2005 (r)	
Tajikistan	10 Apr. 2007	10 Apr. 2007	8 Jan. 2002 (r)	7 Sep. 2000
Tanzania, United Rep. of (Zanzibar)	22 June 1964			
The former Yugoslav Republic of Macedonia	17 Nov. 1991	17 Nov. 1991		
Timor-Leste			30 Jan. 2004 (a)	
Togo		8 Nov. 1983		15 Nov. 2001
Trinidad & Tobago	24 May 1963			
Turkey			27 Sep. 2004 (r)	13 Jan. 1999
Uganda		31 Mar. 1978	14 Nov. 1995 (a)	
United Kingdom	22 Jan. 1951			
Uruguay	18 Mar. 1954		15 Feb. 2001 (a)	
Venezuela, Bol. Rep. of	9 June 1983	9 June 1963		
Zambia	2 Dec. 1964			

^a China notified 1 July 1997 regarding continued application of ILO Convention No. 97 in Hong Kong Special Administrative Region.

Texts of and information on ILO Conventions available at: <http://www.ilo.org/ilolex/english/convdsp1.htm>.
Text of and information on the 1990 Convention available at: <http://www2.ohchr.org/english/bodies/cmw/index.htm> and/or <http://www.december18.net>.

Appendix III

Resolution and conclusions concerning a fair deal for migrant workers in a global economy¹

Resolution concerning a fair deal for migrant workers in a global economy

The General Conference of the International Labour Organization, meeting in its 92nd Session, 2004,

Having undertaken a general discussion based on an integrated approach on the basis of Report VI, *Towards a fair deal for migrant workers in the global economy*,

1. Adopts the following conclusions;
2. Invites the Governing Body to give due consideration to them in planning future action on migrant workers and to request the Director-General to take them into account both when preparing the Programme and Budget for the 2006–07 biennium and allocating such other resources as may be available during the 2004–05 biennium.

¹ Extracted from the Report of the Committee on Migrant Workers, <http://www.ilo.org/public/english/standards/relm/ilc/ilc92/pdf/pr-22.pdf>.

Conclusions on a fair deal for migrant workers in a global economy

Issues and challenges

1. The preparatory report for the present general discussion *Towards a fair deal for migrant workers in the global economy*, the rich and multifaceted discussion held in the Conference Committee as well as the report of the World Commission on the Social Dimension of Globalization reflect a clear consensus on the fact that international migration is increasingly important in the global economy of today. Nearly all countries today are affected by international migration, either as origin, transit or destination countries – and in many cases all these capacities. The rising mobility of people in search of opportunities and decent work and human security has been commanding the attention of policy-makers and prompting dialogue for multilateral cooperation in practically every region of the world. The ILO's mandate in the world of work as well as its competencies and unique tripartite structure entrust it with special responsibilities regarding migrant workers. Decent work is at the heart of this. The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration and can work towards eliminating identifiable detriments of labour migration in collaboration with other international organizations.
2. Although migration has been a permanent phenomenon throughout history, international migration in the globalized economy is a growing and increasingly complex phenomenon. A very large part of contemporary migration is directly or indirectly related to the world of work. Of the 175 million people thought to be residing outside their countries of birth or citizenship, some 86 million are estimated to be economically active. Of these, 34 million are thought to be in developing regions. Women continue to constitute about half of all migrants, but most are now migrating on their own as primary income earners. Many people choose to migrate to improve their living standards and may migrate due to a lack of decent work opportunities at home; however, other factors contributing to migration include poverty, wars, famine and repression as well as population pressures and income inequalities. There are also instances of forced migration for work that should be eliminated.
3. Regional economic integration processes today provide opportunities for facilitating more productive use of labour within larger market spaces. Economic effects of migration for employment are mainly beneficial, allowing for non-inflationary economic expansion, job creation and rejuvenation of populations.

Perceptions of adverse immigration impacts are often unfounded or exaggerated, although particular sectors have experienced declines in wages and conditions. Effects of labour migration on countries of origin, particularly less developed countries, are more complex.

4. It is recognized that among many of the beneficial elements of labour migration are non-inflationary economic expansion, job creation, growth and cross-fertilization of skills, technology exchange, rejuvenation of populations and stimulation of development through remittance flows. The ambition and the drive that motivate people to migrate generally help them to find jobs in many countries, work hard, and benefit both themselves and host country nationals. Demographic trends in some regions suggest that immigration will in some instances be an important component of a long-term solution to the anticipated problems raised by ageing. The ILO's Global Employment Agenda supports policies for economic growth and employment.
5. Despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social exclusion. Gaps in working conditions, wages and treatment exist among migrant workers and between migrant and national workers. In a significant number of cases unemployment rates, job security and wages differ between regular migrant workers and national workers.
6. The number of migrants in an irregular situation is rising, fuelled by the growth of informal forms of employment, shortages of workers for dirty, demeaning and dangerous jobs ("3D-jobs") and lack of opportunities for regular labour migration. The absence of formal management for migration and national policies in some countries contributes to the increasing number of irregular migrants. The increase in trafficking, especially of women and children, poses a particular threat to human rights protections and creates new challenges for governments and the international community. Victims of trafficking face abusive and exploitative situations, often without effective access to legal protection. In some countries, some irregular migrant workers face similar situations, including sexual and physical harassment, debt bondage, retention of identity documents and threats of denunciation to the authorities, without effective access to legal protection. Private fee-charging recruitment agencies are increasingly involved in international migration and, despite efforts both at the national and international levels to regulate this market, some engage in unethical practices which may contribute to irregular migration, causing hardship to migrant workers.

7. Temporary workers and migrant domestic workers often have limited legal rights, may be excluded from social security benefits and may face multiple disadvantages.
8. The complex relationship between migration and development is another issue that is attracting increasing attention. While the potential long-term benefits of circular migration, cross-fertilization of skills and technology exchange have been recognized, the permanent loss of critically skilled workers in many developing countries is nonetheless an increasing issue of concern. This involves the loss of scarce national economic resources that have been invested in education and training. There is a need for further studies and analyses of the effects of the movements of highly skilled migrant workers and those with advanced education on economic and social development in developing countries. Health-care capacity of a number of countries has been particularly affected by the departure of trained doctors and nurses. In addition to the economic costs, there are often social costs to the families of migrant workers, including family dislocation, children growing up without parents, disrupted schooling, and the spread of HIV/AIDS.
9. While returning migrant workers bring back skills, capital, experience and knowledge, these benefits from labour migration can be enhanced by appropriate and equitable conditions to support the return of migrants. Remittance flows represent the second largest source of external funding for developing countries after foreign direct investment; they are transfers of private individual earnings, and usually go towards improved housing, nutrition, schooling and health care. Many of these activities have a significant multiplier effect, with the potential to reduce poverty and expand decent work. Increased remittance flows should not substitute for sound macroeconomic policy, investment in public services and official development assistance (ODA). Improved policies and effective and targeted ODA are also required to reduce poverty in developing countries and to promote decent work as a central objective of national and international economic policies.

Policy approaches

10. Acknowledging the sovereign right of all States to develop their own migration and labour policies, it is accepted that multilateral rules, standards or, as appropriate, guidelines play an important role to make policies coherent, effective and fair. In that context, coherent, comprehensive, consistent and transparent policies are required to effectively manage migration. National

policies and their administration must also be viable, adaptable, dynamic and flexible. All relevant ministries, and in particular labour ministries, merit a key role in policy formulation, elaboration, management and administration of labour migration to ensure that labour and employment policy considerations are taken into account. Effective administration of labour migration requires structures and mechanisms with necessary competencies and capacities within these ministries. Structures and regular mechanisms for social dialogue on migration policy are necessary for meaningful involvement of representative employers' and workers' organizations. Mechanisms for consultation with civil society and migrant groups are also needed.

11. To be effective, credible and enforceable, national policy and practice regarding labour migration and the protection of migrant workers require a sound legal foundation based on the rule of national and international law. A broad array of international labour standards contain principles and rights to guide national law and policy on managing labour migration and the protection of migrant workers. The Migration for Employment Convention, 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations Nos. 86 and 151, in particular, call for cooperation among States, and measures to facilitate and control migration movements. They contain the underlying principle of equality of treatment between nationals and regular migrant workers, minimum standards of protection for all migrant workers, and provisions for participation of social partners in national policy formulation.
12. All migrant workers also benefit from the protection offered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998). In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the elimination of child labour cover all migrant workers, regardless of status. The ILO Declaration makes specific reference to groups with special needs, specifically including migrant workers. Other ILO standards in areas such as employment, labour inspection, social security, maternity protection, wages, occupational safety and health, and private recruitment agencies, as well as in such sectors as agriculture, construction and hotels and restaurants which traditionally employ a large number of migrant workers, also provide necessary guidance for national law and policy to ensure protection of migrant workers.
13. Comprehensive national approaches to improving social welfare and social inclusion and cohesion in the context of labour migration are necessary and should be promoted. Important measures may include: entering into bilateral

or multilateral agreements to provide social security coverage and benefits to regular migrant workers and, as appropriate, to migrant workers in irregular situations, in conformity with relevant international standards and practices; reflecting the differences in conditions facing men and women migrants through measures to improve conditions and reduce specific vulnerabilities faced by female migrants; promoting access to health care for migrant workers and their families, including promoting HIV/AIDS prevention; explicitly addressing discrimination and xenophobia against migrant workers, taking into account relevant recommendations in the Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001); and facilitating economic, social and cultural integration of regular migrant workers and family members into host societies.

14. Employers confront numerous policy and practical challenges in employment of foreign workers, including: identifying, recruiting and ensuring entry of foreign workers through regular channels; complying with complex and lengthy administrative procedures; addressing document control; facing risks of sanctions for employing migrant workers without authorization; managing relations in multi-ethnic workplaces; and assuring proper training and workplace protection in multilingual contexts.
15. For workers' organizations, labour migration poses particular concerns, notably: reaching migrant workers and organizing them into trade unions; ensuring solidarity between foreign and national workers, cooperating with employers to integrate migrants in multicultural workplaces; and obtaining access to policy forums to ensure that the views of men and women migrant workers are taken into account. Workers' organizations in countries of origin can assist migrant workers in obtaining accurate and comprehensive information about employment opportunities and workers' rights in destination countries.
16. Measures to combat trafficking in persons should be strengthened. These measures should include provisions for the prosecution of persons engaged in trafficking, protection of and assistance to victims, coordination between domestic and international investigations, as well as efforts to address the root causes of the problem in countries of origin, including access to regular labour migration channels and to decent work and social protection alternatives in origin countries. Countries can also contribute to these measures by developing policies to combat and prevent irregular migration.
17. Promotion of policies that maximize the contribution of migration to development is another essential component of a comprehensive policy to address the global context of migration. Among urgent required components are measures

to reduce the costs of remittance transfers as well as developing incentives to promote productive investment of remittances. Equitable measures need to be explored to mitigate the loss of critically skilled workers, particularly in the public sectors of developing countries. Consideration may be given to allocating development assistance to projects and programmes generating or increasing employment in decent conditions. Facilitating training and return of migrants, transfer of capital and technology by migrants, and migrant transnational business initiatives are other options that could be promoted.

18. While recognizing the sovereignty of States in determining their own migration policy, the need for international cooperation on migration, and in particular labour migration, among government and other stakeholders is manifested by the emergence of intergovernmental dialogue on migration policy in nearly every region of the world. This is evidenced by the current time-bound activities of the Berne Initiative and the Global Commission on International Migration, as well as ongoing policy dialogue activities under the auspices of the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees and the ILO.
19. The ILO has for many years been actively engaged in many areas of labour migration policy, ranging from elaborating policy approaches on protecting departing migrant workers to offering advice on how to address problems of irregular migration. It manages technical cooperation projects, provides training for policy-makers and administrators, and renders advisory services on policy development, legislation, and organizational development.

An ILO plan of action for migrant workers

20. A fair deal for all migrant workers requires a rights-based approach, in accordance with existing international labour standards and ILO principles, which recognizes labour market needs and the sovereign right of all nations to determine their own migration policies, including determining entry into their territory and under which conditions migrants may remain. As part of the broader commitment to promoting decent work, the ILO and its constituents agree on the desirability of maximizing the benefits to all that can flow from: (i) promoting policies that give priority to economic growth and employment; and (ii) encouraging regular labour migration. It is recognized that this goal requires a commitment to adopt national policies aimed at equal treatment of migrant workers with nationals in respect of national labour laws and access to applicable social protections, combating the exploitation

often associated with migrants in irregular status, and the promotion of basic human rights for all migrants. It is clear that closer cooperation among sovereign States and the tripartite constituents can contribute towards more effective labour migration processes and protection systems. Many countries have requested technical assistance in improving their policies and legislation. In order to advance this agenda, the ILO and its constituents will carry out a plan of action in partnership with other relevant international organizations. The Office shall keep the ILO Governing Body and any other relevant ILO Committees informed of the progress of its implementation.

21. This plan of action shall include:

- development of a non-binding multilateral framework for a rights-based approach to labour migration which takes account of labour market needs, proposing guidelines and principles for policies based on best practices and international standards;
- identification of relevant action to be taken for a wider application of international labour standards and other relevant instruments;
- support for implementation of the ILO Global Employment Agenda at national level;
- capacity building, awareness raising and technical assistance;
- strengthening social dialogue;
- improving the information and knowledge base on global trends in labour migration, conditions of migrant workers, and effective measures to protect their rights;
- mechanisms to ensure ILO Governing Body follow-up of the plan of action and ILO participation in relevant international initiatives concerning migration.

22. A high priority should be given to capacity building and technical assistance, in line with this plan of action.

*A non-binding multilateral framework
for migrant workers in a global economy*

23. In order to assist member States to develop more effective labour migration policies, the tripartite constituents have agreed to develop a non-binding multilateral framework for a rights-based approach to labour migration which takes account of national labour market needs. Such a framework will be drawn from, and based on, available information on policy and best practices

in countries engaged in international migration, existing proposals to enhance the economic benefits of migration, relevant international labour standards, the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up, and other relevant international instruments. This framework should be of particular interest to countries emerging either as origin, destination or transit countries.

24. This framework will comprise international guidelines on best practices on areas including, but not limited to, the following:
- having regard to labour market needs and demographic trends in the various countries, expanding avenues for regular labour migration;
 - promoting managed migration for employment purposes, including bilateral and multilateral agreements between host countries and countries of origin addressing different aspects of migration such as admission procedures, flows, social security, family reunification possibilities, integration policy and return;
 - promoting managed migration to address the impact of an ageing population on national economies, where appropriate;
 - licensing and supervision of recruitment and contracting agencies for migrant workers in accordance with ILO Convention No. 181 and Recommendation No. 188, with the provision of clear and enforceable contracts by those agencies;
 - promoting decent work for migrant workers;
 - preventing abusive practices, migrant smuggling and trafficking in persons;
 - protecting and promoting the human rights of all migrant workers;
 - promoting measures to ensure that all migrant workers benefit from the provisions of all relevant international labour standards;
 - promoting awareness of migrant workers' rights;
 - preventing and combating irregular labour migration;
 - improving labour inspection and creation of channels for migrant workers to lodge complaints and seek remedy without intimidation;
 - measures to reduce the cost of remittance transfers;
 - incentives to promote productive investment of remittances;
 - measures to ensure that all migrant workers are covered by national labour legislation and applicable social laws;
 - policies to encourage return migration, reintegration into the country of origin and transfer of capital and technology by migrants;
 - promoting guidelines for ethical recruitment of migrant workers and exploring mutually beneficial approaches to ensure the adequate supply of skilled health and education personnel that serve the needs of both

- sending and receiving countries, including through bilateral and multi-lateral agreements;
- addressing the specific risks for all migrant workers, men and women, in certain occupations and sectors with particular emphasis on dirty, demeaning and dangerous jobs, and on women in domestic service and the informal economy;
 - promoting social integration and inclusion, reducing discrimination against migrant workers and measures to combat racism and xenophobia;
 - facilitating the portability of social security entitlements and other relevant entitlements through bilateral, regional or multilateral agreements in relation to regular migrants;
 - promoting the recognition and accreditation of migrant workers' skills and qualifications, as appropriate, in order to enhance their employability.
25. The ILO, in consultation with Government members, the social partners and relevant experts, will develop the guidelines contained in this non-binding multilateral framework for consideration by the ILO Governing Body in November 2005.
26. Recognizing the importance of work currently being carried out in the existing international forums in the area of migration, an ILO forum may be established in partnership with other relevant international organizations to provide a platform for increased tripartite dialogue on labour migration and increased policy coherence on this subject.

International labour standards and other relevant instruments

27. ILO Convention No. 97 has been ratified by 42 countries and Convention No. 143 has been ratified by 18 countries. The Office shall undertake to identify the impediments to the ratification of these Conventions, taking into account that labour migration has evolved since their inception, and other relevant instruments have been developed at national, regional and international levels, such as the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the United Nations Convention against Transnational Organized Crime (2000) and its two associated Protocols. The ILO may take appropriate steps to better promote the ratification of Conventions Nos. 97 and 143, and the application of the principles they contain pertaining to the protection of migrant workers. This initiative should also encompass other

particularly relevant standards for migrant workers, including the fundamental ILO Conventions and ILO standards concerning private employment agencies, social security, protection of wages, labour inspection, and occupational safety and health.

28. Consistent with effective management of migration, due consideration should be given to the particular problems faced by irregular migrant workers and the vulnerability of such workers to abuse. It is important to ensure that the human rights of irregular migrant workers are protected. It should be recalled that ILO instruments apply to all workers, including irregular migrant workers, unless otherwise stated. Consideration should be given to the situation of irregular migrant workers, ensuring that their human rights and fundamental labour rights are effectively protected, and that they are not exploited or treated arbitrarily. Due consideration should also be given to the gender dimension in the application of relevant international labour standards, as well as to the various categories of temporary migrant workers, including seasonal workers.
29. Further research should be carried out on how to address some of the lacunae that have been identified in ILO standards on migrant workers, for example, through additional measures and guidelines for national legislation, policy and practice. Participants endorsed the conclusions of the 1997 Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration and called on the ILO to promote the implementation of the conclusions on migrant workers in time-bound activities.
30. The ILO shall periodically prepare and widely disseminate a report on the implementation of international labour standards relevant to migrant workers.

Capacity building and technical assistance

31. Considering the needs expressed by many member States for technical assistance in many areas of labour migration policy and administration, expanded advisory services and technical cooperation should be a key priority for the ILO to help governments and social partners formulate and give effect to national and regional policies and practices concerning labour migration. Such capacity building and technical assistance should, inter alia, further the following activities:
 - support the development of gender-sensitive national migration policies;
 - support member States in reviewing and updating laws and regulations, undertaking practical measures on labour migration, and improving the functioning of administrative arrangements and enforcement mechanisms;

- support member States in mitigating the circumstances driving migration through the generation of decent work opportunities in countries, including through the implementation of the ILO Global Employment Agenda at the national level;
 - help build capacity for monitoring labour migration at the national level;
 - support member States in capacity building for developing national databases concerning migrant workers;
 - strengthen the capacity of workers' and employers' organizations to participate in the formulation and implementation of labour migration and integration policies, and promote equal treatment of migrant workers;
 - promote awareness and better understanding of the ILO standards relevant to migrant workers and assist member States in conforming national labour migration policies and programmes to these standards;
 - develop and promote measures and activities to combat racism, discrimination and xenophobia;
 - promote awareness of labour rights;
 - strengthen labour legislation so as to ensure that it provides labour protection for migrant workers and protects labour principles and rights identified in relevant ILO Conventions and instruments;
 - strengthen the capacity of authorities, including labour inspection services and labour tribunals, to secure compliance with labour laws, with a particular focus on the situation of migrant workers, by building transparency, knowledge and professionalism, and by sharing best practices.
32. The ILO International Training Centre in Turin should be involved in the development and carrying out of these capacity-building activities and technical assistance projects.

Development of a global knowledge base

33. Together with its constituents and, as appropriate, in conjunction with other international organizations, the ILO should continue building a global knowledge base on international labour migration, focusing its research and strengthening its knowledge management tools in the following areas:
- continued qualitative and quantitative research in areas of migration for employment, including on the gender dimensions of migration;
 - develop models for future information exchange on job openings and skills needs for foreign workers;

- collection and dissemination of information and profiles of “best practices” in relevant categories of labour migration management and in integration policies;
- specific assistance to constituents to improve and build capacity to collect and analyse sex-disaggregated data;
- cooperation and exchange among countries to improve migration statistics, particularly by expansion of the ILO’s International Labour Migration Database;
- studies of long-term labour market developments that are relevant to future migration flows, and adjustment policies to maximize mutual benefits.

Social dialogue

34. ILO support is required to assist its member States and employers’ and workers’ organizations in establishing national mechanisms of social dialogue on migration, facilitating participation of social partners in relevant international forums, preparing educational materials, providing services to migrants, conducting anti-discrimination and integration activity, and addressing other concerns.

Follow-up

35. The ILO Governing Body, as appropriate, shall periodically review the progress made in implementing these conclusions and plan of action. For this purpose, consideration may be given to the need to establish a Permanent Committee on Migration of the ILO Governing Body.
36. The ILO is expected to participate actively in relevant international forums and to enhance cooperation with other relevant international organizations for the furtherance of this plan of action.

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