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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protection of the labour and human rights of migrant workers

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, submitted in accordance with Assembly resolution [76/172](#) and Human Rights Council resolution [52/20](#).

* [A/78/150](#).



Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales

Summary

In the present report, the Special Rapporteur on the human rights of migrants, Felipe González Morales, outlines the main activities undertaken during the reporting period since his most recent report to the General Assembly.

In the report, the Special Rapporteur highlights the human rights challenges faced by migrant workers by providing an analysis of how labour migration can put migrants in increased positions of precarity and vulnerability to human rights violations. He discusses how to address situations of vulnerability of migrants by creating and strengthening migrant labour protection mechanisms.

On the basis of the information and analysis provided by States, international organizations, civil society and other stakeholders, the Special Rapporteur identifies promising practices, ongoing efforts and existing challenges and provides a set of recommendations aimed at strengthening labour migration governance mechanisms and programmes to enhance the protection of the human rights of migrants.

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the human rights of migrants, Felipe González Morales, pursuant to Assembly resolution [76/172](#) and Human Rights Council resolution [52/20](#).

II. Activities undertaken by the Special Rapporteur

2. On 5 April 2023,¹ the Special Rapporteur participated as a speaker at an event on achieving fair and effective regularization measures in Europe, organized by the Platform for International Cooperation on Undocumented Migrants.

3. On 24 April, the Special Rapporteur participated at a conference about the impact and challenges of the jurisprudence on migration of the Inter-American Court of Human Rights in Chile, held by the Inter-American Court in Santiago.

4. On 9 May, the Special Rapporteur participated in a panel discussion on disappearances of migrants at the first International Congress of Families of Border Victims in Madrid, organized by Caminando Fronteras.

5. On 16 May, the Special Rapporteur spoke at the launch of the book *Irregular Migrants and the Right to Health*, organized by the Irish Centre for Human Rights at the University of Galway.

6. On 9 June, the Special Rapporteur participated at the launch of the 2022 annual report on statistics on human mobility in Chile, convened by the Jesuit Service for Migrants.

7. On 22 June, the Special Rapporteur took part in an interactive dialogue with the Network of National Institutions for the Promotion and Protection of Human Rights Institutions in the Americas.

8. On 26 June, the Special Rapporteur presented his annual report, entitled “How to expand and diversify regularization mechanisms and programmes to enhance the protection of the human rights of migrants” ([A/HRC/53/26](#)) and country visit reports to Bangladesh, Belarus and Poland to the fifty-third session of the Human Rights Council. The Special Rapporteur participated in a side event organized by Franciscans International about the situation of migrants in Americas.

9. On 4 July, the Special Rapporteur participated in a side event at the fifty-third session of the Human Rights Council entitled “From recommendation to action: protecting the rights of women human rights defenders at risk in migration context”, organized by the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).

10. On 5 July, the Special Rapporteur gave a lecture entitled “Migration Trends in the Americas”, as part of a series of conferences held by University Carlos III of Madrid and Tirant lo Blanch Publishers.

¹ For activities prior to April, see the previous report of the Special Rapporteur to the Human Rights Council ([A/HRC/53/26](#)).

III. Protection of the labour and human rights of migrant workers

A. Introduction

11. Globally, there are 281 million migrants worldwide,² including approximately 99 million male migrant workers (58.5 per cent) and 70 million women migrant workers (41.5 per cent).³ Approximately 73 per cent of all domestic workers are migrant women, representing nearly 12.7 per cent of all women migrant workers.⁴ Migrants, regardless of status, have contributed an estimated \$702 billion in remittances in 2020,⁵ alongside significant unmeasured contributions to societies through their work and participation in communities around the globe. Migrant labour has been central to the growth of the global economy. However, the human and social development returns of such contributions may be undermined if migrants are working in precarious or unsafe conditions that can have long-term consequences for their health and well-being.

12. Longstanding structural drivers of migration for the purposes of work, such as inequality and lack of economic opportunity, remain persistent alongside new drivers such as climate change. As the realities of work are changing, the growing flexibilization, contractualization and digitalization of labour are leading to more “temporariness” in both work and migration. Migrant workers are disproportionately impacted by such changes, with many experiencing unsafe work, exploitation, insecurity, violence and abuse, with often deleterious consequences for their physical and mental health. Particular groups of migrant workers face elevated risks, including women, LGBTIQ+ persons, migrants with irregular status, temporary labour migrants and other marginalized populations. Often there are multiple cross-cutting and intersecting forms of discrimination that further heighten exposure to labour and human rights violations. Across all stages of migration – in countries of origin, transit and destination – all migrants, regardless of status or citizenship, must have non-discriminatory access to productive, decent work in conditions of freedom, equity, security and human dignity. This requires fair income, pathways to secure employment and migration, safe working conditions with freedom to express concerns and to associate, as well as equal treatment before the law, and access to health care and social protection for workers and their families.

B. International legal instruments and policy frameworks on human and labour rights of migrant workers

13. Under the Universal Declaration of Human Rights, the inherent right to life with freedom from discrimination, access to health and the safety and security of the individual have been enshrined. These rights are further codified under the International Covenant on Civil and Political Rights, in conjunction with the International Covenant on Economic, Social and Cultural Rights. They apply to all migrants, regardless of legal or migration status, including the right to an adequate standard of living, health, personal integrity and freedom of movement.

² Marie McAuliffe and Anna Triandafyllidou (eds.), *World Migration Report 2022* (International Organization for Migration (IOM), Geneva, 2021).

³ International Labour Organization (ILO), *ILO Global Estimates on International Migrant Workers: Results and Methodology*, 3rd edition (Geneva, 2021). Available at www.ilo.org/global/topics/labour-migration/publications/WCMS_808935/lang--en/index.htm.

⁴ ILO, *ILO Global Estimates on Migrant Workers: Results and Methodology – Special focus on migrant domestic workers*. Available at www.ilo.org/global/topics/labour-migration/publications/WCMS_436343/lang--en/index.htm.

⁵ McAuliffe, *World Migration Report 2022*.

14. The Convention on the Elimination of All Forms of Discrimination against Women provides additional guidance on addressing varying forms of injustice and rights abuses faced by women. The Committee on the Elimination of Discrimination against Women, in its general recommendation No. 26 (2008) on women migrant workers provides specific guidance on protecting migrant women workers rights. This includes the right to private and family life, the principle of the best interests of the child, the right to health, the principle of equality and non-discrimination and the principle of non-refoulement.

15. Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination indicates that States must undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin and to equality before the law, as well as other labour protections including the rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work and to just and favourable remuneration. It also establishes the right to form and join trade unions, the right to housing and the right to public health, medical care, social security and social services, inter alia. These protections are also reiterated in the International Convention on the Protection of Rights of All Migrant Workers and Their Families.

16. The International Labour Organization (ILO) Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) extends the scope of equality between legally resident migrant workers and national workers to ensure equal opportunities and treatment with regard to employment and occupation, social security, trade union and cultural rights and individual and collective freedoms for migrant workers and their families. It also contains provisions for ratifying States to help facilitate family reunification for the families of migrant workers to legally reside in the host State. The United Nations Office on Drugs and Crime developed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in which it recognizes the potential for abuse and exploitation to occur with migrant workers and seeks to establish reporting mechanisms, such as the Global Report on Trafficking in Persons, as well as providing guidance on protecting migrant workers' rights in employment.

17. Under the ILO Migration for Employment Convention (Revised), 1949 (No. 97) States are required to develop effective mechanisms to facilitate international migration for employment by establishing and maintaining a free assistance and information service for migrant workers and taking measures against misleading propaganda on labour migration. The Convention also contains provisions on access to appropriate medical services for migrant workers as well as on ensuring the transfer of the workers' earnings and savings. States are required to apply the same treatment to migrant workers as applied to their own citizens in relation to issues including, but not limited to, conditions of employment, freedom of association and social security.

18. The need for workers to organize and collectively bargain with their employers is recognized under the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) and the Violence and Harassment Convention, 2019 (No. 190), which includes specific protections to address migrant workers' exposure to violence in the workplace.

19. Several additional instruments of relevance include: the Contracts of Employment (Indigenous Workers) Convention 1947 (No. 86); the Abolition of Forced Labour Convention, 1957 (No. 105); the Private Employment Agencies Convention, 1997 (No. 181); the Minimum Age Convention, 1973 (No. 138); the

Worst Forms of Child Labour Convention, 1999 (No. 182); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

C. Issues of concern

20. Often migrants face differential access to decent work as compared with nationals or citizens in countries of employment, as is evidenced by indicators such as pay inequity, termination of employment, lack of access to maternity protection, paternity and parental leave, maximum hours of work and paid annual leave, minimum wage and collective bargaining rights, inter alia. Migrant workers also face social exclusion from broader integration measures, such as access to education, language training, sociocultural and recreation facilities, immigration and employment services owing to their ineligibility for these programmes.

21. Discrimination against migrant workers can occur in both their work and daily lives on intersecting grounds, including gender, race, nationality, ethnicity, religion, family status, marital status, legal partnership status, pregnancy, disability, socioeconomic background and caste.

22. Temporary labour migration programmes further entrench multiple and intersecting forms of discrimination against low-wage migrant workers.⁶ Racial and ethnic stereotypes applied to low-wage migrant workers and the structural conditions of such programmes reinforce stereotypical associations between certain types of work and specific nationalities. Additionally, irregular and temporary migrant workers experience xenophobia, racial profiling, biometric data collection and surveillance by authorities⁷ and employers. These experiences were exacerbated during the coronavirus disease (COVID-19) pandemic.

23. Labour migration is highly gendered, with adverse gendered impacts for men and highly deleterious outcomes for women migrants, including sexual and gender-based violence, exploitation and trafficking for the purposes of sex and forced labour and other human rights violations. Gender norms and roles, and systemic inequality, further heighten exposure to labour rights violations for women and lesbian, gay, bisexual, transgender (LGBT) and gender-diverse persons and in relation to sexual orientation, gender identity, gender expression and sex characteristics. Compounding these vulnerabilities, there is also heightened risk of gender-based violence, exploitation and trafficking of women migrant workers, as many are employed in underregulated, informal sectors such as domestic work. This work is often unseen, unpaid or devalued and can lead to increased health risks. Where migrants are working irregularly or their visas are tied to their employers, they may not report abuses as they fear retaliation, blacklisting, loss of job or their visa or permit, after paying exorbitant recruitment fees. For those returning to countries of origin, reintegration and access to decent work is often undermined by stigma, continued heightened risks of sexual and gender-based violence and gender discrimination.

24. LGBTIQ+ migrants face particularly heightened risks of sexual and gender-based violence,⁸ and they may encounter homophobia both within their own

⁶ OHCHR, *We Wanted Workers, but Human Beings Came: Human Rights and Temporary Labour Migration in and from Asia and the Pacific*. Available at <https://bangkok.ohchr.org/wp-content/uploads/2023/01/Report-on-temporary-labour-migration-programme-final-250123.pdf>.

⁷ See Ontario Human Rights Tribunal, *Logan v. Her Majesty the Queen in Right of Ontario*, HRTO 2015-22136-I. Available at <https://ccla.org/wp-content/uploads/2022/08/2015-22136-I-Logan-Final-Decision.pdf>.

⁸ Diálogo Diverso, *Diagnóstico de las necesidades de las personas LGBTI en situación de movilidad humana, en las ciudades de Quito, Guayaquil y Manta; incluyendo la variable coyuntural de impacto de la crisis sanitaria ocasionada por el COVID-19* (2020).

communities and in countries of employment, experiencing discrimination, prejudice, harassment or violence based on their sexual orientation or gender identity. LGBTIQ+ migrants are protected under ILO Convention No. 111, which provides for explicit protection against discrimination based on sex.⁹ LGBTIQ+ migrant workers are also protected under ILO Convention No. 190 from violence and harassment at work.¹⁰

25. Migrant children, especially when unaccompanied, face a higher risk of exposure to trafficking for sexual or labour exploitation.¹¹ Children work in transit, which can add further precarity owing to the temporary and often unregulated nature of the work. Migrant children often work for less pay and face higher death rates at work.¹²

26. Racialized migrant workers face intersecting forms of racial discrimination, gender-based discrimination and xenophobia in both their work and daily lives. There is disproportionate policing and surveillance of racialized communities, including racial profiling by police and other State security services, and also generalized racism and xenophobia, which has a clear and directly negative impact on the ability of migrant workers to live full lives, free of persecution and discrimination.¹³

1. Recruitment

27. Since recruitment intermediaries (i.e., brokers, subagents and personal networks) remain outside of regulatory frameworks, workers face challenges bringing complaints against them. While there have been some efforts to address issues concerning labour recruitment, such as the ILO Fair Recruitment Initiative,¹⁴ the unregulated nature of the industry means that exploitative and fraudulent recruitment practices persist, including deception (primarily about working and living conditions); the charging of unauthorized fees; the retention of identity documents; violence, abuse, intimidation and control of workers; wage retention; and debt bondage or other forms of debt tied to their recruitment. In many instances, workers rely on unverified information about job opportunities, and private recruitment agencies can intentionally conceal potential risks associated with the work advertised. Workers often have inadequate knowledge and awareness of legal migration pathways, which increases their vulnerability to unethical recruitment practices, including excessive placement fees, forgery of documents, false promises about the nature and conditions of work and debt bondage from money lenders and recruiters. The profile and level of education of the majority of migrant women domestic workers in particular may limit them from accessing (on their own) information on the legal and institutional landscape.¹⁵

⁹ ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111), art. 1 (1) (a), contains a list of seven prohibited grounds of discrimination, and under article 1 (1) (b) ratifying countries are allowed to declare additional prohibited grounds. Many countries have recognized sexual orientation, gender identity and/or other grounds protecting LGBTIQ+ persons from discrimination and have reported periodically to ILO on application of the Convention. Available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111.

¹⁰ ILO Violence and Harassment Convention, 2019 (No. 190).

¹¹ ILO, *Protecting the rights of migrant workers in irregular situations and addressing irregular labour migration: A compendium* (Geneva, 2021). Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_832915.pdf.

¹² See www.ilo.org/ipcc/areas/Migration_and_CL/lang--en/index.htm.

¹³ For example, see Ontario Human Rights Tribunal, *Logan v. Her Majesty the Queen in Right of Ontario* (see footnote 8).

¹⁴ ILO, “Fair Recruitment Initiative Strategy 2021–2025: taking stock, moving forward”, 2021. Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_817166.pdf.

¹⁵ Women in Migration Network, *No Borders to Equality: Global Mapping of Organizations Working on Gender and Migration* (2021). Available at <https://www.womeninmigration.org/map/download/no-borders-for-equality.pdf>.

28. When workers do not have sufficient information about their rights or risks associated with certain migration routes or actors, or when application processes are unclear or complex, or criteria for entry are too elevated, workers may use the services of a labour broker or recruiter or, in the worst cases, smugglers, to navigate the complexities associated with securing visas and employment outside of their country of origin.

2. Temporary labour migration programmes

29. In cases where applicants must demonstrate an offer of employment in order to secure a work permit, migrant workers face limits on the permit duration, and States commonly restrict family reunification, deny multiple re-entry permits and restrict access to specific sectors and occupations (in particular for migrant workers with low levels of formal education and/or skills). In some cases, sending States may also impose restrictions on workers, such as through forced saving schemes or mandatory deductions for private insurance, air transportation, health examinations or other costs. Sector-specific temporary labour migration programmes typically involve fixed-term, low-wage work in sectors such as agriculture, construction, care work or the service industry. Although characterized as “temporary”, migrant workers in these programmes often undertake repeated migrations (i.e., circular) for decades and even effectively for their whole working lives. Despite working in situations where the labour demands are permanent (such as in agriculture), migrant workers in these programmes are routinely excluded from pathways to permanent stay or citizenship, as well as family unity.¹⁶ Many temporary labour migration programmes discriminate against women, by restricting their employment to feminized jobs (e.g., care work) in female-dominated occupations that are devalued and underregulated, and employers often select workers on the basis of gender and country of origin.

30. Such programmes are not consistent with broadly accepted labour rights, including the right to change employers, mobility rights and the right to family reunification. Often, the “temporary” designation of the work permit can lead to restrictions on a range of human and labour rights, as well as exclusions from law, policy and programmes intended for citizen and permanent workers (such as social protection). This is particularly the case with temporary migrant worker programmes that tie workers to a single employer, meaning that their visas and documentation are not portable between employers, jobs or sectors.¹⁷ In many cases, they do not have the ability to work for multiple employers, to seek other employment or to change status or programmes from within the country of employment. Work permits that tie migrant workers to a specific employer for the duration of their stay create additional structural vulnerabilities and extreme power asymmetries, exacerbating human rights violations through the practical delegation by States of varying degrees of responsibility for the operation and oversight of the schemes to employers and a range of other private intermediaries.¹⁸ Such programmes are fraught with issues due to employer control over workers’ access to rights protections (e.g., collective bargaining rights). Issues range from egregious human and labour rights violations (e.g., wage theft, unsafe work, wrongful dismissal) to barriers to accessing full social protection (e.g., ineligibility for parental benefits, long-term disability, spousal benefits), etc.

31. Kafala and sponsorship systems further heighten migrants’ risks of exploitation and are largely not aligned with States’ obligations under international human rights

¹⁶ OHCHR, *We Wanted Workers, but Human Beings Came* (see footnote 7).

¹⁷ See Government of Canada, Seasonal Agricultural Worker Program. See www.canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural.html.

¹⁸ OHCHR, *We Wanted Workers, but Human Beings Came* (see footnote 7).

law.¹⁹ Such systems restrict workers' ability to renew their work permits and to change employers without the employers' permission and often require that workers live in employer-provided housing or in an employer's residence. Paperwork renewals happen through the sponsor, meaning that workers are often unaware of the status of their renewal, and the power imbalance means that workers are not likely to speak out against unsafe work, mistreatment, withholding of wages, etc., owing to fear of loss of current or future employment. Despite clear international guidance against this practice, employers also often continue to hold employees' passports. In some cases, in particular in circular and seasonal migration programmes and in domestic worker programmes and renewal systems mean that employers wield the power over workers for current but also future employment, making it much less likely that a worker will file complaints or refuse unsafe work.²⁰

32. For workers under tied work permit and kafala systems, conflicts with employers can lead not only to workplace abuse or loss of employment but also to loss of work permit, migration status and housing and even to imprisonment and deportation.²¹

3. Irregular migration

33. Irregular migration is a reality of labour migration that should neither be ignored nor criminalized. When migrant workers are denied access to regular pathways, inclusive of visa schemes or temporary labour programmes, they often have few options other than irregular pathways, which can generate additional forms of vulnerability. Often migrants who transit through irregular pathways lack formal documentation to work in countries of employment. Irregular migration pathways can, in some cases, involve unregulated labour recruiters and, in others, smugglers or criminal organizations working across migration corridors. Trafficking and forced labour can begin through unethical recruitment practices but are enabled by the practices in origin and destination countries.^{22,23,24} Irregular migration increases migrants' vulnerability to exploitation and abuse, forced labour, trafficking and modern forms of slavery, including because of their reliance on smugglers, a lack of access to protection mechanisms and safety nets along migration routes and in countries of destination.

34. Migrant workers who have entered their country of employment via an irregular pathway or have fallen into an irregular situation are often penalized prior to return, facing detention ahead of their deportation, and may also face punishment on return where irregular emigration is penalized by their country of origin. For example, the administrative burden of these schemes may see some employers or recruiters fail to process work permits and/or employment contracts correctly, leaving migrant workers unknowingly in irregular status. Time limits on work permits, criteria for renewal of work permits and complex bureaucratic processes may push many migrant workers under temporary migrant worker programmes into irregularity. With their residency tied to their employer, migrant workers who experience human rights abuses at work may

¹⁹ The Legal Clinic on International Human Rights Law at University Carlos III of Madrid contributed to this section.

²⁰ Migrant Forum Asia, "Reform of the Kafala (sponsorship) system", policy brief No. 2, 2012. Available at <https://www.ilo.org/dyn/migpractice/docs/132/PB2.pdf>.

²¹ Submission from the Women in Migration Network.

²² Vani Saraswathi, "In Ghana, the ban that isn't feeds corruption and desperation", 7 April 2023. Available at www.migrant-rights.org/2023/04/in-ghana-the-ban-that-isnt-feeds-corruption-and-desperation/.

²³ Vani Saraswathi, "Ill-prepared and uninformed, Ghanaian women risk it all for jobs in the Gulf". Available at www.migrant-rights.org/2023/04/ill-prepared-and-uninformed-ghanaian-women-risk-it-all-for-jobs-in-the-gulf/.

²⁴ Migrant-Rights.org, "Huge recruitment fees charged for jobs in the Gulf; Qatar recruiters accused of demanding the highest commissions". Available at www.migrant-rights.org/2022/06/huge-recruitment-fees-charged-for-jobs-in-the-gulf-qatar-recruiters-accused-of-demanding-the-highest-commissions/.

choose to leave the situation (if they are able) and move into irregular status, rather than report the mistreatment and risk being deported. These situations, as well other forms of misconduct by the employer, such as visa trading and contract substitution, the former referring to the migrant worker's visa being unofficially "traded" or "sold" to another sponsor and the latter to the practice of unofficially changing the originally agreed terms of employment, may see migrants initially working in a country under a temporary labour migration programme become undocumented.²⁵ For women migrant workers, discriminatory restrictions on their migration routinely limit their mobility rights on the basis of age, marital status, migration status, pregnancy and/or maternity status, among other factors. There are well-documented instances where States place further restrictions on women's migration, such as bans on out-migration for women migrants to specific regions or States.²⁶ Such restrictions drive irregular migration, increase the likelihood of the use of recruiters and smugglers and heighten risks of trafficking and other forms of exploitation and human rights violations. Gender discrimination and inequality can limit access to regular pathways for women and drive irregular migration. The risk of gender-based violence is particularly high along some irregular migration routes,²⁷ and irregular migration heightens the risks of exploitation, violence and trafficking for migrant women. In many cases irregular migrants face criminalization, which can lead to increased exposure to vulnerable situations and human rights violations, including discriminatory profiling, arbitrary arrest and detention, family separation and the inability to access health care, adequate housing, education and employment, among other rights (A/HRC/50/31).²⁸

4. Working conditions

35. Although most major countries of destination have employment standards and labour laws in place establishing minimum wages, hours worked and workplace conditions, many migrant workers continue to be contracted and employed informally or only partially covered by such laws.²⁹ Under article 55 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, migrant workers who have been granted permission to engage in a remunerated activity shall be entitled to equality of treatment with nationals of the State of employment in the exercise of that remunerated activity. However, many migrant workers face unequal conditions of work when compared with nationals, including pay inequity and unsafe working conditions characterized by a lack of occupational health and safety training and personal protective equipment, and in some cases exclusion from labour law and employment standards.

36. In many cases, migrant workers do not refuse unsafe work, for fear of loss of current or future employment, loss of housing or medical insurance, as well as loss of status. This is particularly problematic since migrant workers are concentrated in underregulated sectors and are often performing the most dangerous work. Many migrant workers in agriculture also tend to have long working hours, are usually excluded from employment standards due to seasonal variability, are not eligible for vacation or overtime pay, and tend not to have seniority or skills recognition when their work permits specify job categories (e.g., general farm labourer) or lower skill or

²⁵ OHCHR, *We Wanted Workers, but Human Beings Came* (see footnote 7).

²⁶ Women in Migration Network, *No Borders to Equality* (see footnote 16).

²⁷ United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), "From evidence to action: tackling gender-based violence against migrant women and girls", policy brief, 2021. Available at www.unwomen.org/en/digital-library/publications/2021/10/policy-brief-from-evidence-to-action-tackling-gbv-against-migrant-women-and-girls.

²⁸ UN-Women, "Leaving no one behind: access to social protection for all migrant women", policy brief No. 14. Available at www.unwomen.org/en/digital-library/publications/2020/01/access-to-social-protection-for-all-migrant-women.

²⁹ UN-Women, "Women migrant workers' journey through the margins: labour, migration and trafficking" (New York, 2016). Available at <http://www.unwomen.org/en/digital-library/publications/2017/2/women-migrant-workers-journey-through-the-margins>.

education levels. Abuses in their place of employment remain a constant reality for many migrant workers. In extreme cases, violence and harassment at work can evolve into situations of forced labour trafficking and exploitation.³⁰

37. Women migrants are also often limited to riskier and lower paid work because their skills and qualifications are not recognized.³¹ In countries such as Australia, Canada, Estonia, Iceland, Jordan, Mexico, Sierra Leone, the United Republic of Tanzania and the United States of America, the gender pay gap between migrant men and migrant women is much higher than the aggregate gender pay gap at the country level.³² Women migrants are also concentrated both in informal work and in sectors with under regulation, and therefore often outside the protection of labour law, with low wages, a lack of opportunities for skills development and the risk of exploitation. Women migrant domestic workers often perform risky jobs in isolated situations and often experience wage theft and employer abuse, with limited networking opportunities, social support and access to information, in addition to lack of protection for freedom of association and collective bargaining. Following up with the employers is next to impossible because ties to the destination country are cut once they return, and local agents distance themselves once the migrants reach the destination country. Migrant domestic workers in Middle Eastern countries are particularly at risk of labour and human rights violations, as they are excluded from protection under domestic labour law and are subjected to abuse and exploitation under the sponsorship (kafala) system; and there is also a lack of effective remedies against such abuses and the existence of anti-union reprisals.³³ Furthermore, absconding laws in the Gulf Cooperation Council countries, which criminalize workers who attempt to leave exploitative working conditions, ranging from wage theft to sexual and physical abuse, particularly impact women migrant domestic workers.^{34,35,36}

5. Freedom of assembly and association

38. Freedom of association and collective bargaining are fundamental rights of universal scope that should apply to all workers – including migrant workers (A/HRC/44/42). Denying or obstructing rights to expression, assembly and association undermines migrant workers' access to justice and the exercise of other fundamental rights.³⁷ The right of affiliation, freedom of association and the effective recognition of the right to collective bargaining for domestic migrant workers is recognized under

³⁰ United Nations Office on Drugs (UNODC), *Global Report on Trafficking in Persons 2020*, Chapter IV: Trafficking for Forced Labour; the Economy of Coercion. Available at https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_Chapter4.pdf.

³¹ Submission from the Women in Migration Network.

³² ILO, *The Migrant Pay Gap: Understanding Wage Differences between Migrants and Nationals* (Geneva, 2020). Available at www.ilo.org/global/topics/labour-migration/publications/WCMS_763803/lang--en/index.htm.

³³ Observation (CEACR) - adopted 2018, published 108th ILC session (2019); Right to Organise and Collective Bargaining Convention, 1949 (No. 98) - Lebanon (Ratification: 1977). Available at www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3960664. See also CCPR/C/LBN/CO/3.

³⁴ Migrant-rights.org, “Huroob cases on the rise as Saudi’s Kafala reforms off to a shaky start: rife with corruption and kickbacks, lifting Huroob charges is a lucrative business for middlemen”, 25 April 2022. Available at www.migrant-rights.org/2022/04/huroob-cases-on-the-rise-as-saudis-kafala-reforms-off-to-a-shaky-start/.

³⁵ Vani Saraswathi, “Huroob, runaway, absconding: trapping migrants in extreme abuse”, 30 September 2020. Available at www.migrant-rights.org/2020/09/huroob-runaway-absconding-trapping-migrants-in-extreme-abuse/.

³⁶ Al-Sulaiman, “Jullebee Ranara’s murder is a failure of State and society”, 8 February 2023. Available at www.migrant-rights.org/2023/02/jullebee-ranaras-murder-is-a-failure-of-state-and-society/.

³⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), art. 18.

article 3 of the ILO Domestic Workers Convention, 2011 (No. 189) and under article 2, in accordance with ILO Domestic Workers Recommendation, 2011 (No. 201), for all migrant workers. While most States have established freedom of association and collective bargaining principles and provide for their basic protection in law, there are obstacles for migrant workers to claiming these rights: the exclusion of migrants in labour law and employment standards and from collective bargaining in particular; sector-specific exclusions (e.g., agriculture); imposed trade union monopoly; interference in trade union activities; insufficient protection against anti-union discrimination (e.g. dismissal, demotion, transfer, intimidation, harassment); anti-union violence; arrests; inadequate sanctions and remedies for violations of freedom of association and collective bargaining; and restrictions on access to judicial mechanisms.³⁸

39. Under the kafala system,³⁹ collective action or contract negotiation are often not protected rights, and workers may face reprimands for refusing unsafe work or filing complaints, such as about abuse, loss of employment or earnings, loss of status, removals, blacklisting from future employment. Furthermore, these practices may cause their employment to be transformed into situations that could amount to forced labour.^{40,41,42} For women migrant workers who are concentrated in domestic care work and in the informal economy, it is challenging to organize and fight for collective bargaining rights, despite protections under the Convention on the Elimination of All Forms of Discrimination against Women.

6. Safe housing

40. International law stipulates that migrant workers shall have equality of treatment with nationals of the State of employment in access to housing,⁴³ sanitation, electricity, water supply and communications,⁴⁴ having due respect for privacy,⁴⁵ as well as, in case of an imminent and serious danger to life, health or safety due to violence and harassment, the right to remove themselves from both the work situation and housing facilities.⁴⁶ However, adequate and safe housing remains out of reach for many migrant workers, and housing is often framed as temporary, regardless of the duration of stay or the number of years over which migrants may return to the same housing. This is often used to justify camp-like conditions that pose physical and mental health risks and lack safety, security, privacy and dignity. Inadequate housing also jeopardizes other rights, including migrants' right to privacy and to family life.

³⁸ ILO, *Migrant Workers' Rights to Freedom of Association and Collective Bargaining* (Geneva, 2023). Available at www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_883446.pdf.

³⁹ See submission from Migrant-Rights.org. Most States in the Gulf Cooperation Council disallow collective bargaining and unionization, leaving millions of workers without solidarity or the support system required to fight for their rights. Moreover, where unions are permitted (Bahrain, Oman and Kuwait), migrant workers are not allowed to found their own unions or join leadership positions, and their rights are often neglected.

⁴⁰ Observation (CEACR) – adopted 2009, published 99th ILC session (2010), Forced Labour Convention, 1930 (No. 29) – Saudi Arabia, published 2017.

⁴¹ See www.migrant-rights.org/2023/02/hundreds-of-world-cup-workers-stage-protest-remain-unpaid-and-destitute/.

⁴² For example, in Viet Nam, the Law on Trade Unions (2012) provides only Vietnamese labourers with the right to establish, participate in or operate trade unions in the country (art. 5). In Qatar the Labour Law states that membership in the General Union of the Workers of Qatar shall be confined to Qatari workers (sect. 116 (4)). See also report of the Special Rapporteur on the human rights of migrants on the right to freedom of association of migrants and their defenders (A/HRC/44/42).

⁴³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), art. 43.

⁴⁴ Convention on the Elimination of All Forms of Discrimination against Women (1979), art. 14 (2) (h).

⁴⁵ ILO Domestic Workers Convention, 2011 (No. 189).

⁴⁶ ILO Violence and Harassment Convention, 2019 (No. 190).

Furthermore, many migrant workers under labour migration programmes are subject to de facto segregation, being compelled by law or circumstance to reside physically distant from the majority population.⁴⁷

41. Makeshift or modified housing in garages, barns, sheds or other such structures is often reconfigured to house migrant agricultural workers.⁴⁸ Generally, these structures are not meant for residences, are not compliant with fire codes and may pose risks to migrant worker health. When buildings are on worksites, they may have proximity to fertilizers and other hazardous chemicals and equipment. Overcrowding, lack of ventilation, lack of fire alarms and exits, lack of food storage and preparation facilities and lack of potable water and sanitation are also common problems with migrant worker housing.⁴⁹ In addition, particularly for employer-provided housing, lack of communication and transportation, isolation and segregation, lack of social and recreation space or facilities, lack of privacy and security, as well as employer surveillance and control are commonly reported problems. For women migrant workers, concerns over gender-responsive housing needs, such as locks on doors, separate bathrooms and privacy from male workers are notable concerns.

42. The coronavirus disease (COVID-19) pandemic drew widespread attention to the low standard of much of the housing provided or available to migrants on temporary labour migration programmes. Crowded housing and lack of ventilation were a major risk factor for transmission of the virus, constituting a danger to them and to public health. In the Maldives when migrant workers were not paid wages for months during the COVID-19 lockdown, some reported being unable to buy soap to maintain adequate hygiene in overcrowded housing. Many temporary migrant workers in Australia were excluded from pandemic support packages and over 40 per cent of respondents in one survey shared that they feared they would be made homeless as a consequence. Although its initial pandemic response measures were widely praised, the approach of Singapore to its low-wage migrant workers greatly exacerbated their risk of infection and saw dormitory-housed workers account for the vast majority of its COVID-19 cases – more than 90 per cent of all cases by August 2020.⁵⁰

7. Social protection

43. Migrant workers face difficulties in accessing social protection systems designed for nationals and citizens, including pensions, social security and employment benefits, as well as parental, childcare and elderly care benefits owing to eligibility (often permanent residency requirements), cost and time constraints, limitations in portability and transferability of benefits, as well as owing to a lack of information and language barriers in countries of origin, transit and destination. Migrant workers are often excluded from social protection systems, and they are therefore especially vulnerable to economic shocks, unemployment and poverty, as they often do not enjoy the same rights and protection as nationals. Even if eligible, migrant workers face barriers in accessing unemployment insurance, parental and sick leaves, as well as disability insurance, pensions and other benefits, even though they may pay into these systems. At the same time, they risk losing entitlement to any existent social security benefits in their countries of origin owing to extended periods living abroad. Furthermore, even if eligibility requirements are met, migrant workers will likely face constraints in the

⁴⁷ OHCHR, *We Wanted Workers, but Human Beings Came* (see footnote 7).

⁴⁸ Giulia Tranchina, “Better solutions needed for migrant workers’ makeshift settlements in Italy. EU funding should not be used to build more container camps”, 4 April 2023. Available at www.hrw.org/news/2023/04/04/better-solutions-needed-migrant-workers-makeshift-settlements-italy.

⁴⁹ IOM Displacement Tracking Matrix, *Libya: A Long Way from Home – Migrants’ Housing Conditions in Libya* (2020). Available at <https://dtm.iom.int/reports/libya-%E2%80%94-long-way-home-%E2%80%93-migrants%E2%80%99-housing-conditions-libya-23-nov-2020>.

⁵⁰ OHCHR, *We Wanted Workers, but Human Beings Came* (see footnote 7).

portability of these rights across borders (e.g., accessing long-term disability when returned to countries of origin), which is particularly problematic for seasonal or temporary migrant workers.

44. ILO Migrant Workers Recommendation, 1975 (No. 151) establishes that all migrant workers living in the country of employment should have the right to any outstanding remuneration for work performed, including severance payments normally due; benefits for employment injuries suffered; compensation in lieu of any holiday entitlement acquired but not used (in accordance with national practice); and reimbursement of certain social security contributions, regardless of their status. However, migrant workers typically cannot access unemployment or sick leave benefits for which they often pay premiums and have difficulty obtaining wages owed after contracts are terminated, in part because they must leave the country when no longer working. Migrant workers face particular barriers to accessing workers' compensation systems, including loss of earnings, return to work assistance, disability, long-term illness, death benefits and supplementary insurance schemes in the case of occupational injuries or accidents, irrespective of migration or residence status.

45. In cases where migrants are covered under social protection systems, those who are irregular migrants may still face exclusion. For example, in Tunisia, while it is commendable that health-related benefits are managed by the National Health Insurance Fund, and regular migrant workers and their families can access these benefits under the same conditions as Tunisians, irregular migrants remain excluded from these benefits.⁵¹ In Lebanon, health-care benefits are extended only to formal non-Lebanese employees from one of the five European countries that maintain reciprocity of treatment for Lebanese citizens. Formal non-Lebanese employees of other nationalities contribute to the National Social Security Fund but do not have access to benefits.⁵² Furthermore, de jure social protection provisions for migrant workers in Gulf Cooperation Council countries continue to cause significant protection gaps, shaped by the legacy of the sponsorship system, an assumption that migration is only short term, and a dual social protection system that discriminates between national and migrant workers.^{53,54}

8. Access to health services

46. International human rights law provides that all persons, irrespective of their nationality, residency or migration status – or duration of visa or work permit – are entitled to preventive, curative and palliative health services and prohibits any discrimination in access to health-care services and the underlying determinants of health. However, many migrant workers do not have full access to quality health-care services on a par with nationals during their stay.

47. Migrant workers are often concentrated in more dangerous jobs with high rates of accidents and injury (e.g. construction, agriculture), which can have direct and indirect impacts on the health of migrants.⁵⁵ Barriers to accessing health care for

⁵¹ ILO, *Extending Social Protection to Migrant Workers in the Arab Region* (Geneva, 2023). Available at www.ilo.org/beirut/publications/WCMS_886164/lang--en/index.htm.

⁵² Ibid.

⁵³ ILO, *Reforming end-of-service indemnity for migrant workers in Member States of the Cooperation Council for the Arab States of the Gulf (GCC): Policy Options for the Progressive Realization of International Social Security Standards* (2023). Available at https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_886159.pdf.

⁵⁴ ILO, *Review of National Social Protection Legislation and Legal Frameworks for Migrant Workers in the Gulf Countries* (2023). Available at https://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_886063.pdf.

⁵⁵ ILO, *Occupational Fatalities among International Migrant Workers* (2021). Available at <https://publications.iom.int/books/occupational-fatalities-among-international-migrant-workers>.

migrant workers include eligibility for medical insurance systems, language and cultural barriers, lack of access to transportation and information about health-care services, hours of work and clinic and family doctor roster systems that are reserved for residents, etc. Migrant workers in employer-provided housing may also face loss of housing if they are unable to work owing to illness or injury. Migrant workers face barriers in accessing both acute and long-term health care for occupational illness and injury, and those injured at work or who have an occupational illness face considerable barriers in accessing workers' compensation systems built for citizen workers. In some cases, workers have been returned to countries of origin prior to receiving health care and filing compensation claims. Non-emergency health care is particularly out of reach for migrant workers, for example routine medical exams and screening for cancer or other illness, reproductive health care, mental health care, ocular care and dentistry. Prior to the pandemic, in many countries migrant workers had little access to vaccines, preventive medicine, physiotherapy or other non-emergency treatments. Few have access to low-cost pharmaceuticals or medications, even when medically necessary (e.g., diabetes medication).

48. Furthermore, access to temporary labour migration programmes is often contingent on passing a series of medical tests pre-departure, on arrival and during their time on these schemes. Some of this mandatory testing is discriminatory (such as for HIV or pregnancy), and migrants who do not pass these tests are denied visas in some of the major destination countries, even if the injury or illness was sustained during work in the country of employment. These are violations that regularly result in long-term health consequences for migrant workers, including the injury or death of migrant workers, especially those engaged in low-wage work: violations of the right to life that authorities often attribute to "natural causes."⁵⁶

49. Irregular migrant workers face additional health risks (e.g., lack of safety training or personal protective equipment) and barriers to accessing health care. Many will not qualify for access to government-funded health-care services which may be restricted to those with legal documentation, and/or they may not be able to pay the high cost of private health-care services or access assistance for uninsured patients. Furthermore, many will not even seek health-care services owing to lack of firewalls between health-care services and immigration enforcement, which is in contravention of general recommendation No. 38 (2020) of the Committee on the Elimination of Discrimination against Women on trafficking in women and girls in the context of global migration (CEDAW/C/GC/38), paragraph (54) (c), which highlights the importance of access to care and reporting without fear of reprisals or loss of status, in particular in the context of trafficking of women and girls. Women migrant workers face particular health risks in their workplaces owing to their concentration in care work, which heightens their exposure to infectious and communicable disease, as well as sexually transmitted infections and sexual and gender-based violence. For women migrant workers, accessing sexual and reproductive health rights is particularly challenging, since workers risk termination of employment for pregnancy and reprisals for reporting sexual and gender-based violence.

9. Access to justice and accountability measures

50. Access to justice is a basic rule of the law^{57,58} and is fundamental in protecting all migrant workers. This requires full legal equality and equal protection under the law, access to fair dispute resolution and access to remedy. Migrant workers' access to justice is clearly stipulated in law under ILO-C190 article 10 (a) and (b (i-v)). Legal systems are often not adjusted to the particular vulnerabilities of migrant workers, in particular

⁵⁶ OHCHR, *We Wanted Workers, but Human Beings Came* (see footnote 7).

⁵⁷ International Covenant on Civil and Political Rights, art. 14.

⁵⁸ Universal Declaration of Human Rights, art. 8.

women migrants. Women migrants tend to be disproportionately concentrated in informal work and unregulated sectors or isolated occupations in which various forms of abuses are common, such as physical, sexual and psychological violence, including intimidation, harassment, exploitation and threats at work.⁵⁹ Owing to gaps in legislation, exploitative policies, or threats of gender-based violence, women migrant domestic workers may be bound by “live-in requirements” that compel them to stay at their employer’s residence, isolating them in such a way that they may not be able to access complaint and redress systems.⁶⁰ Women also face stigma and fear of being ostracized when they press charges, especially if the abuses involve sexual violence,⁶¹ and are thus less likely to report abuses.⁶² Women migrants face particular forms of reprisals, including gender-based violence and harassment, and have limited legal recognition and protection impeding them from recognizing their right to access to justice.⁶³

51. Retaliation or threats of retaliation from employers and recruiters is one of the major concerns for migrant workers who have reported being intimidated and threatened when they face employers and recruiters in court or mediation,⁶⁴ thus becoming forced or coerced to accept a lower remedy offer or drop their cases altogether. Employers may falsely accuse migrant workers of theft, malpractice and other crimes that put them at risk of detention and deportation.⁶⁵ For example, in Hong Kong (China), in 14 out of 35 cases where domestic workers brought a complaint to the labour tribunal, the employer filed a counterclaim,⁶⁶ and in Jordan, counterclaims impact workers’ genuine complaints of abuse and exploitation because judges assume that workers may be lying.⁶⁷

52. International labour conventions call for cooperation between the labour inspectorate and immigration authorities. The main objective of the former is to protect the rights of all workers and to improve their working conditions, rather than the enforcement of immigration law.⁶⁸ Loss of employment often means loss of work and residence permit, especially when work and residence permits are linked and tied to one employer. This leaves migrant workers vulnerable to irregularity, and subsequent repatriation or deportation. Lack of and loss of documented status places migrant workers in an irregular situation where they may have to endure abuse or to find other employers instead of bringing a claim and accessing their right to justice. The enforcement of legal rights is often acutely difficult for migrant workers, especially vulnerable to abusive conditions, who may have the perception that enforcing rights may affect residence rights.⁶⁹

⁵⁹ Federation of Asian Domestic Workers Unions, *The Price of Justice, Migrant Domestic Workers’ Experience of Trying to Resolve Labour Disputes in Hong Kong* (Hong Kong, 2019).

⁶⁰ See clause 3 of the Hong Kong (China) standard employment contract for a domestic helper recruited from outside Hong Kong. Available at: www.immd.gov.hk/eng/forms/forms/id407.html.

⁶¹ Sarah Paoletti, Eleanor Taylor-Nicholson, Bandita Sijapati, and Bassina Farbenblum, *Migrant Workers Access to Justice at Home: Nepal* (Open Society Foundations, 2014).

⁶² See E/CN.4/1998/74/Add.1.

⁶³ ILO, *Fair recruitment and access to justice for migrant workers* (Geneva, 2022). Available at https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_850615.pdf.

⁶⁴ Federation of Asian Domestic Workers Unions, *The Price of Justice, Migrant Domestic Workers’ Experience of Trying to Resolve Labour Disputes in Hong Kong*.

⁶⁵ Saraswathi, “Huroob, runaway, absconding: trapping migrants in extreme abuse” (see footnote 36).

⁶⁶ Federation of Asian Domestic Workers Unions, *The Price of Justice, Migrant Domestic Workers’ Experience of Trying to Resolve Labour Disputes in Hong Kong*.

⁶⁷ Federation of Asian Domestic Workers Unions, *The Price of Justice, Migrant Domestic Workers’ Experience of Trying to Resolve Labour Disputes in Hong Kong*.

⁶⁸ ILO, *Promoting Fair Migration: General Survey Concerning the Migrant Workers Instruments* (Geneva, 2016), paras. 477 and 482.

⁶⁹ Ibid.

53. While access to justice is often recognized by States in law, migrant workers typically do not have recourse to enforceable, timely and affordable remedies, including access to an independent, fair tribunal and to legal aid as necessary, regardless of nationality, migration or residence status. For example, in Brazil, although migrant workers seeking remedies for human or labour rights violations could in principle bring a case against a recruitment agency under the country's penal code for fraud, the realities of corruption, slavery and trafficking and cross-border migration in the region mean that this is insufficient to ensure access to justice, and instead requires stand-alone legislation to address the scale and complexity of international recruitment.⁷⁰ In most cases, migrant workers do not have unrestricted and effective access to judicial remedies without fear of reprisals and expulsions. As noted above, migrant workers face barriers to lodging complaints against their employers, recruiters or others, including on grounds of sexual harassment in the workplace, and have little access to remedies for unpaid wages and compensation for violations of labour rights and other human rights violations. Women migrant workers are often in the unregulated informal economy, further limiting their options to access to justice and undermining their possibilities of acquiring regular migratory status.

D. Rights-based approaches to ensuring the labour rights of migrants

54. Some good practices have been implemented by States and civil society which strengthen their alignment with commitments under international law and are more consistent with labour standards. Such practices range from regularization programmes for migrant workers with irregular status, pathways to permanent or secure migration status for those on temporary work permits or under temporary migration programmes, to ensuring equality of access to social protection, standardized contracts for migrant workers and establishing firewalls between services and immigration enforcement. Below are some promising practices.

55. A domestic workers' trade union in Argentina, the Unión Personal Auxiliar de Casas Particulares, works to improve awareness and access to new labour policy changes in Argentina. In collaboration with the Government, the union has developed a website, a smartphone app and introduced video toolkits⁷¹ about domestic worker rights, including wages, freedom of association and paid leave. The mobile app makes this information easier to access and provides contact information for organizations and government offices where workers can seek remedies. This particular government–trade union model is being explored for replication in other South and Central American countries.⁷²

56. Toolkits have been developed by Governments and non-governmental organizations to improve awareness among migrant workers seeking justice. Migrant health-care workers – in particular Indian and Filipino nurses in countries of destination such as Denmark, Finland, Germany and Norway – have access to a tool developed by Public Services International that outlines grievance mechanisms in specific migration corridors which workers can contact in times of distress.⁷³

57. In Canada, migrant workers are permitted to apply for an open permit, through the Open Work Permit for Vulnerable Workers, which allows them to search for a new

⁷⁰ ILO, *The Migrant Recruitment Industry: Profitability and Unethical Business Practices in Nepal, Paraguay and Kenya* (Geneva, 2017). Available at www.ilo.org/global/topics/fair-recruitment/WCMS_574484/lang--en/index.htm.

⁷¹ See www.upacp.org.ar/?page_id=3017#derechosLaborales.

⁷² ILO, “Trade Union Action to Promote Fair Recruitment for Migrant Workers”, ILO brief, April 2020.

⁷³ See www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=130.

employer or job in the labour market for up to 12 months if they are experiencing abuse or are at risk of abuse.⁷⁴

58. In Morocco, the medical assistance scheme is based on the principle of national solidarity for the benefits of the poor population. Medical coverage consists of mandatory health insurance and a medical assistance plan. The mandatory health insurance provides benefits in kind (for sickness) and cash (for sickness and physical invalidity). Because of the principle of national solidarity, both nationals and non-nationals can access benefits in kind.⁷⁵ In Algeria, migrant workers are affiliated with the social security health scheme, irrespective of their nationality, the amount or nature of their remuneration or the form, nature or validity of their work contract (including irregular migrants).⁷⁶

59. The Philippines-Bahrain Partnership on the Issuance of Flexible Visas, work and residency permits valid for two years and renewable indefinitely, ensures pathways for regularization of migrant workers in response to the unintended consequences brought about by the Kafala system, a traditional sponsorship system in the Middle East.⁷⁷ This serves as one pathway to regularize the status of Filipino migrants to prevent being caught in unscrupulous recruitment practices that often lead to trafficking.

60. Egypt strives to eradicate human trafficking through a victim-centred approach through a cooperation protocol establishing a new dedicated shelter for victims of human trafficking which was signed by the Ministry of Social Solidarity, the National Council for Childhood and Motherhood and the Egyptian Red Crescent.⁷⁸

61. The fair recruitment corridor pilot between Nepal and Jordan was designed in collaboration with Better Work Jordan and social partners. Through the Integrated Programme on Fair Recruitment (FAIR), ILO linked up with a private employment agency that developed procedures for fair recruitment of Nepali workers in the garment sector in Jordan in line with the ILO general principles and operational guidelines for fair recruitment.⁷⁹

62. The Platform for International Cooperation on Undocumented Migrants is an initiative of grassroots organizations representing a network of more than 140 organizations and 100 individual advocates working with undocumented migrants in 33 countries, primarily in Europe, as well as in other world regions. The Platform has built a comprehensive evidence base regarding the gap between international human rights law and the policies and practices existing at the national level, promoting recognition of their fundamental rights, providing an essential link between local realities and debates at policy level.⁸⁰

⁷⁴ See Immigration, Refugees and Citizenship Canada, Open work permits for vulnerable workers [R207.1 – A72] – International Mobility Program, modified 23 February 2023. Available at www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers/vulnerable-workers.html.

⁷⁵ ILO, *Extending Social Protection to Migrant Workers in the Arab Region* (see footnote 52).

⁷⁶ Ibid.

⁷⁷ Migration Network Hub: Repository of Practices (2023), Philippines-Bahrain Partnership: Flexible Visas. Available at <https://migrationnetwork.un.org/practice/philippines-bahrain-partnership-issuance-flexible-visas>.

⁷⁸ Migration Network Hub: Repository of Practices (2023), Dedicated Shelter for Victims of Trafficking in Persons. Available at <https://migrationnetwork.un.org/practice/dedicated-shelter-victims-trafficking-persons>.

⁷⁹ ILO, “Fair recruitment corridor piloted between Nepal and Jordan (in the garment sector)” (2015–2019). Good Practices database. Available at www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=205.

⁸⁰ ILO, “Platform for international cooperation on undocumented migrants (PICUM)” (2001–2015), Good Practices database. Available at www.ilo.org/dyn/migpractice/migmmain.showPractice?p_lang=en&p_practice_id=16.

63. Mauritania is a country of transit and destination for Senegalese migrant workers. The National Confederation of Senegalese Workers has established a centre for prospective Senegalese migrants seeking employment in Mauritania or Europe in Nouakchott, and a call centre in Dakar that provides specialized assistance to domestic workers, most of whom are migrant women. It also receives complaints from domestic workers and facilitates employment-related issues and acts as a dispute resolution office.⁸¹

E. Conclusions and recommendations

64. **Increasingly, States are turning to temporary migration schemes or programmes to facilitate regular labour migration, and many seek explicitly or implicitly also to reduce irregular migration and the harmful realities associated with it. However, the restrictions inherent in these schemes create situations of vulnerability for migrants which actually drive them into irregularity. For example, migrants' lack of control over the timing of their return from these programmes may drive some to move into irregular status rather than return at the end of their contract, in particular if they have developed social relationships, or if conditions in their country of origin became unfavourable due to climate change or political or economic turmoil. For those who have experienced exploitation or abuse, workplace injury, unpaid work or debt bondage, return may not be a viable option until debts are paid, or documentation procured.**

65. **Many such temporary pathways are incompatible with States' human rights obligations. Workers usually take up fixed-term, low-wage work in sectors such as agriculture, construction, care work or the service industry. The temporary nature of these programmes structures the lived realities for these migrants so that they remain cut off from permanent supports and networks. Their framing as temporary is used to justify substandard "temporary" housing and a myriad of restrictions on a range of human rights, even in cases of protracted or "permanently temporary" migration whereby migrant workers migrate repeatedly through the same programme for decades, many for their whole (working) life, typically separated from their families. Even in situations where the labour needs that they are fulfilling are permanent, migrant workers in these programmes are usually excluded from pathways to permanent stay or citizenship.**

66. **There is a need for new mechanisms and permanent pathways that will protect migrant workers in countries of employment, regardless of status. They must be able to access decent work in safe environments free from discrimination and exploitation and have their labour and human rights protected wherever they are living and working.**

67. **It is the responsibility and obligation of States to institutionalize rights-based migration governance, guided by the principle of non-discrimination for all workers (in areas such as pay, deductions for housing or transportation, access to rights, social protection and health-care insurance).**

68. **The Special Rapporteur calls upon States and other stakeholders to:**

(a) **Strengthen and extend domestic labour protection to all migrant workers – regardless of their status – including in relation to minimum wages, payment for overtime, working hours, working conditions, days of rest, annual leave, freedom of association, social security protection (i.e., parental leave,**

⁸¹ ILO, "Centres for migrants in Senegal and Mauritania", Good Practices database. Available at www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=141.

health insurance, pensions and disability, family and child benefits), as well as effective recourses and remedies;

(b) Implement “firewalls” between public services and immigration authorities to ensure that all migrants are not discouraged from gaining access to education, adequate housing, cultural services and health care, including comprehensive sexual health and reproductive health services and other basic entitlements such as food allowances, without discrimination and fear of detection, detention and deportation;

(c) Enhance the oversight and monitoring of recruitment agencies, brokers, employers and other intermediaries, by putting in place a holistic and comprehensive recruitment policy that is subject to rigorous human rights and law due diligence; developing fully robust, transparent and publicly accountable licensing systems for recruitment companies; ensuring that restrictive measures are in place to prevent the re-registration of unscrupulous agencies which had had their licences revoked; regulating irregular agents and sanctioning of unlicensed agencies; developing a rating scheme and blacklist in order to assess the conduct of recruitment agencies; establishing confidential tip-lines for migrant workers to report unsafe work; as well as effectively banning all types of recruitment fees paid by migrants;

(d) Create a strong and effective labour inspection system, with regular unannounced inspections in all worksites and ensuring there a sufficient number of labour inspectors, who are well trained and are able to monitor and enforce human rights and labour standards. Labour inspectors should be able to interview migrant workers directly, review their contracts, make sure they are allowed to keep their passports, are paid on time and issued identification documents in full. Labour inspectors should be accompanied by interpreters in languages understood by migrant workers;

(e) Take all measures necessary to prevent, investigate, prosecute and sanction human rights violations and abuse against migrant workers, whether perpetrated by public officials or private individuals;

(f) Ensure that all migrant workers have equal access to justice, complaint mechanisms and remedies to empower workers to file cases with labour courts and fight discrimination in employment – including in relation to recruitment; sponsorship; residence permits; contracts; working and living conditions; wage protection and other labour disputes – without fear of reprisals and timely processing. Access to interpreters and legal aid should be guaranteed, and consideration should be given to language barriers, transportation, work schedules and lack of access to information about rights and services by migrant workers, to ensure equal treatment on the same basis as nationals and citizens of destination countries;

(g) Ensure that migrant workers have written contracts of employment in a language that they understand, stating their specific duties and parameters of work; remuneration, benefits and deductions; job description; location, days of rest and hours of work; housing conditions (where applicable); transportation; effective recourse and remedies; and gender-responsive facilities. Model and standardized contracts for migrant workers within different sectors and varying skill levels should be adopted for this purpose. States must prohibit and sanction practices of contract substitution, retaining documentation and forced seclusion or locking in homes of migrant workers, in particular domestic workers;

(h) Abolish the kafala system and employer-tied workplace programmes and instead replace it with a regulated open labour market, where the rights and

residence status of migrant workers are not tied to one employer or sector, by taking into account the reality of the labour market and allowing bridges between different types of work and work permit statuses in order to prevent migrant workers from falling into irregularity when a job situation changes or in cases of exploitation. This includes abolishing “no objection” and exit permit requirements to allow migrant workers the opportunity to change sponsors;

(i) Lift gender-specific barriers to the labour market by providing migrant women with legal status, independent of their families, partners, spouses and employers;

(j) Take measures to ensure that family reunion policies, multiple re-entry and access to permanent pathways are applicable to migrant workers at all levels, including domestic workers, in order to enable their spouses and children to join them in their country of destination;

(k) Improve understanding of the different realities and challenges faced by migrant workers, as well as their specific needs, through actively engaging with migrants and conducting awareness-raising campaigns to better uphold the dignity of migrant workers, and to highlight their social and economic contributions to society;

(l) Protect migrant workers’ rights to collective bargaining rights, freedom of peaceful assembly and association, regardless of status or sector of employment, as well as reinforce the capacity of trade unions to defend the labour and human rights of migrant workers and foster a vibrant civic engagement on labour migration governance and practices;

(m) Ensure human rights-based, gender-responsive, age- and child-sensitive safe and regular migration pathways, taking into account the particular needs of all migrants in situations of vulnerability; ensure access to regular status for irregular migrants; regularization and work permit renewal processes must be free from employer sponsorship and provide migrant workers with direct pathways to regular status;

(n) Undertake early identification of victims of gender-based violence or trafficking in persons; ensure that there is a clear “firewall” between local police and immigration authorities to encourage reporting of crimes, as well as provide safe housing for migrant workers who seek to leave abusive employers, spouses, partners or other individuals;

(o) Develop bilateral agreements on labour migration between countries of destination and origin that prioritize the full implementation of the human rights and labour rights of migrants based on international standards and fully incorporate the voices of both migrants and civil society, as well as encourage systematic sharing of intelligence on parties that exploit migrant workers;

(p) Ensure that all data collection systems are up to date, accurate and disaggregated by age, gender, race, ethnicity, migratory status, religion or belief, disability, sexual orientation and gender identity, socioeconomic background, geographic location and other characteristics, which also fully capture phases of labour migration and recruitment patterns, the welfare and treatment of migrant workers and their whereabouts.