EXPANDING LABOUR MOBILITY CHANNELS

Building upon the New York Declaration for Refugees and Migrants adopted on 19 September 2016, the Global Compact for Safe, Orderly and Regular Migration (GCM) will set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions. The GCM should make an important contribution to global governance and enhance coordination on international migration. For the consideration of Member States, the "Thematic Papers", developed by IOM, outline core topics and suggestions to inform actors involved in the broad 2017 consultation process that will lead to the inter-governmental negotiations and final adoption of the GCM.

INTRODUCTION

International labour migration is broadly defined as the movement of persons from their home State to another State for the purpose of employment. In its most simple form, labour migration occurs when a person is recruited from their home State to take up employment in another State, or when a person migrates to another State with the aim of finding employment. When managed well, labour migration brings many benefits to migrants, communities, employers, governments, and other stakeholders, in countries of origin and destination. For countries of origin, labour migration reduces the stress of national unemployment or underemployment, and contributes to development through remittances, transfer of skills, and the creation of business and trade networks. For countries of destination, labour migration helps address critical labour shortages, especially within the context of ageing populations and changing labour demographics. For workers, migration provides opportunities to raise income levels, gain skills and competencies, and improve living conditions for their families and communities.

Without diminishing the benefits, there are also governance challenges associated with labour migration. For countries of origin, especially developing countries, these include potential skills shortages or gaps as local skilled professionals migrate to other countries, as well as social consequences for families that stay behind. For countries of destination, poorly managed labour migration can lead to social dumping where migrant workers are employed at wages and working conditions below those of national workers, which can exacerbate social tensions, and skills mismatches that perpetuate labour market gaps.

There can be challenges associated with protecting the rights of migrant workers throughout the labour migration process, in countries of origin, transit and destination. For example, the exploitation of migrant workers often begins during recruitment when workers are charged excessive fees leading to possible debt bondage. Workers can also encounter deceptive and non-transparent recruitment practices at the hands of unscrupulous labour recruiters due, in part, to a lack of government regulation and oversight. They may also face risks during deployment and transit, particularly workers who migrate irregularly and in cases involving smugglers or human trafficking. Migrant workers can experience discrimination and social isolation in the workplace, including a lack of parity with local workers. Women migrants often face the dual discrimination based on gender and on their immigration or employment status. If violations or disputes do occur, it is often more difficult for migrant workers to access judicial and organizational remedy. Furthermore, migrant workers face the risk of detention or deportation when their employment is linked to employer sponsorship schemes.

However, the challenges of labour migration management can be mitigated through the adoption and implementation of well-managed migration policies and legislation—including through bilateral and

multilateral frameworks—that respect and uphold State sovereignty, provide prospective workers with safe and legal migration pathways and protect the rights of migrant workers. Countries of origin and destination can maximize the benefits of labour migration by ensuring that employers are able to fill vacancies through transparent and efficient labour mobility processes. Concerted efforts and cooperative approaches are important at all stages of the labour migration process—starting from the pre-departure orientation, during the recruitment, deployment and employment stages and all the way to return and reintegration.

This paper provides an overview of current principles and frameworks, while also exploring policy considerations for admission for employment, while acknowledging that other pathways may exist for student mobility, family reunification, and entrepreneur or investor schemes.

EXISTING PRINCIPLES

Existing normative and cooperative frameworks

Within the framework of international legal obligations, States have a sovereign right to determine the conditions of entry and stay of foreigners within their jurisdiction. However, irrespective of sovereignty, there exist rights that are afforded to a person once they have crossed a border. The normative frameworks protecting the rights of migrant workers can be found in three areas of international law:

i)   The nine core international human rights treaties that apply to all persons, including migrants – and in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990;

ii)   Transnational criminal law that includes provisions to address the criminal elements related to migration— and in particular the United Nations Convention against Transnational Organized Crime 2000, the Protocol against Smuggling of Migrants by Land, Sea and Air, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; and

iii)   International Labour Organization (ILO) standards that apply to all persons regardless of nationality or legal status. In particular, the eight core ILO conventions, the ILO Declaration on Fundamental Principles and Rights at Work, 1998, and specific ILO conventions that protect the rights of migrant workers.[1]

Additionally, the ILO has created a Multilateral Framework on Labour Migration (2006) that contains non-binding principles and guidelines for a rights-based approach to labour migration.[2] The Framework is supported by the recent development of General Principles and Operational Guidelines for Fair Recruitment (2016), which guide governments, employers and labour recruiters in the governance of national and international labour recruitment.[3]

Similarly, the UN Guiding Principles for Business and Human Rights provide a conceptual framework for governments and businesses in mitigating adverse human rights impacts on individuals and groups, including migrant workers, in both their direct activities and supply chains.[4] Furthermore, the "Protect, Respect, Remedy" Framework underscores the obligations of States to regulate activities of businesses in respecting national and international laws as well as conducting due diligence in their business relationships, and of both States and companies in providing access to effective remedy.[5]

Regional frameworks also exist to guide labour mobility among neighbouring countries and within regional trade coalitions. However, there is a great deal of variation among regional groupings, with some frameworks, such as the European Union and Mercusor (Latin American Southern Common Market) allowing for the free movement of workers and (temporary) residence for citizens of Member States, while other frameworks, such as the North American Free Trade Agreement, are much more limited in nature and provide entry for employment in very specific circumstances.

Bilateral agreements also provide governance over the movement of workers between jurisdictions, often focusing on seasonal, temporary or circular migration. For example, bilateral memoranda of understanding have been signed in the Greater Mekong Subregion (GMS) among States, including Cambodia, the People's Republic of China, Laos, Myanmar, Thailand, and Viet Nam.[6] The Russian Federation has signed a number of separate bilateral agreements regarding admission and protection of migrant workers. Equally, Canada has bilateral agreements with Mexico and several countries of the Eastern Caribbean regarding the seasonal admission of agricultural workers.

Finally, several State-led regional consultative processes on migration have been created to facilitate dialogue among groups of States on migration related issues of mutual interest. These include, but are not limited to: the Ministerial Consultation on Overseas Employment and Contractual Labour for Countries of Origin in Asia (Colombo Process); Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia (Abu Dhabi Dialogue); Migration Dialogue for Southern Africa; Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Regional Conference on Migration (RCM or Puebla Process); Intergovernmental Consultations on Immigration, Refugees and Asylum (IGC); The South American Conference on Migration; and the Migration Dialogue for West Africa Process.

Sustainable Development Goals, the Addis Ababa Agenda for Action, and the Migration Governance Framework

The Sustainable Development Goals (SDGs), adopted under the 2030 Agenda for Sustainable Development, set targets for ensuring safe, orderly and regular migration through well-managed migration policies (Target 10.7); eradicating forced labour, modern slavery and human trafficking (Target 8.7); protecting migrant workers' rights (Target 8.8); reducing the cost of remittances (Target 10C); and improving data (Target 17.19). In addressing the fair treatment of migrant workers, targets aligned with SDG 8 reinforce the notion that reduction of recruitment costs to workers is necessary for the elimination of forced labour and modern slavery in global supply chains.

The Addis Ababa Action Agenda provides a framework for implementing sustainable development, including commitments to lower the costs for recruiting migrant workers and to combat unscrupulous labour recruiters in accordance with national circumstances and legislation.[7]

Finally, IOM's Migration Governance Framework (MiGOF) outlines the essential elements for facilitating orderly, safe, regular and responsible migration and mobility of people through planned and well-managed migration policies.[8] In relation to labour mobility, Principles 1 (Adherence to international standards and fulfilment of migrants' rights) and 2 (Formulates policy using evidence and "whole-of-

government" approach), and Objective 1 (Advance the socioeconomic well-being of migrants and society) are most relevant.

ISSUES

States can promote good migration governance by creating effective systems and institutions that operate in a transparent, fair and timely manner. States may wish to consider creating or expanding legal pathways for temporary and permanent labour migration, both intra-and inter-regionally as a way to reduce irregular migration, prevent loss of life and protect workers' rights, improve international job-matching, and promote social cohesion. These admission channels should be fit for purpose to meet a plurality of labour market needs for workers at all skill levels, including seasonal or temporary vacancies, as well as long-term and structural labour market shortages. The following section outlines key principles and considerations that States may wish to consider in the design and implementation of such channels.

1) **State sovereignty.** States have sovereign rights to determine their immigration policies, including the provision of legal pathways for labour mobility. Immigration policies should be based on national law and entrenched within national legal structures

2) **Protection of migrant workers and ethical recruitment.** Labour mobility policies that are designed to protect migrant workers throughout the labour migration process, beginning with ethical labour recruitment consistent with the ILO's General Principles and Operational Guidelines for Fair Recruitment, are strongly encouraged. This entails improved regulation and enforcement, support for industry-led and multi-stakeholder certification schemes, such as the International Recruitment Integrity System (IRIS),[9] as well as increased government-to-government oversight.

3) **Regional and bilateral collaboration.** Internationally mobile persons often find themselves in transition—in a limbo between jurisdictions, labour markets, education systems and social protection systems which, in the absence of effective transnational governance, may lead to the possible loss of rights, increased vulnerability and wasted potential. Safety of the journey and the potential duration and nature of being in transit are also important factors. Effective measures to facilitate a smooth and safe migration journey, and inter-State cooperation on issues ranging from skill recognition to portability of social security are key to successful migration and integration.

4) **Labour mobility policies are evidence-based**, and take into account accurate and reliable labour market information in countries of origin and destination, as well as opportunities for skills transfer between migrant and national workers. Labour market analysis and dialogue with social partners, including employers and sector associations, is essential for identification of actual skill gaps. These measures also play a key role in building public confidence on immigration and its socioeconomic impact. Entry permits can be tied to a labour market impact assessment that ensures that national workers are not readily available, that the job offer is genuine, and that wages and benefits are consistent with those offered to national workers, and that other labour rights are respected in accordance with national law and practice and international standards.

5) **Decent work for migrant workers.** Labour mobility policies that are rights-based and preserve decent work for migrant workers, based on the ILO Declaration on Fundamental Principles and Rights at Work, are strongly encouraged. This includes work-place parity for migrant workers with national workers, including in collective bargaining agreements. Both high-skilled and low-skilled workers benefit from equal protection without discrimination.

6) **Mainstreaming migration into government policies.** Consistent with Principle 2 of IOM's MiGOF, well-functioning labour migration policies require a "whole-of-government" approach, ensuring horizontal and vertical integration throughout national and subnational administrations and departments.[10]

7) **Roles for the private sector**. Effective governance in the field of labour mobility requires collaboration among governments and social partners, particularly the private sector.

   - In accordance with the UN Guiding Principles for Business and Human Rights, both governments and businesses have obligations in the safeguarding of human rights, including labour rights of migrant workers, in their own operations and in their supply chains. Specific concerns of migrant workers, such as the costs associated with recruitment, need to be mainstreamed into private regulation such as human resources policies and supplier codes of conduct.

   - Additionally, private sector employers play a vital role in the following aspects of migration governance: contributing data and information to labour market information systems; forecasting skills shortages that feed into labour market planning, including inbound and outbound temporary and longer-term labour mobility schemes, as well as educational and vocational policies and programmes for nationals and newcomers; and fostering the socio-economic integration of migrants.

8) **Administrative efficiency.** When legal admission channels exist, cumbersome and lengthy immigration procedures are among the main factors which discourage employers from lawfully recruiting from abroad in response to their labour needs, particularly if such needs are temporary. This calls for the optimization of current processes towards **clear and time-bound labour migration procedures, use of new technologies in facilitating migration and staff training for officials working with migrants**, and employers who wish to hire them, to promote the culture of support and collaboration.

9) **Labour-market responsive.** Labour mobility policies need to be labour market responsive and meet skills gaps through temporary and long-term legal pathways for both low- and high-skilled workers. As there is no "one size fits all" solution, States may wish to consider implementing a variety of programmes that are fit for purpose, taking into account the following considerations:

- <u>Avoid temporary solutions for long-term shortages</u>: the instability of employment through long-term labour mobility regimes without a clear pathway to a long-term or permanent legal status can adversely impact rights protection, integration and social inclusion, and productivity.

- <u>Circular migration is contingent upon access to return and re-entry</u>: while circular schemes may be well suited to fill short-term or seasonal vacancies, the risks inherent in sometimes precarious employment can be mitigated through well-managed programmes that offer opportunities for return and re-entry, and protection against exploitation during the recruitment process that can result in debt bondage, no gains or losses for workers, and risk of overstaying and irregularity.

- <u>Express entry systems</u>: allow the admission of workers in accordance with two criteria: 1) passing through a "points based" system of calibrated criteria based upon the labour market needs of a country of destination with pre-determined markers for successful integration and 2) a bona fide job offer. In this way, potential migrants can self-identify through a pre-selection process from which employers can select suitable candidates.

- <u>Links to family migration</u>: Spouses and migrant children of working age also benefit from access to the labour market, further enabling social inclusion, financial independence, and skills development. In particular, the availability of work for trailing spouses is often a major consideration for high skilled workers when deciding where to migrate. Access to education for school-age children of migrant workers is also critical to ensuring that no child is left behind.

10) **Skills recognition.** Governments may wish to consider collaboration to enable the recognition of skills and qualifications that facilitate labour mobility while preventing deskilling and under-utilisation. Migrant decisions and journeys are often shaped by the education and employment opportunities in the country of origin, including the type of skills a person can acquire and the transferability of these skills to other employment markets. More can be done to build long-term genuine strategic partnerships between countries on joint skill development and harmonization of educational standards. The experience of the Bologna Process between the Member States of the Council of Europe illustrates a good practice in improving comparability of academic degrees. In particular, States may wish to consider measures that recognize and promote the competencies of lower skilled workers. Given the growing recognition of the importance of student mobility to labour migration management, further links could be explored with educational exchange programmes and opportunities for traineeships and apprenticeships.

11) **Portability of social security coverage and benefits** between and among countries to prevent migrant workers from losing entitlements due to their migration status can be considered. Effective portability schemes do not disadvantage the worker or their dependents; are fiscally fair for host and origin countries; and are not bureaucratically burdensome for host countries. The most

effective regulations at the multilateral level can be found in the respective decrees of the European Union.[11]

12) **Labour market and social integration.** Both temporary and longer-term labour migrants would benefit from labour market and social integration services, including pre-departure, pre-employment and post-arrival orientation to ensure they are 'job ready' and empowered with adequate information regarding their rights and obligations as workers and residents, as well as avenues for remedy. To fully reveal their potential for international job matching and labour market integration, integration support programmes for various categories of newcomers should be designed and implemented with the involvement of employers to strengthen the role of such initiatives in enabling early labour market inclusion of migrants in line with their competences and qualifications. Protection of rights is a key precondition for successful integration. Migrants that face rights violations, including exploitation and violence, have limited capacity and motivation to engage with the community of destination. Access to a legal status is crucial in this regard, as is access to legal redress and basic assistance to all persons irrespective of status.

13) **Multi-stakeholder approaches.** Due to the complex, interdisciplinary and multi-jurisdictional nature of migration governance, multi-stakeholder methodologies are encouraged to ensure holistic approaches that promote burden-sharing while minimizing negative policy outcomes. This can include skills partnerships with private sector and civil society actors, including trade unions, migrant associations, and diaspora groups.

14) **Mitigation of potential negative development impacts.** The mass and rapid recruitment of higher-skilled workers in key occupations, such as health personnel and teachers, can lead to development deficits for countries and communities of origin. As one response, the World Health Organization has developed principles for the international recruitment of health personnel that strengthens the health systems of developing countries, countries with economies in transition and small island States.[12]

15) **Gender mainstreaming.** The migration experiences of men and women differ greatly. A person's gender can influence their reasons for migrating, the social networks they use to move, the opportunities for employment and experiences at their destination, and their relations with their country of origin. While women and girls now represent almost half of all migrants globally, they still remain more vulnerable to abuse and exploitation. This is especially the case for low-skilled female migrants who work in unregulated and isolated sectors, such as domestic service. In this context, labour mobility programmes will achieve better results when gender is mainstreamed to anticipate and mitigate possible negative impacts for women and men.

Partnerships

16) **Government**

   'Whole-of-government' approaches to labour migration management involve multiple departments and agencies within national systems, but also at the sub-national or municipal level. These may include ministries in charge of emigration and/or immigration, consular assistance for nationals working overseas, labour or employment, trade, or consumer protection (in some cases, for the regulation of labour recruiters or immigration consultants or other service providers). Furthermore, education ministries and vocational and other educational services need to be engaged as part of short- and long-term labour market planning which can include identification of opportunities for nationals, and outbound and incoming migrants. This dialogue may involve engagement with public employment services; public universities, colleges and training centres; and regulatory authorities for registered trades and professions. Public health ministries and public health service providers also have an important stake in the development of national policies in this area.

17) **Private sector**

   While it is the responsibility of States to create legal labour migration frameworks for admission, private sector actors have a significant role to play in migration governance. As mentioned above, employers, employer federations and chambers of commerce contribute to the evidence base in identifying and forecasting shortages. They also have responsibilities vis-à-vis programme integrity, to mitigate the risk of labour violations and other forms of exploitation and abuse through self-governance, including forced labour or 'modern slavery'. Multinational enterprises in multiple jurisdictions have been particularly instrumental in raising awareness and promoting corporate responsibility in accordance with international norms and instruments where adoption and ratification has been inconsistent.

   Other private sector entities provide services to migrants, employers and governments in relation to the recruitment and deployment of migrant workers. These include but are not limited to labour recruiters; immigration consultants; for-profit medical clinics; private universities, colleges and vocational training and language schools; travel agencies; resettlement and other on-boarding service providers; insurance companies; banks and other lending institutions; and remittance transfer operators.

   Stronger employer involvement in migrant integration could be beneficial in targeted workplace orientation and language training as well as job-related training and validation of worker competences and learning in the workplace. Public-private partnerships at the local level could further underpin support in non-work areas, such as housing. Integration support programmes provided by State and non-State actors could benefit from closer involvement of employers in their design and implementation.

18) **Civil society**

   Trade unions and other civil society and non-government organizations, such as migrant assistance providers and diaspora groups, also play a role in labour migration management, providing bottom-up feedback into labour market information systems, and facilitating feedback from migrant

workers concerning the efficacy of labour mobility policies and programmes, and potential violations of their rights or employment contracts. They also play a critical role in facilitating access to remedy through judicial or organizational grievance mechanisms.

SUGGESTED ACTION

1)   Consider ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990. States that have ratified are encouraged to incorporate the protections offered by the Convention into their national legal structures.

2)   Create and/or expand labour migration pathways for migrant workers and their families, in particular for low-skilled workers.

3)   Support the suggestion of the UN Special Representative of the Secretary-General for International Migration to establish a global information platform on skills and mobility for employment. This would allow governments, employers, recruiters, trade unions, education and training institutions, regional organizations, industry associations and other relevant actors to address the multiple policy challenges involved in developing skills and managing labour mobility in a comprehensive manner.

4)   Consider measures to extend provisional visas and work authorization to victims of abuse or exploitation, as well as victims of trafficking, to increase their access to judicial and organizational grievance mechanisms.

5)   Consider measures that allow workers, especially lower-skilled workers, to legally change employers in countries of destination to reduce the vulnerability of migrants to exploitation that is associated with single-employer work permits. States may wish to consider establishing sector-based work permits, which link a worker to a sector rather than an individual employer.

6)   Implement measures to regulate labour recruiters, including the ratification of Convention 181 on Private Employment Agencies (1997) further elaborated in ILO's General Principles and Operational Guidelines for Fair Recruitment (2016). This could include incentivizing recruitment industry self-governance and participation in voluntary multi-stakeholder certification processes such as the International Recruitment Integrity System (IRIS).[13]

7)   Consider further measures that reduce the costs of migration, including the costs borne by the worker through the recruitment and deployment process, and in particular promote the "Employer Pays" principle of recruitment.[14]

8)   Consider implementation of standardized pre-departure and post-arrival orientation for migrant workers that empowers them with information regarding the migration process, life in the country of destination, and their rights and responsibilities in the workplace and as residents.

9)   Develop mechanisms to facilitate skills and credential recognition in countries of destination.

10)   Promote the establishment and registration of written employment contracts for migrant workers that outline work responsibilities and include human rights and labour protection provisions, and that are written in a language that is understood by the worker.

11)   Consider creating new, or strengthening existing, mechanisms that provide access to remedy for migrant workers whose rights have been violated, regardless of their migration status.

12)   Support efforts to highlight the contribution, especially the economic contribution, which migrants make to both countries of origin and destination through the exchange information and the collection of data.

13)   Continue to support efforts to dispel the negative perceptions of migrants among destination populations to promote social cohesion and protect the rights of migrant workers.

14)   Take measures to foster self-reliance by pledging to expand opportunities for refugees to access, as appropriate, livelihood opportunities and labour markets, without discrimination, and in a manner which also supports host communities.

15)   Consider making available or expanding, including by encouraging private sector engagement and action as a supplementary measure, resettlement opportunities and complementary pathways for admission of refugees through opportunities for skilled migration, labour mobility, and education.

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[1] A more complete list of international frameworks and agreements is available separately. Please also refer to the Human Rights Discussion paper for more information.

[2] http://www.ilo.org/global/topics/labour-migration/publications/WCMS_178672/lang--en/index.htm

[3] http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_536755.pdf

[4] https://www.business-humanrights.org/en/un-guiding-principles

[5] In 2008, the Human Rights Council approved the UN Protect, Respect and Remedy Framework and Guiding Principles, after three years of research and consultation by the Special Representative to the Secretary General on this issue. The Framework focuses on three pillars: (1) the state duty to protect against human rights abuses by third parties, including business; (2) the corporate responsibility to respect human rights; and (3) greater access by victims to effective remedy, both judicial and non-judicial. For more information: https://www.business-humanrights.org/en/un-secretary-generals-special-representative-on-business-human-rights/un-protect-respect-and-remedy-framework-and-guiding-principles

[6] https://www.adb.org/sites/default/files/publication/30210/facilitating-safe-labor-migration-gms.pdf

[7] http://www.un.org/esa/ffd/ffd3/press-release/countries-reach-historic-agreement.html

[8] https://dmsportal/PublishedDocuments/Organizational%20updates/MiGOF%20Brochure_A4_EN.pdf#search=mig

[9] www.iris.iom.int

[10] https://www.iom.int/sites/default/files/about-iom/migof_brochure_a4_en.pdf

[11] http://www.euro.centre.org/data/1440597003_94525.pdf

[12] http://www.who.int/hrh/migration/code/code_en.pdf

[13] www.iris.iom.int

[14] The Leadership Group for Responsible Recruitment has committed to adopting the Employer Pays Principle of Recruitment - https://www.ihrb.org/news-events/news-events/the-leadership-group-responsible-recruitment