

# **Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers**

## **An Information Guide**

### **Booklet 1**

#### **Introduction:**

**Why the focus on women international migrant workers**



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Gender Promotion Programme  
International Labour Office  
Geneva



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## 1.1. Aims and structure of the Guide

This Information Guide is intended:

- **To enhance knowledge and understanding of the vulnerability of migrant workers, especially women, to discrimination, exploitation and abuse throughout all stages of the international labour migration process, including being trafficked;**
- **To promote and improve legislation, policies and action to prevent such discrimination, exploitation and abuse and to better protect those women migrant workers who are vulnerable; and**
- **To emphasize and explain why and how the prevention of discrimination, exploitation and abuse, including trafficking, of migrant workers should be addressed within a framework aimed at promoting regulated and orderly labour migration and as a matter of:**
  - ☑ **Upholding basic human rights, including labour rights and migrant rights;**
  - ☑ **Promoting gender equality and ending all forms of discrimination, racism and xenophobia;**
  - ☑ **Promoting decent and productive work for all workers, women and men, in conditions of freedom, equity, security and human dignity; and**
  - ☑ **Eradicating poverty and social exclusion.**

### **Box 1.1. Focus on women from a rights-based, gender perspective**

Although the focus is on women (and girls), the Information Guide is not women-exclusive. It adopts a rights-based, gender-sensitive perspective that:

- Recognizes the similarities and differences in the migration experiences of different categories of women *and* men in relation to vulnerabilities, violations and consequences;
- Relates these differences in migration experiences to gender -- by distinguishing the biological ("sex") from the socially determined ("gender") differences between women and men. Links differences in migration experiences to the different roles, attributes and behaviour that society deems socially appropriate for women and men, and to the division of labour, access to and control over resources and decision-making and constraints, opportunities and needs facing women and men;
- Addresses the differential and often discriminatory impacts of legislation, policies and programmes on different groups of women and men;
- Considers the interaction between gender and other social categories, such as national origin, class, ethnicity and age;
- Gives particular attention to the especially vulnerable groups of women or men;
- Approaches the issues of women migrant workers not merely from the perspective of moving, working and living in foreign countries but also from the perspective of their generally less valued socio-economic roles and disadvantaged position vis-à-vis men;
- Emphasizes the need for policies that not only address the supply of and demand for migrant workers but also address gender discrimination and inequalities;
- Holds that the elimination of gender inequality and discrimination is a human right and core to efforts to address the problems of women migrant workers;
- Aims to empower, not just to protect, women (and, where appropriate, men), so that they can claim their rights and make informed decisions about their lives.

The Guide shows that changing labour markets with globalization have increased both opportunities and pressures for women to migrate.

*For many women, as for men, migration represents a positive experience and can have important emancipating and empowering impacts. But the focus of the Guide is on those women migrant workers who are especially vulnerable to discrimination, exploitation and abuse, including trafficking.*

Women are migrating for employment on almost the same scale as men, accounting for about half of the total migrants worldwide. For many women, as for men, migration is a positive experience, leading to a better life and improvement of their economic and social position. The labour migration process can enhance their earning opportunities, autonomy and empowerment and, thereby, change gender roles and responsibilities and contribute to gender equality. Women migrants are able to achieve their goals and may gain comparatively more than male migrants, not so much in terms of income, but in status and position back home. Although they may earn less than male migrants and they usually work in non-regulated sectors of the labour market, they are often able to improve the economic position of their family and their own status, independence and decision-making power within the family. They may also be able to have a better chance in the local labour market upon return and to earn money to start their own business.

But migration for employment can also expose women to serious violation of their human

*The concern is that the overall feminization of international migration is likely to continue and that the vulnerability of women migrants to discrimination, exploitation and abuse is also likely to increase.*

rights, including their labour rights. Whether in the recruitment stage, the journey across national borders, transit or living and working in another country, women migrant workers, especially those in irregular situations, are vulnerable. They are exposed to harassment, intimidation or threats to themselves and their families, economic and sexual exploitation, racial discrimination and xenophobia, poor working conditions, increased health risks and other forms of abuse, including trafficking into forced labour, debt bondage, involuntary servitude and situations of captivity. The concern is that the overall feminization of international migration is likely to continue and that the vulnerability of women migrants to discrimination, exploitation and abuse is also likely to increase – because of hardened attitudes towards migrants in general <sup>1</sup> and because gender-based attitudes and perceptions continue to be slow in changing. Gender inequalities persist and labour markets remain highly segmented and segregated in both origin and destination countries.

Women migrant workers, whether documented or undocumented,

*Gender-based discrimination intersects with discrimination based on other forms of “otherness”.*

are much more vulnerable to discrimination, exploitation and abuse – relative not only to male migrants but also to native-born women. Women and girls are also more at risk than men and boys to trafficking. Gender-based discrimination intersects with discrimination based on other forms of “otherness” – such as non-national/foreigner status, race, ethnicity, religion, economic status – placing women



in situations of double, triple or even fourfold discrimination, disadvantage, marginalization and/or vulnerability.

Although the focus is on women migrant workers, many of the concerns and issues raised, analysis and guidelines provided cut across gender and, sometimes, age. Therefore, this Information Guide could be relevant for all individual migrants, women and men, so that they can better understand the risks involved in labour migration, know their rights and are better able to protect themselves. The Guide also shows why among children, girls are often more vulnerable than boys to exploitation and abuse. However, the greater vulnerability of children to exploitation and abuse and the particular physical, psychological and psychosocial harm suffered by trafficked children require that they be dealt with separately. This Guide does not deal with children-specific solutions, which should also be specific for girls and for boys.<sup>2</sup>

The Guide comprises six booklets which are inter-related but which can be used separately. Booklet 1 provides a general introduction of the dynamics of female labour migration. Booklets 2 to 5 cover the different stages of the migration process and the corresponding activities, policies and practices of other actors – the government, business, the private sector, civil society groups and families -- that affect the mobility and employment of women and men within and outside their countries of origin. Booklet 6 focuses on the trafficking of human beings, particularly women and girls.

**Booklet 1** *Introduction: Why the focus on women international migrant workers*

Highlights the vulnerability of women migrant workers to discrimination, exploitation and abuse in the different stages of the migration process. The labour market situations women migrant workers go into put them at greater risk to human rights violations, compared to male migrants and local women. To protect women migrant workers, the Booklet introduces a multidisciplinary and comprehensive framework – addressing both demand and supply factors, and incorporating the promotion of human rights, gender equality, decent work and poverty reduction; and involving a wide range of social actors in legal and policy instruments and practical action at international, regional, national and community levels.

**Booklet 2** *Decision-making and preparing for employment abroad*

Describes the process of decision-making and preparation for moving to and working in a foreign country. It highlights the kinds of accurate and realistic information and assistance services that potential migrants should have to properly decide on employment abroad. It also identifies other actors in the decision-making process, in particular the families of the women, and emphasizes the need to reach out to and sensitize these other actors. For those who make the decision to become labour migrants, the Booklet describes the information that would help steer them safely through the recruitment and journey

process, including information on their legal rights and obligations and how to claim their rights and what to do in crisis situations. It also stresses the importance of measures to ensure that migrant workers have access to social protection.

**Booklet 3** *Recruitment and the journey for employment abroad*

Distinguishes the different modes of recruitment and emphasizes that fraudulent and exploitative practices are very common in the recruitment stage. It defines illegal recruitment and draws attention to the various dangers and risks women can face in the recruitment process. Trafficking is one form of illegal recruitment. It describes what governments, the social actors and migrants themselves can do to prevent these malpractices.

**Booklet 4** *Working and living abroad*

Raises awareness of the working and living conditions of women migrants in the destination countries, and provides guidelines on how to improve their situation and especially to prevent and redress cases of violation of their basic rights and to also ease their adjustment and integration. It shows that where women migrant workers are organized and have networks of information and social support, exploitation is much less likely to occur. The focus is on migrant domestic workers who are among the most vulnerable to exploitation and abuse and because domestic work is the single largest employment category for women migrants.

**Booklet 5** *Back home: return and reintegration*

Illustrates the specific problems faced by women migrants returning to their home countries and families. It identifies the kinds of supports – logistical, legal, socio-psychological, employment, skills related and financial -- they need to enable them to achieve successful reintegration and avoid re-migration or being re-trafficked. It emphasizes opportunities for remunerative employment as key to successful reintegration.

**Booklet 6** *Trafficking of women and girls*

Focuses on a global problem of growing concern: trafficking in persons, especially women and girls. It identifies the supply-side and demand-side causes, describes the mechanics of trafficking and explains why women and girls are more vulnerable to becoming victims. It points out that trafficking in human beings is, first and foremost, a violation of human rights; it should not be dealt with merely from the perspective of fighting illegal migration nor protecting national interests. A wide range of actors need to tackle the entire cycle of trafficking through policy, action and cooperation at different levels for the prevention of trafficking, support for and protection of victims and prosecution of traffickers.

## 1.2. How to use the Guide

The booklets of the Guide are intended as an **information/reference source for a wide and varied audience:**

- The main target audience are advocates and activists, policy makers and implementers concerned with migration issues and women workers' rights in origin, transit and destination countries. They include government officials responsible for the administration of justice, the judiciary and service providers -- such as migration officers, embassy personnel, labour attachés, labour inspection officials, police and law enforcement personnel, judges, prosecutors, equality officers, social and public health workers and officials from women's bureaus and ministries of labour, justice and immigration/emigration;
- The Guide is also more broadly addressed to workers' and employers' organizations, associations of migrant workers (including associations of domestic workers), public and private recruitment and employment agencies, as well as non-governmental organizations (NGOs), community-based organizations (CBOs) and other civil society groups concerned with human rights;
- The information in the Guide is clearly very useful for individual migrants, both women and men. However, the Guide is written for the use of actors who directly address individual migrants; for example trade unions, government agencies or NGOs to raise awareness among potential migrants or to conduct pre-departure orientation for migrants. As such, they may need to adapt the materials or simplify the language and presentation style to suit the migrant audience.



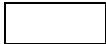







Individual and institutional users will have to select one or more particular booklets and utilize, adjust and adapt the materials according to their specific national and socio-cultural contexts, needs and purposes. To assist users, the information is structured in as "user-friendly" a format as possible. Different symbols, fonts and colours depict different types of information. At the end of each booklet, notes, a bibliography and useful websites are provided for readers interested in more detailed or additional explanations and reference materials.<sup>3</sup> A Power Point presentation highlights/ summarizes the main points covered in the booklet. Cross-references are provided where there are areas of overlap in the different booklets or where issues are dealt with in more than one section or booklet. Important information is repeated, so that each booklet is as complete as possible.

The examples given of both "good" and "bad" practices are not intended to single out individual countries. They reflect the availability of information (which also helps to explain why there appears to be more examples from the Asia Pacific region). Although the countries from which the examples are drawn are indicated, the "good" or "bad" practices are not necessarily specific only to these countries.

The Information Guide can flexibly be used for:

- **Awareness raising or sensitisation:** To improve knowledge and understanding of the vulnerabilities faced by migrant workers to discrimination, exploitation and abuse, including trafficking, and the challenges confronting government, workers' and employers' organizations, NGOs and other civil society actors in addressing these vulnerabilities, protecting human rights and promoting decent work for migrant workers, in particular for women migrant workers. Access to such information may empower the women to increase their self-esteem and build confidence to defend their rights as women, as migrants and as workers.
- **Advocacy and publicity:** The Guide intends to place the discrimination, exploitation and abuse that women migrant workers experience on the "radar screen" of the international human rights, development and donor communities. Government agencies, NGOs and other social actors may also use the Guide for media campaigns, community mobilization and outreach to inform or educate the general public and other concerned actors, including migrant women and men themselves, about the role they can play and the possible measures they can take to protect vulnerable women migrant workers and to improve the situation of migrants of both sexes in general.
- **Tool for action:** The Guide indicates the normative framework that could be used for addressing discrimination, exploitation and abuse of women migrant workers. Law and policy makers can refer to relevant international and regional standards and some national examples to adopt a rights-based approach and to formulate or review legislation. The Guide also presents guidelines, checklists and practical examples for action. Users can learn from the experiences of actors in countries of origin, transit and destination and may be better aware of what might be possible or effective for assisting vulnerable women in the migration process. However, since the circumstances vary from one country to another, the information is not intended to represent "best" or "good" practices that should be adopted in all situations or be used in any definite manner.
- **Training and educational purposes:** The information in the booklets may serve as background material in training seminars (such as for migration officers, labour attachés, law enforcement officers and employment agents), topics to include in school curricula or general education programmes targeting potential female migrants, and, importantly, in preparation courses for migrants before they go abroad.
- **Networking tool:** The Guide offers ideas for improving networking and collaboration between and amongst government and social actors, trade unions, NGOs and employment agencies; for generating discussion and stimulating action amongst various stakeholders; and building alliances between various organizations and individual migrant women within and between countries of origin, transit and destination.

To assist users of the Guide, the information is organized in different ways:

-  Aims of the different booklets and sections of the Information Guide
-  *Text box in coloured italics, main themes and highlights of different sections of the Information Guide*
-  *Text box in bold italics, international instruments*
-  Coloured text box, important explanations or examples of policies or action
-  **Key points to bear in mind**
-  *Elaboration/details of key points, checklists or guidelines*
-  *Good practices*
-  *Bad practices*
-  *Lessons learned*
-  Refer to, cross-references



### 1.3. Why the focus on women international migrant workers?

#### 1.3.1. The feminization of international labour migration

*“Times have changed, and today more and more women migrate not to join their partner, but in search of employment in places where they will be better paid than in their home country. It is estimated that female migrants make up almost half of migrant workers in the world today. This ‘feminization’ is sometimes characterized by an over-representation of women migrants in extremely vulnerable positions, in so far as these positions are characterized by a strong bond of subordination between the employer and the employee and, above all, because those sectors are generally excluded from the scope of legal protection on employment, notably from the Labour Code”.*<sup>4</sup>

The gender dimensions of international labour migration are too important to ignore:

#### **Number and share of female migrants large and increasing:**

- At the start of the 21<sup>st</sup> century, one out of every 35 persons worldwide is living outside their country of origin. The total number of migrants more than doubled between 1965 and 2000 from 75 to 175 million. This number includes migrant workers, permanent immigrants, refugees and displaced persons, but does not include irregular migrants who escape official accounting. The annual flow of migrants is estimated at between 5 and 10 million people, including undocumented migrants.<sup>5</sup>
- According to the International Labour Organization (ILO), there are some 120 million migrant workers and their family members worldwide. The regional breakdown is 20 million in Africa, 18 million in North America, 12 million in Central and South America, 7 million in South and East Asia, 9 million in the Middle East and 30 million in Europe.<sup>6</sup>
- Global estimates by sex <sup>7</sup> confirm that for more than 40 years since 1960, female migrants have been almost as numerous as male migrants. Already in 1960, female migrants accounted for nearly 47 out of every 100 migrants living outside their countries of birth. Since then, the share of female migrants among all international migrants has been rising steadily, to reach 48 per cent in 1990 and nearly 49 per cent in 2000. By 2000, female migrants constituted nearly 51 per cent of all migrants in the developed world and about 46 per cent of all migrants in developing countries [👁️ **Box 1.2**];
- What is striking is that in developing countries that admit migrants exclusively for temporary labour purposes <sup>8</sup>, the share of women in the labour migration flows has been increasing since the late 1970s. The major magnets for female labour migration are located in Western Asia and also in the countries of the Pacific Rim in East and Southeast Asia. In both these regions, the proportion of women among all international migrants has been rising steadily since 1980. By 2000, the number of female migrants was estimated to have surpassed the number of male migrants in East and

Southeast Asia (5 million versus 4.9 million). The 7.6 million female migrants in Western Asia were estimated to constitute 48 per cent of all migrants in that region. “One of the most recent changes to African migration has been a growing feminization, which suggests that traditional social roles have been modified considerably. Whereas men used to leave in search for work, more and more women are now striking out on their own to seek economic independence. Women currently make up half of Africa’s migrants. Doctors, domestic workers or businesswomen, they are now migrating not only within borders, but increasingly abroad”.<sup>9</sup> What is noteworthy in the case of African women migrants is the growing number of highly skilled. The brain drain has been feminized in recent years as more and more African women are becoming as qualified and skilled as men.<sup>10</sup>

- National level estimates indicate that in 2000, women represented 68 per cent of the 2.55 million Indonesian migrant workers abroad; 46 per cent of the 2.945 million documented and 1.840 million undocumented Filipino migrant workers abroad; and 75 per cent of some 1.2 million Sri Lankan migrant workers abroad.<sup>11</sup>

**Box 1.2.**

**Percentage of female migrants among the total number of international migrants, by major area, 1960-2000**

Major Area	1960	1970	1980	1990	2000
World	46.6	47.2	47.4	47.9	48.8
More developed regions	47.9	48.2	49.4	50.8	50.9
Less developed regions	45.7	46.3	45.5	44.7	45.7
Europe	48.5	48.0	48.5	51.7	52.4
Northern America	49.8	51.1	52.6	51.0	51.0
Oceania	44.4	46.5	47.9	49.1	50.5
Northern Africa	49.5	47.7	45.8	44.9	42.8
Sub-Saharan Africa	40.6	42.1	43.8	46.0	47.2
Southern Asia	46.3	46.9	45.9	44.4	44.4
Eastern and South-eastern Asia	46.1	47.6	47.0	48.5	50.1
Western Asia	45.2	46.6	47.2	47.9	48.3
Caribbean	45.3	46.1	46.5	47.7	48.9
Latin America	44.7	46.9	48.4	50.2	50.5

Source: H. Zlotnik, “ Data Insight The Global Dimensions of Female Migration” in United Nations, *International Migration Report: 2002*. No. E.03.XIII.4 (New York, United Nations, 2002).

- Increasingly, the globally mobile workers are women who are moving on their own (as autonomous migrants), leaving family and home for employment abroad;
- The bulk of recent women migrants are engaged in temporary migration. However, there are many who end up going abroad several times over their life cycle, taking up a series of employment contracts, or who live and work in a country for several years and in some cases even permanently;



- In some parts of the world, the growth of a “migration industry” comprising private recruitment agents, overseas employment promoters, human resource suppliers and a host of other legal and illegal intermediaries has greatly facilitated female labour migration;
- Some sending countries encourage labour migration of both men and women as an important source of foreign exchange through the remittances of workers’ wages;
- Men migrate for a variety of jobs ranging from low to high skilled jobs. But female labour migration is strongly characterized by the concentration in a very limited number of female-dominated occupations, which are associated with traditional gender roles, such as domestic workers and “entertainment” workers. While these jobs do not necessarily have to be exploitative, the circumstances of the job itself often lead to a high degree of vulnerability to abuse and exploitation, even forced labour and slavery;
- To give a sense of the significance of **women migrants in domestic work**, some figures can be quoted: in Hong Kong, migrant domestic workers numbered more than 202,900 in 2000;<sup>12</sup> between 1999 to June 2001, 691,285 Indonesian women left their country (representing 72 per cent of total Indonesian migrants) to work mainly as domestic workers abroad;<sup>13</sup> in Malaysia, there were 155,000 documented (and many more undocumented) migrant domestic workers in 2002;<sup>14</sup> in Italy, 50 per cent of the estimated 1 million domestic workers are non-European Union citizens and in France over 50 per cent of migrant women are believed to be engaged in domestic work;<sup>15</sup>
- Data on **women migrants in the entertainment industry** or in sex work are lacking. But in the year 2000 alone, some 103,264 migrants entered Japan as “entertainers”.<sup>16</sup> Estimates from official statistics suggest that up to 5,000 women could have been trafficked into South Korea for the sex industry since the mid-1990s, although the actual number may be much higher. Filipino women make up the majority, but significant numbers also come from the central Asian countries. There has also been a recent surge in the number of female entertainers from Russia, Belarus and Ukraine.<sup>17</sup>
- Migrants, both men and women, are often used as a buffer stock for reserve labour hired at times of shortage and dismissed when the employment situation deteriorates:
 

*“In this world of transformation, the status of migrants is precarious. In developed economies, they already constitute the least protected and more expendable segment of the labour force, forever an element of flexibility in the labour market. In developing economies, where jobs are lacking, migration provides additional flexibility to employ the domestic labour force. Migrants are the flexible factor par excellence. Is flexibility just a new word for exploitation?”*<sup>18</sup>

☑ **The changing role of women migrants within their families and societies:**

- In some parts of the world, women migrant workers have become important income earners for their families and contributors of foreign

exchange for their countries of origin, often on par with men. In Sri Lanka, they contributed over 62 per cent of the more than US\$1 billion total private remittances in 1999, accounting for more than 50 per cent of the trade balance and 145 per cent of gross foreign loans and grants.<sup>19</sup>

- Their movement, often as a family survival strategy, has been given an added impetus by the negative impacts of structural adjustment programmes, economic/financial crises, transition to market economies, political conflicts in their home countries;
- In these contexts, the feminization of poverty and the fact that more women are becoming the sole breadwinner in families have contributed to the growing number of women willing to take their chances by searching for employment and income opportunities abroad.

☑ ***Trafficking and forced labour of women and girls: a growing global concern:***

- Trafficking in human beings – male and female adults and children - has grown in scope and magnitude to such an extent that it is now the focus of international, regional and national counter-trafficking initiatives. Although there are no hard data because of the nature of the phenomenon, it is estimated that some 800,000 to 900,000 persons are trafficked across borders annually <sup>20</sup>
- Of particular concern is that the bulk of victims of trafficking are women and girls who end up in prostitution and sexual exploitation or in other exploitative forms of employment, forced labour, debt bondage or slavery;
- Women are also victims of the mail-order bride trade; they are tricked by offers of marriage with foreigners only to end up in forced labour or even in prostitution rings. There are also cases of women and girls being sold or traded as wives to foreigners;
- There is an obvious link between trafficking of women and racial discrimination: Some women of certain racial or ethnic groups are subjected to abuses in larger measure than other women, while trafficking frequently involves racist attitudes and perceptions;
- Violation of human rights, including labour rights, are both a cause and a consequence of the trafficking in persons;
- The feminization of poverty and chronic unemployment in countries of origin have exacerbated the vulnerability of women and girls to trafficking;
- Restrictive policies on migration are at variance with market realities in both origin and destination countries and account for the rising numbers willing to take the risk of being smuggled and/or trafficked. On the one hand, the job prospects and the wage differentials can be so great that the probable returns to the risks involved become an attractive proposition for individual migrants. On the other hand, the imbalance makes trafficking and smuggling of migrant labour a very lucrative “business”;
- In addition, the growth in many countries of a visible but legally restricted sex industry has expanded the demand for female migrants not subject to any inspection or regulatory control and thus more highly exploitable.



### **Gender differences in the migration experience:**

- The factors leading to female migration and those conditioning the outcomes are likely to differ from those relating to male migration;
- Immigration and emigration policies and regulations are often gender-insensitive and not gender-neutral in intent or impact.<sup>21</sup> Policies and regulations often reproduce and intensify existing social, economic and cultural inequalities between women and men in both the countries of origin and destination;
- The over-generalization/misperception that “men migrate, women are trafficked” can lead to additional biases in migration policies;
- The impacts of labour market dynamics are selective by gender, race or ethnic origin and migrant status in countries of origin and destination;
- Adjustment to living and integration in a foreign country is often harder for female than male migrants, especially for those who come from conservative or sheltered backgrounds. They normally have limited or no access to culturally appropriate or language-specific support services;
- Reintegration upon return to their home countries is often a very difficult process, especially when the women are faced with family problems caused by the separation. Many women are not able to find remunerative employment, are not able to succeed in establishing their own businesses and are often pressured into leaving for jobs abroad again.



### **Empowerment or vulnerability:**

- Many women move as a means of furthering their emancipation. Migration can be an empowering experience, helping women to achieve greater freedom and personal fulfilment;
- On the other hand, in some countries the families of women and girls believe that it is the daughter’s responsibility to improve the family’s living standard. Daughters and sons do not have equal rights to self determination – and the daughter’s duty may include allowing herself to be trafficked, sold as a wife to a foreigner or at least to endure hardships as a migrant worker to support her family;<sup>22</sup>
- Women migrant workers tend to be much more vulnerable – relative to male migrants or native women – to discrimination, exploitation, abuse and trafficking – both in the actual migration move and in the labour markets of origin and destination countries:  
*“Women migrant workers suffer from double discrimination in employment: first because they are foreigners and hence subject to the same discrimination as male migrant workers; and second because they are women and as such often victims of entrenched traditional attitudes in their country of origin or of employment concerning the place of women in society in general and in working life in particular”.*<sup>23</sup>
- Gender-insensitive migration, labour market and social policies and the pervasiveness of socio-cultural norms that perpetuate gender inequalities have meant that in many cases, migrant women exchange a subordinate position within their family in the country of origin for an equally

subordinate, if not exploitative, position within the workplace in the destination country:

*“Population movements can be highly gender-specific, with women and men migrating for different reasons along different routes and with different results. But most migration-related policies and regulations have not adjusted to this – at either the country of origin or country of destination end of the migration spectrum. Policies are frequently non-existent or neglect the gendered nature of migration, with unforeseen consequences for women”<sup>24</sup>*

- There is often a downgrading or waste of human capital and deskilling; women migrants take up jobs mismatched with their educational or skill qualifications. For better income but lower status abroad, the women understate their qualifications in order to secure a job abroad;
- The migration of young women affects their life cycle trajectories, for example, they may delay marriage and having children. There may also be inter-generational impacts, in that older women may be left to look after grandchildren;
- The migration of mothers can have a more severe impact on children left behind than the migration of fathers. Children are found to drop out of school or have poor grades, have emotional problems, be drawn into substance abuse, be forced to enter the labour force early, suffer physical or sexual abuse;
- The trafficking of women and girls into the sex industry is contributing to the spread of sexually transmitted infections and HIV/AIDS across national borders. The health aspects are of growing concern;
- The “victims” of trafficking when “rescued” by the authorities normally face rapid deportation – because they are undocumented migrants – and are denied the right of access to justice. There is often a “revolving door” phenomenon, with trafficked women and girls ending back in their origin countries with the push factors unchanged and falling back into the hands of the same or other traffickers and being re-trafficked.

### 1.3.2. Vulnerabilities to discrimination, exploitation and abuse

*“The Committee [of Experts] draws the attention of governments to the particular vulnerability to exploitation and abuse of women migrant workers, who according to some estimates account for half the entire migrant population worldwide today. [...] Their vulnerability lies principally in the fact that they are employed abroad and hence outside the legal protection of their country of origin, but is also due to the fact that they often hold jobs for which there is little protection under social legislation: domestic workers, manual workers (in agriculture, factories or export processing zones), hostesses or entertainers in nightclubs or cabarets, etc. Their subordination is made worse by the lack of autonomy and the strong relationship of subordination that is typical of the jobs usually held by these workers; added to this is the fact that these women are usually young and poor, living in fear of losing their jobs, having had to leave their families in their countries of origin, do not speak the language of the country of employment, are unaware that they have rights that are being infringed, and usually do not know where to go for help. In these circumstances, the fact that they are in an irregular situation in the country of employment or that they are illegally employed there makes them even more vulnerable to violence or ill treatment”.*<sup>25</sup>



**Women migrant workers are at greater risk to discrimination, exploitation and abuse in several ways:**

- ☑ *As women vis-à-vis men;*
- ☑ *As foreigners compared to nationals;*
- ☑ *As dependent compared to autonomous migrants; and*
- ☑ *As irregular (which they often are) relative to documented migrants.*

- ☑ **As women vis-à-vis men:**

Gender inequality and discrimination persist in virtually all countries – whether origin, transit or destination. Within their families, at the workplace, in society and in the nation, women and girls still do not have equal rights and opportunities with men and boys. On the other hand, more and more women are being expected to assume responsibility for the survival of the whole family and to look for new sources of income.

*Within their families, at the workplace, in society and in the nation, women and girls still do not have equal rights and opportunities with men and boys. On the other hand, more and more women are being expected to assume responsibility for the survival of the whole family and to look for new sources of income.*

But they still face distinctions, exclusions or restrictions on the basis of their being born female, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field. Stereotyped gender roles persist – for example that men are

breadwinners and women are dependents; that men migrate and women are trafficked. Women, relative to men, have limited access to information and lack decision-making powers and control over resources. Labour markets and occupations in both countries of origin and destination remain largely segregated by sex.

☑ *As foreigners compared to nationals:*

Women migrants, like men migrants, are

*An important source of vulnerability is due to the fact that women migrant workers are often concentrated in occupations that are not normally covered by the destination country's labour codes or social security provisions.*

vulnerable in so far as they are outside the jurisdiction and protection of the laws of their own home country and are not entitled to the full range of protection and benefits of the destination country. An important source of vulnerability is due to the fact that women migrant workers are often concentrated in occupations, such as domestic service, sweatshop manufacturing, entertainment and the sex industry, that are not normally covered by the destination country's labour codes or social security provisions. In many countries, migrant workers are not allowed to form or join trade unions.

With the hardening of official attitudes towards migrants in general coupled with the growing resentment of nationals towards foreigners especially in situations of rising unemployment or economic difficulties in the countries of destination, the vulnerability of migrants in general, and women migrants in particular, has been increasing. **Xenophobia** (attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity) and **racism** (distinction based on difference in physical characteristics, such as skin coloration, hair type, facial features, etc) have been growing in the media, political discourse and public sentiments.

☑ *As dependent migrants compared to autonomous migrants:*

*The "one employer rule" and the visa sponsorship system put the worker almost totally under the control of the employer/sponsor.*

Women face discrimination and restrictions in the countries of destination in terms of entry, stay and labour market participation, including the right to work, access to welfare assistance, the right to remain and the right to sponsor the migration of others. This is especially the case when women move not as autonomous migrants but on the basis of family ties and are cast in a legally dependent position to the male migrants. Many entry laws still tend to assume that female migrants are mainly secondary migrants joining other migrants. As "dependents", migrant women have restricted labour market rights, may be deported if they lose the support of their husbands or families or may be summarily forced to leave if their husbands or parents are deported.



Another type of dependency is when women migrant workers are not allowed under the immigration laws of the receiving country to change employers or are required to have their visas sponsored by a national. The “one employer rule” and the visa sponsorship system (“*kafala*” system in the Middle East) put the worker almost totally under the control of the employer/sponsor. If they do not want to lose their ability to stay on in the country, the women migrant workers may have to put up with any kind of employment condition and abuse. The dependency is especially great in the case of migrant domestic workers who live in the employer’s household. The women have hardly any power of negotiation and are unable to react against breaches of their rights and severe abuse.

When women are allowed entry into a country as autonomous labour migrants, it is normally into the bottom end of the labour market. Many labour importing countries have in place legislation protecting their domestic labour market. Such legislation, which is often referred to as the “*priority rule*” means that employment permits will not be issued until it is verified that there are no nationals wanting to take the jobs. Women migrants are received to perform lower status jobs that are clearly unattractive to locals.

☑ *As undocumented or irregular migrants:*

Some countries have attempted to “protect” women and girls from being trafficked, exploited or abused by banning or restricting their mobility.<sup>26</sup> However, such restrictive migration policies often have the consequence of pushing women and girls into seeking illegal channels for migration and making them much more vulnerable to trafficking.

*Since they have no legal status in the destination country, they have no recourse to the law in case of violation of their rights. They are also too scared to complain or even to approach the authorities for any kind of official assistance. Even when they are “rescued” by the authorities, they are often treated as criminals.*

Women and girls who have entered a country without proper documents or port-of-entry inspection, whose legal residency in a country has expired as well as those who are legally resident in a country but are working without the permission of the State are especially vulnerable to exploitation and abuse. Since they have no legal status in the destination country, they have no recourse to the law in case of violation of their rights. They are also too scared to complain or even to approach the authorities for any kind of official assistance. Even when they are “rescued” by the authorities from employers, intermediaries or others exploiting or abusing them, they are often treated as criminals because of their illegal status. Trafficked women who escape their situation often find themselves re-victimized as a result of the treatment they receive at the hands of the authorities.



**Women migrant workers, therefore, face multiple forms of discrimination and disadvantage and are vulnerable to exploitation and abuse at each stage of the international migration process [👁️ Box 1.3]:**

- ☑️ *Decision-making and preparation for going abroad;*
- ☑️ *Recruitment and the journey for employment abroad;*
- ☑️ *Working and living abroad; and*
- ☑️ *Return to their countries of origin and reintegration back into their families and communities.*

☑️ ***Decision-making and preparation for going abroad:***

It has been said that the most critical period in the migration process is prior to departure – especially at the stage of making the decision to migrate. Often the decision to seek employment abroad is not made by the individual woman herself but rather by her family, especially by the male members. Although the family also exerts some influence on male migration, it is often the family that makes the decision to send daughters and wives overseas “to earn well, save and give [their] family a bright future”. It is in the family that women’s subordination to male authority is generally most obvious and immediate; it is the family that assigns or defines roles for women, which in turn determines their relative motivations and incentives to migrate; and it is the family that provides the resources and information that can support or discourage migration.

*Accurate, adequate and easily accessible information is critical as the basis for realistic decision-making. Unfortunately, potential women migrants and their families often have unrealistic expectations and perceptions about working and living abroad.*

Accurate, adequate and easily accessible information is critical as the basis for realistic decision-making. Unfortunately, potential women migrants and their families often have unrealistic expectations and perceptions about working and living abroad because recruitment agents and traffickers provide misleading information; returning migrants often give a rosy picture rather than admit the true nature of their migration experience; and male migrants provide information that might not be relevant for potential female migrants. Women themselves, because of their subordinate position within their family or society often lack access to the kinds of information they need on labour market opportunities, the true costs and benefits of migration, the legal and other requirements, etc.

☑️ ***Recruitment and the journey for employment abroad:***

Where women or their families lack access to realistic and accurate information concerning available job opportunities at home and abroad and the economic and social costs and benefits of overseas employment, they are especially at risk of being deceived by unscrupulous recruitment agents and traffickers.

*The “migration business” has become so lucrative that recruitment agents, overseas employment promoters and a host of other legal and illegal intermediaries and traffickers operate, often taking advantage of the women’s lack of access to accurate and realistic information.*



The recruitment stage can be fraught with dangers. The “migration business” has become so lucrative that recruitment agents, overseas employment promoters and a host of other legal and illegal intermediaries and traffickers operate, often taking advantage of the women’s lack of access to accurate and realistic information. The fees charged by agents are commonly exorbitant, so that the women and their families often go into long-term debt or sell their property to pay these fees. Depending on the placement fees they can afford to pay, they end up in different countries. The women may be confined in “training camps” under deplorable conditions for several months until they can be sent abroad, have their passports or other documents unlawfully withheld by the agent, and be subject to deceptive contractual agreements, contract substitution or the absence of contracts.

Illegal recruitment for migration has proliferated, often because of very restrictive, complicated, time-consuming or very costly procedures involved in legal migration. Women tend to be more likely than men to make use of illegal recruitment and migration channels because of their limited access to information, lack of time to search for legal channels and lack of financial resources to pay the fees. The nature of the work and the forms of migration open to women may also lead them to rely on fraudulent and dubious recruiters and agents. These situations make them easy prey for organized crime networks and illegal recruiters and expose them to high-risk situations in the context of irregular migration. Illegal, unscrupulous recruiters may also actively seek out women as being more gullible than men. The escalating problem of trafficking in women and children and smuggling of migrants can also be traced to the operation of well-organized networks, often with official connections.

The actual journey to the country of destination can be very risky and dangerous, especially when the migration move is in irregular or abusive conditions. There are many cases of women and girls illegally transported, smuggled or trafficked across international borders under appalling conditions – resulting in injury to or even death of the migrants concerned. During the journey women and girls may also be subject to sexual and physical violence by different intermediaries.

☑ ***Working and living abroad:***

Immigration laws governing entry into a country are generally not overtly sex-specific in so far as not explicitly including words such as “husband or wife”, instead of spouse, “daughter or son” instead of children, “male or female” instead of migrant. Instead, indirect factors, notably sex stereotypes and sex stratification, are at work. For example, practices that automatically assign the role of head of household to men increase the probability that women are administratively designated as spouses - and therefore dependents - both by visa officers and by the immigrant family itself.

*In jobs such as domestic work, in the entertainment and sex industry, as helpers in restaurants and hotels, female migrants have limited or no power for bargaining and few or no opportunities for establishing networks of information and social support. These jobs are often not recognized as work and are not, or are only very partially, covered by labour laws and welfare provisions.*

In so far as entry regulations admit migrants for certain occupations and there is gender segregation in these occupations, migrants admitted as seasonal agricultural workers or construction workers generally will be men, whereas women migrants usually dominate the services sector (domestic service, care-giving and entertainment). The application of skills criteria for entry would also tend to produce different outcomes for women and men, either because in the countries of origin, there is discrimination in access to skills training or because in the destination countries, gender stereotypes lead to women being associated with unskilled jobs and men with highly skilled positions.

In the countries of destination, “if migrants are concentrated in *SALEP-jobs* (Shunned by all Nationals Except the Very Poorest), migrant women are concentrated in the most vulnerable of these jobs”<sup>27</sup>. They are in the “*3D jobs*” – the dirty, dangerous and degrading jobs [👁️ **Section 1.3.4**]. Many women migrant workers, in particular domestic workers and entertainers, are subject to abuses such as contract violations (under/non-payment of wages, no rest days or holidays), substandard working and living conditions, restricted freedom of movement, physical, psychological or sexual abuse.

Most of these jobs are extensions of women’s traditional role of care-giving and household work and are characterized by individualized and isolated work environments. In jobs such as domestic work, in the entertainment and sex industry, as helpers in restaurants and hotels, female migrants have limited or no power for bargaining and few or no opportunities for establishing networks of information and social support. These jobs are often not recognized as work and are not or are only very partially covered by labour laws and welfare provisions, even for nationals. They are exposed to exploitation by employers, who often rely on their immigrant status (especially if they are undocumented) and their dependent relationship on their employers to underpay them, overwork them and treat them as a docile labour force.

☑️ *Return and reintegration:* *Just as the life of migrant women is hard abroad, their reintegration upon return may be equally difficult.*

For a large proportion of migrants, return represents the last stage of the migration process and the attainment of the ultimate migration goal. Some women return with accumulated savings and assets, greater self-confidence and new norms or attitudes acquired abroad. They acquire enhanced status and decision-making power within their own families and, importantly, may be role models for other young women seeking a better life.

But they can also face serious re-adaptation problems. Case studies show that, just as the life of migrant women is hard abroad, their reintegration upon return may be equally difficult. Female migrants need assistance not only to fit back into their families and communities but also to find satisfying and remunerative employment. Their problems are particularly serious when they find that their time abroad has contributed to family break-ups, their spouses have taken new partners and the

money they faithfully remitted every month disappeared in family consumption. Without any savings or being unable to find employment locally, many of the women seek employment abroad again. Where the women or their families have managed to save, it is still a challenge for them to be able to put their hard-earned savings into productive investments because of the lack of local opportunities or official support.

Under international covenants and anti-trafficking laws, those sold or trafficked into a country should be considered victims exempt from fines or imprisonment and granted safe repatriation back to their countries of origin. However, trafficked women and children are commonly dealt with under the immigration and alien laws or labour laws of the destination country, arrested and often imprisoned for long periods without charge or trial and eventually deported. Even back in their own countries, trafficked persons may not be safe. In most cases, trafficked persons returned home are not afforded any protection by the authorities of their countries of origin, and may be highly vulnerable to reprisals by traffickers and to being re-victimized into trafficking. Victims of trafficking may also need socio-psychological counselling, health care and legal assistance to help them deal with their terrible experiences and to successfully reintegrate back into their families and communities.


**Box 1.3. Vulnerabilities at different stages of the migration process**

<b>Migration Stage</b>	<b>Vulnerabilities faced by female migrant workers</b>
<b>Recruitment and Pre-departure</b>	<ul style="list-style-type: none"> <li>▪ Illegal recruitment and trafficking</li> <li>▪ Excessive fees for placement and documents</li> <li>▪ Cheating and extortion by agencies and brokers</li> <li>▪ Non-existent jobs</li> <li>▪ Inappropriate and expensive training programmes</li> <li>▪ Being locked up by recruiters, abuses in “training centres”</li> <li>▪ Not being sent abroad at all</li> <li>▪ Falsification of worker’s identity</li> <li>▪ Lack of information on terms and conditions of employment</li> </ul>
<b>Journey</b>	<ul style="list-style-type: none"> <li>▪ Expensive fares</li> <li>▪ Unofficial transportation/smuggling</li> <li>▪ Hazardous travel</li> <li>▪ Victimization in transit</li> </ul>
<b>Working and living abroad</b>	<ul style="list-style-type: none"> <li>▪ Contract substitution or contract violations</li> <li>▪ Dependent employment relationship</li> <li>▪ Withholding of papers/documents</li> <li>▪ Poor working and living conditions</li> <li>▪ Health and safety risks and lack of social protection</li> <li>▪ Non-payment of or unauthorized deductions from wages</li> <li>▪ Physical, psychological or sexual abuse or violence</li> <li>▪ Limited freedom of movement</li> <li>▪ Lack/absence of information, access to services and redress mechanisms</li> <li>▪ No embassy or inadequate services provided by embassy</li> </ul>
<b>Termination of contract</b>	<ul style="list-style-type: none"> <li>▪ Illegal termination</li> <li>▪ Sudden, unjust termination</li> <li>▪ No place to stay before being sent home</li> <li>▪ Absence of complaint and redress procedure</li> </ul>
<b>Return and Reintegration</b>	<ul style="list-style-type: none"> <li>▪ No alternative source of income, difficulties of finding employment</li> <li>▪ Extortion and overpricing of services by airport and customs personnel, moneychangers, etc.</li> <li>▪ Bankruptcy</li> <li>▪ Family problems, adjustment</li> <li>▪ Social reintegration difficulties, particularly for survivors of violence abroad</li> <li>▪ Danger of being re-trafficked.</li> </ul>

Adapted from: Asian Migrant Centre, Asia South Pacific Bureau for Adult Education, Migrant Forum in Asia, *Clearing a Hurried Path: Study on Education Programs for Migrant Workers in Six Asian Countries* (Hong Kong, 2001), pp.93, 114-116; Unlad Kabayan Migrant Services Foundation Inc., *Planning Your Re-entry Filipino Migrant Workers Orientation Course* (Quezon City, Unlad Kabayan, November 2001), pp.16-17; and Asian Migrant Centre and Coalition for Migrants’ Rights, “Strategies, Experiences and Lessons: Protecting the Rights and Empowering Asian Migrant Domestic Workers”, power point presentation made at the ILO Programme Consultation Meeting on the Protection of Domestic Workers against the Threat of Forced Labour and Trafficking, 17-19 February, 2003, Hong Kong.

### 1.3.3. Migration in abusive conditions



It is essential to clearly distinguish the different types of migration and the relationship between regular and irregular/undocumented migration, smuggling and trafficking. The vulnerability of migrants to exploitation and abuse would be very much influenced by the type of movement [  Boxes 1.4 and 1.5. In Box 1.5, the darker the shade of the box, the higher the vulnerability to abuse].



Migration in abusive conditions includes situations in which migrants are subjected during their journey, on arrival or during their period of residence and employment to “conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations”.<sup>28</sup>




Individuals, who are recruited, migrate, reside or work in violation of immigration and employment laws and regulations are most likely to find themselves highly vulnerable to exploitation and abuse. They include irregular or undocumented migrants, those who are smuggled and those who are trafficked.



The term “*illegal migrant*” should not be used. It contradicts the spirit, if not directly violates the letter of the Universal Declaration of Human Rights, which clearly establishes in Article 6 that *every person* has the right to recognition before the law, and in Article 7, that *every person* has the right to due process.<sup>29</sup> The preferred term is “irregular migrant” or “undocumented” migrant.

***Irregular or undocumented migration:***

The irregular, undocumented or unlawful entry, employment and residence of foreign workers are not new phenomena. But what gives cause for concern is the scale on which they are now happening and the increasing proportion of whom are women. With increasing legal restrictions on entry, stay and employment of foreigners, more and more migrants are in irregular situations, where they have entered the destination country by fraudulent or unofficial channels or have not received formal residence or employment status. The irregular situation is often not temporary. Many migrants may live and work in an irregular situation for several years, and in some cases even permanently. The abusive conditions in which they may find themselves are many and diverse [  Box 1.6].

The way in which irregular migration for employment has been changing is also a cause for concern. Irregular migration is becoming a highly organized international activity with important national repercussions. It is also closely related to other lucrative criminal activities, including drugs and arms trafficking, falsification of identity papers, human trafficking, forced prostitution, etc.

#### **Box 1.4. Categories of Female International Migrants** <sup>30</sup>

##### **Women as permanent immigrants:**

These are documented migrants admitted for permanent resettlement in the host country. Only a handful of countries still permit migration on a permanent basis, namely the United States, Canada, Australia and New Zealand. Women have been admitted mainly as dependents of male migrants, for example under family reunification schemes. Women admitted as dependents often have restricted rights to participation in the labour market.

##### **Women as temporary migrant workers:**

These are women admitted by a country other than their own for the explicit purpose of exercising an economic activity. They can be *seasonal migrant workers* employed for only part of a year because the work they perform depends on seasonal conditions. *Project-tied migrant workers* are admitted for a defined period to work solely on a specific project carried out in the host country by the migrant workers' employer. *Contract migrant workers* have contractual arrangements that set limits on the period of employment and are not allowed to change jobs. *Temporary migrant workers* are allowed to work for a limited period in a particular occupation or a specific job and may change employers and have their work permits renewed. Most female migrant workers are unskilled or semi-skilled, but women are also accounting for a rising proportion of *highly skilled or professional migrants*, often referred to as the "*brain drain*".

##### **Women as refugees and asylum-seekers:**

A refugee is "any person who, ...owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country" <sup>31</sup>. Refugees are those seeking permission to enter the host country, while asylum-seekers are either already in the country in which they hope to be recognized as refugees. Some countries have now adopted "women at risk" immigration programmes, which provide special resettlement opportunities for unprotected refugee women and their dependents; the criteria for granting refugee status includes women fleeing persecution on the basis of gender discrimination, including female genital mutilation.

##### **Women as irregular or undocumented migrant workers:**

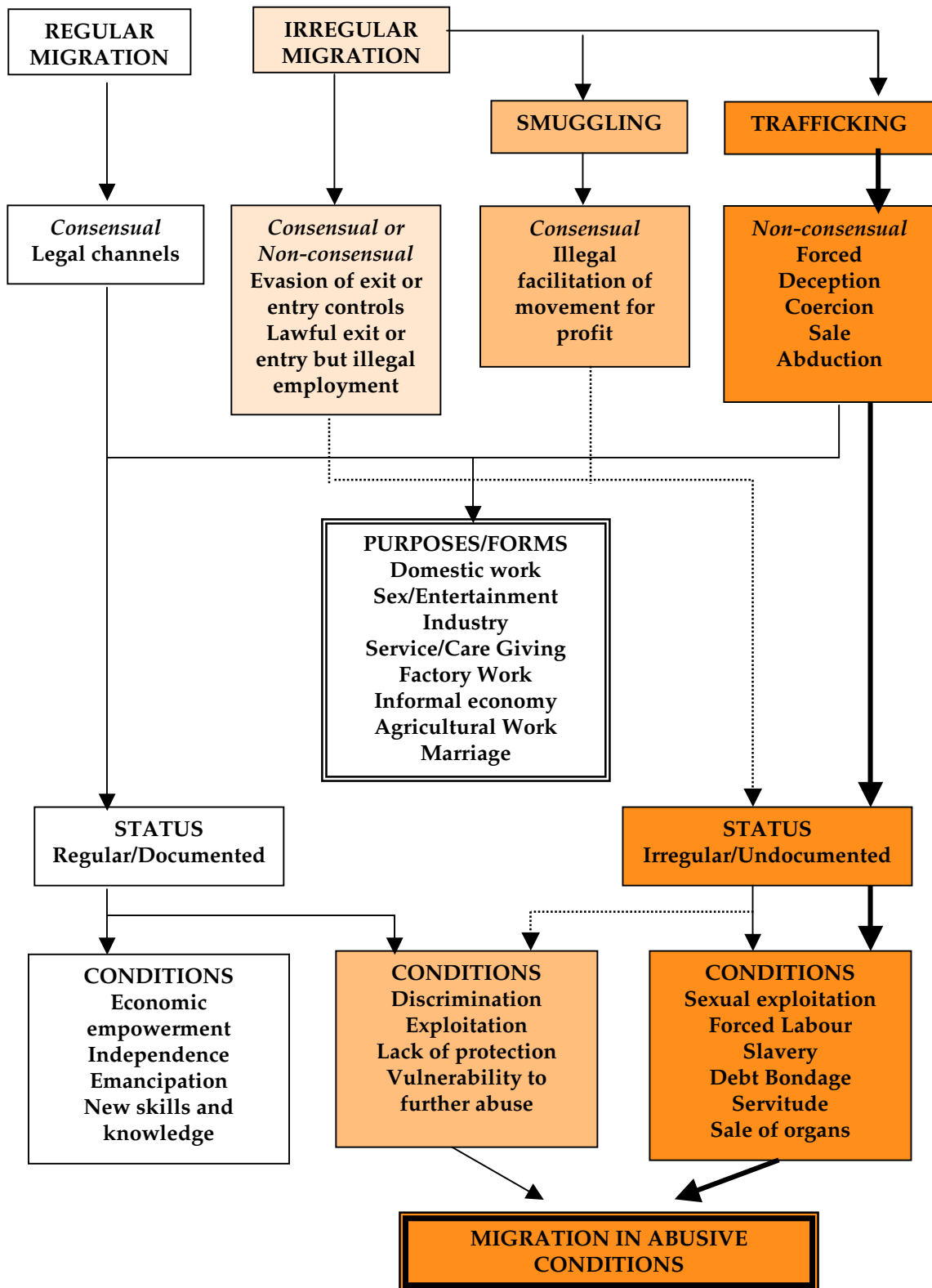
Irregular or undocumented migrant workers are those who do not comply with the conditions necessary to be authorized to enter, to stay and to engage in a remunerative activity in the country of employment pursuant to the law of that State and the international agreements to which that State is a party. Irregular or undocumented female migrant workers can be:

- *Those who enter the country legally but whose stay or employment contravene the law.* One example concerns those who overstay after their contract or visa has expired or after they left their employer and they are no longer in line with applicable immigration and labour law of the country of employment;
- *Those whose stay and entry are lawful but who do not have the right to work and are engaged in illegal or illicit employment.* They are usually women who migrated as dependent spouses and whose residence permit is separated from their work permit;
- *Those who enter the country illegally and who seek to change their status after arrival to find legitimate employment.* They may enter by fraudulent or unofficial channels, such as using false documents or having no documents and do not have the right to stay or to work;
- *Those who enter the country illegally, whose stay is unlawful and whose employment is illegal.* This kind of irregular migration usually involves illegal recruiters and traffickers, smugglers or organized crime networks. Such women would be extremely vulnerable to exploitation and abuse.

While persons are generally categorized as irregular due to the manner in which they entered or remained in a country of destination or transit, migrants may be irregular in their countries of origin as well. For example, some countries restrict outward travel for work by their female nationals to external destinations. Some countries prohibit the emigration of women below a certain age to become domestic workers abroad. Others may prohibit labour migrants from leaving without completing certain registration procedures. Emigrants who contravene these requirements may be considered irregular in their origin countries, whether or not they are considered irregular in the destination or transit countries.



**Box 1.5.**  
**Interrelations between regular and irregular migration, trafficking and smuggling**





### Box 1.6. Migration in abusive conditions

Malpractices exist where the treatment of migrant workers and members of their family is not in accordance with national laws and regulations or ratified international standards or where such treatment is recurrent and deliberate. Exploitation exists where, for example, such treatment incurs very serious pecuniary or other consequences; migrants are specifically subjected to unacceptably harsh working and living conditions or are faced with dangers to their personal security or life; workers have transfers of earnings imposed on them without their voluntary consent; candidates for migration are enticed into employment under false pretences; workers suffer degrading treatment or women are abused or forced into prostitution; workers are made to sign employment contracts by go-betweens who know that the contracts will generally not be honoured upon commencement of employment; migrants have their passports or other identity documents confiscated; workers are dismissed or blacklisted when they join or establish workers' organizations; they suffer deductions from wages without their voluntary consent which they can recuperate only if they return to their country of origin; migrants are summarily expelled as a means to deprive them of their rights arising out of past employment, stay or status.

Source: ILO, *Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration* (Geneva, ILO, 1997), Annex III, para.1.2.

#### **Trafficking and Smuggling:**

The interpretations, definitions and approaches to trafficking, smuggling and irregular migration are critical [ **Box 1.5**]. Trafficking involves much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process – such deception, force or coercion being used for the purpose of exploitation. The Trafficking and Smuggling Protocols to the United Nations Convention on Transnational Organized Crime, 2000 (sometimes referred to as the Palermo Convention and Protocols) make these distinctions [ **also Section 1.4.3.2 and Booklet 6**]. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. <sup>32</sup>

#### *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000*

##### *Article 3(a):*

##### *Trafficking of human beings:*

*The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.*



*Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000:*

*Article 3 (a):*

*Smuggling of migrants:*

*The procurement in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Illegal entry shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.*



**Trafficking thus involves force, coercion and/or deception occurring during at least some stage of the migration process and is aimed at exploiting the person involved.** Consent by an adult victim of trafficking is not relevant when any of the means included in the Trafficking Protocol definition has been used. For persons under 18 years of age, the very recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation constitutes “trafficking in persons”.



**Migrant smuggling may involve no coercion whatsoever.** It refers to the facilitated, illegal movement of persons across borders for profit. The smuggled person, desiring to reach a destination country where legal channels of migration have been blocked off, may enter into an entirely consensual contract in order to achieve clandestine and illegal migration. In principle, the smuggling of persons constitutes an illegal border crossing and is therefore a violation of the rights of the State. In contrast, trafficking in human beings is a violation of the individual, so that the victims of the crime are the trafficked persons themselves.



**It is extremely crucial not to conflate trafficking with various manifestations of migration and mobility on the one hand and with prostitution and sex work on the other. The dangers of conflating and collapsing the categories of migration with trafficking and trafficking with prostitution are:**<sup>33</sup>

- Equating trafficking with migration can lead to simplistic and unrealistic solutions – in order to prevent trafficking, there are both conscious as well as inadvertent moves to stop those who are deemed vulnerable from migrating. *“Conflating trafficking with migration results in reinforcing the gender bias that women and girls need constant male or State protection from harm, and therefore must not be allowed to exercise their right to movement or right to earn a living in a manner they choose”;*
- Curbing migration does not stop trafficking, and merely drives the activity further underground;
- Conflating trafficking with sex work or prostitution leads to anti-trafficking measures being invariably anti-prostitution measures – *“Prostitution per se as the exclusive purpose of trafficking is an untenable definition as not all victims are prostitutes and nor have all the prostitutes been trafficked”.*

*“Trafficking becomes an offence and a violation of human rights because of the non-consensual or deceptive nature of the movement and the exploitative or servile nature of the conditions of work and life to which the trafficked person is confined. It does not become an offence because of the purpose for which a person is moved or moves. The common elements in the trafficking are not the movement or the site of work per se but the brokering, lack of consent and exploitative conditions of work. Unfortunately, most initiatives on trafficking have failed to make these distinctions, and are focused on stopping movement, especially of women, regardless of the consent of the subject, on the assumption that they will be trafficked”.<sup>34</sup>*

*“Over-emphasizing trafficking and taking it out of context (in relation to migration) is strategically counter-productive in the fight for human rights because (a) trafficking puts migration in a crime control, crime prevention context, rather than talking about migrants’ human rights first and then talking about trafficking in the context of human rights; and (b) trafficking is being used by governments as a vehicle to develop more restrictive approaches to migration in general”.<sup>35</sup>*

### 1.3.4. Labour market position

Often by the very nature of the work which they undertake, women can

*Often by the very nature of the work which they undertake, women can be particularly vulnerable when employed for work outside their own countries.*

be particularly vulnerable when employed for work outside their own countries.<sup>36</sup> The global labour market reproduces traditional gendered divisions of labour. Women are much more dependent than men for employment in the informal unregulated sectors, not covered by labour law or social protection and not unionised – so that they have little or no representation and voice.

The **position of women migrant workers in the labour markets of destination countries** [👁 Section 4.3.2 in Booklet 4] is characterized by:

- Concentration in a limited number of occupations, especially in those occupations where women have typically dominated and which are associated with traditional female roles and sex stereotypes;
- Concentration in the SALEP (Shunned by all Nationals Except the Very Poorest) and “3D” (dirty, dangerous and degrading) jobs: mainly as domestic workers, “au pairs”, entertainers, sex workers, helpers in restaurants and hotels, cleaners, sales girls and manual workers in labour-intensive manufacturing in small factories and sweatshops. These are the jobs that are low-skilled, low-paid, with inferior working conditions – jobs which probably they would have rejected in their home countries;
- Concentration in the informal economy where decent work deficits are most serious: lack of respect for labour rights, unproductive and poorly remunerated jobs, little or no social protection and lack of organization, representation and voice vis-à-vis employers and the authorities;
- Occupational hazards and safety and health risks: The kinds of jobs women migrants are employed in expose them to specific hazards and risks, including harmful chemicals, substances or radiation for those working in small factories and sweat shops and health risks for those in the entertainment sector. Many work in hazardous buildings or premises without adequate safety exits in case of fires or industrial accidents;
- Relatively little or no competition since nationals do not want these jobs. In fact, the demand for women migrant workers, in particular those going into domestic service, is often high and sustained since they represent a form of “replacement mobility” for female nationals who are freed from their household and care responsibilities to take up other positions in the labour market;
- Limited representation in the professional, skilled categories; the only exceptions are as teachers and nurses;
- Exploitation of those who are brought in to work as “trainees” or “technical interns” in factories and small and medium size enterprises. Officially, the trainee programme, which is used in countries such as Japan and the Republic of Korea, is supposed to train workers from developing countries in the use of new technologies and to promote the transfer of

technology. However, it is often misused as a system to import cheap labour. The trainees are not provided any benefits at all, and both the sending and receiving countries do not provide proper safeguards for these workers;<sup>37</sup>

- Higher unemployment rates for immigrant women compared to native women;
- Lower wages for immigrant women as compared to immigrant men and native women workers;
- Lack of organization, representation and voice: one important reason for the exploitation of migrant women workers is that they are in sectors where workers are normally not organized and therefore have no bargaining power or representation vis-à-vis employers or the public authorities.

A major occupation of female migrant workers is in domestic service. But as described in the Colombo Declaration of the Regional Summit on Foreign Migrant Domestic Workers, August 2002: <sup>38</sup>

*“From the testimonies and voices of foreign migrant domestic workers and other stakeholders at the Summit, it was apparent that the isolation and unequal dependency on the employer for the fulfilment of the foreign migrant domestic workers’ basic human needs, the absence of access to own documents, restricted mobility and captivity within the household make them, especially women, vulnerable. We have heard accounts of foreign migrant domestic workers being further victimized, accused, blamed and punished as consequences of sexual abuse, assault and exploitation which even ended in death. Lack of access to free and fair trial, appeal, judicial and immigration procedures and decisions, gender biased policies, regulations and practices further increase risks to their human security and rights”.*

Another major sector that women migrants, in particular those who have been trafficked, end up in is the sex sector:

*“Many of these persons are trafficked into the international sex trade, often by force, fraud or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution, pornography, sex tourism and other commercial sexual services. The low status of women in many parts of the world has contributed to a burgeoning of the trafficking industry”.*<sup>39</sup>



**The vulnerability of women migrant workers in the labour markets of destination countries can be traced to:**

- Very importantly, their employment in jobs not covered or inadequately covered by labour legislation or other social security or welfare provisions;
- The persistence of gender stereotypes and occupational segregation in the labour markets;

- Their individualized work situations (especially for those in domestic service in other people's homes) where there is greater isolation and lower likelihood of establishing networks of information and social support;
- The nature of their employment which is normally regulated by a relationship heavily in favour of the employer – hence, their almost complete dependence on their employer;
- Their workplaces, in particular other people's homes, brothels, small factories and sweatshops, which are away from the public eye and from official monitoring or inspection;
- Their involvement in work which sometimes is not lawful in the destination country, such as in sex work or prostitution;
- Their inability to communicate effectively in the local language;
- Their inability to change jobs without authorization; they do not seek redress for abuses for fear of losing their jobs and being refused permission to take other employment;
- Their lack of organization and, therefore, their lack of representation and bargaining power;
- Their employers' often lack of respect for normative working conditions.



## 1.4. Framework of response

### 1.4.1. Comprehensive, multi-pronged and multi-level responses



A framework to address the multifaceted causes, manifestations and consequences of discrimination, exploitation and abuse of women migrant workers, including trafficking, should be comprehensive, multi-pronged and multi-level:

- ☑ *Aimed at achieving regulated and orderly labour migration and as a matter of [👁 Section 1.4.2]:*
  - *Promoting human rights, including labour rights and migrant rights;*
  - *Promoting gender equality and ending all forms of discrimination, racism and xenophobia;*
  - *Promoting decent work; and*
  - *Eradicating poverty and social exclusion.*
- ☑ *Based on international standards [👁 Section 1.4.3];*
- ☑ *Focusing on the root causes of the supply of and demand for migrant and trafficked workers;*
- ☑ *Covering all stages of the migration process and trafficking cycle;*
- ☑ *Combining initiatives at all levels;*
- ☑ *Involving a wide range of actors with cooperation and coordination at all levels.*

- ☑ *Aimed at achieving regulated and orderly migration:*

*“Win-win” situations can be achieved through policies, laws and administrations that maximize the benefits and minimize the negative impacts of migration on countries of origin and destination and on the migrants themselves.*

A country cannot formulate its international migration policies without considering the impact on other domestic policies and goals and without considering international migration patterns and foreign policy implications and goals more generally. The aims would be on the one hand, to address the imbalances between the supply of and demand for workers in the labour markets of different countries and to achieve longer-term development objectives; and, on the other hand, to address the management of migration and the human and labour rights of migrants. Mutual benefits or “win-win” situations can be achieved through policies, laws and administrations that maximize the benefits and minimize the negative impacts of migration on countries of origin and destination and on the migrants themselves. Unregulated migration can often have immeasurable social, financial and political costs for the individual, society and government, at any point on the migration spectrum, i.e. for the country of origin, transit or destination. Informed, transparent and coherent approaches to migration will help minimize these “costs”. Such approaches should involve:

- Countries of origin with large numbers of out-migration workers adopting specific foreign employment policies with clear development and social objectives;

- Countries of destination adopting a migrants admission system based on informed and transparent assessment of labour market demand; and
- Countries of origin and destination pursuing their shared concerns through cooperative action, such as through regional consultative processes and bilateral or multilateral labour agreements.

A sending country cannot expect that labour emigration would be at desirable levels and would proceed in desirable directions if the State adopts a completely neutral position and leaves everything to the market. Another critical reason for intervention by the State is to reduce the private cost of migration for its nationals and to ensure their protection while working abroad. As shown in **Box 1.7**, sending countries can have different types of foreign employment policy regimes and different objectives relating to the emigration of their nationals for employment abroad. What is important is to reconcile the inherent conflicts among the policy goals – so that, for instance, the desire of the State to increase foreign exchange earnings does not leave migrant workers exposed to exploitation and abuse or, on the other hand, the goal of the State to protect women migrant workers does not infringe on their basic human rights.

For the destination countries, the aim should be to regulate and promote orderly migration by

*It is unfortunate that in many destination countries, the local labour market demand for migrants to fill jobs and the immigration policies and administrative procedures for managing migrant workers remain quite separated.*

admitting labour migrants based on systematic and realistic assessment of the labour market situation and “respond to measured, legitimate needs, taking into account domestic labour concerns as well”.<sup>40</sup> The current and emerging demand for migrant workers at all levels of the skills spectrum should be regularly assessed by the appropriate government agency in destination countries (ministries of labour rather than ministries of interior or ministries of justice), in consultation with employers’ and workers’ organizations - and used as an informed and transparent basis for determining the admission of migrant workers. It is unfortunate that in many destination countries, the local labour market demand for migrants to fill jobs and the immigration policies and administrative procedures for managing migrant workers remain quite separated. Many destination countries control migrant labour through their immigration departments or the security apparatus, which tend to be under the ministries of interior.

Legal labour migration channels would reduce exploitation, trafficking and smuggling of migrants, both women and men. Bilateral or multilateral labour agreements between countries of origin and destination, that formalize each side’s commitment to ensuring that migration takes place in accordance with established rules and pre-agreed terms and conditions would help to ensure the rights of migrant workers [👁️ **Box 1.8 and also Box 3.5 in Booklet 3**]:



### Box 1.7. A foreign employment policy for countries of origin

For a country of origin, the major policy concerns related to the emigration of its nationals for employment abroad would be related to its:

- **Development objectives:** to relieve high rates of domestic unemployment, generate foreign exchange remittances, increase the rate of migrant savings;
- **Social objectives:** to ensure that their nationals' rights and interests are respected and protected while they are working and living abroad, curb recruitment abuses and malpractices and protect vulnerable migrants, in particular women and children, from exploitation and trafficking; and
- **Strategic objectives:** to expand and diversify the destination countries of employment, influence the skill composition of the emigrant workforce, minimize possible dislocation of domestic industries due to loss of skilled labour, and reduce possible wage distortions that may be caused by the extension of the labour market abroad.

The extent to which the country is able to meet these different objectives and to reconcile some of the inherent conflicts among the goals may depend on the type of foreign employment policy regime:

- **Laissez-faire:** A country of origin can leave it completely up to the market to decide how and where labour is to be employed and on what conditions and not intervene at all in the recruitment process. It does not impose any standards and the terms of the employment contracts are the concern only of the worker and the foreign employer.
- **Regulated system:** The State of origin adopts laws and regulations governing recruitment of nationals for employment abroad. The State in effect allows private recruitment agents to be the main players within its domain, but sets laws and regulations to cover proscribed recruitment practices, with penalties imposed on violators.
- **State-managed system:** The State does not simply regulate foreign employment but also sets up state organizations to recruit and place workers abroad. The State has an active foreign employment policy that covers the entire migration process and that may include interventions to influence demand (such as opening up new and better destinations for migrant workers) and supply (such as improving the skills of migrant workers or imposing barriers to exit of scarce skills); interventions to regulate recruitment (including being directly involved in recruitment, introduction and placement of migrant workers) and interventions to protect workers.
- **State-monopoly:** The State assumes full and sole responsibility for organizing labour migration. Under such a policy regime, there is no room for the operation of private intermediaries in the recruitment of nationals and their deployment in foreign countries.

Adapted from: M. I. Abella, *Sending Workers Abroad A Manual for Low and Middle-Income Countries* (Geneva, ILO, 1997), pp. 8-9, 14-15.

### **Box 1.8. Bilateral labour agreements**

Increasingly many states are turning to bilateral agreements to regulate both labour emigration and immigration flows as well as to respond to labour market fluctuations. They are designed to ensure the transfer of labour from one country to another. They usually include the aims of the treaty, the definition of the labour concerned, admission criteria, the terms of migration, the status of labour migrants, fair and equitable treatment clauses, and annual quotas (if applicable). The main reason for sending countries is to decrease the supply pressure; for receiving countries it is to fill labour shortages. Some of the advantages of such agreements are that they can be adapted to the particularities of specific groups of migrants, and that both the sending and the receiving countries can share the burden of ensuring adequate living and working conditions, the monitoring of the agreement, and a more active management of the pre-and post-migration processes.

Bilateral agreements on labour migration involve the participation not only of governmental agencies, workers and employers but of an increasing range of public and non-governmental organizations and local authorities. Their mission is to make the process beneficial for all, reduce any negative consequences and increase the positive impacts. The best bilateral labour agreements seem to be those that put in place a formal structure which ensures that all the key players are engaged and are fully committed to the process.

Source: OECD, *Bilateral Labour Agreements: Evaluation and Prospects* - Report for Seminar Jointly Organised by the OECD and the Swiss Federal Office of Immigration, Integration and Emigration (IMES), Montreux, 19-20 June, 2003, pp.3-4.

Primarily in response to the growing incidence of irregular migration and trafficking, governments are acknowledging that solutions to international migration challenges do not lie in unilateral or even bilateral actions. Bilateral arrangements are therefore being increasingly supplemented by multilateral and regional approaches. For example, there have been a number of **regional consultative processes** that bring developed and developing countries together, either by groups of like-minded states or in groups with diverse interests but common geography. Examples of regional consultative processes include the Regional Conference on Migration (Puebla Process) [👁️ **Box 1.9**], the Migration Dialogue for Southern Africa, the Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, the South American Conference on Migration (Lima Process).<sup>41</sup>

In the context of globalization, a number of multilateral and regional economic groupings, such as the North American Free Trade Association (NAFTA), the Association of South-East Asian Nations (ASEAN), the South American Common Market (MERCOSUR), have been formed to facilitate freer movement of goods and services. Historically, economic or trade groups had very little to do with those responsible for migration policies. But there is now greater recognition that freer movement of labour should complement economic integration processes. However, the challenge remains of how to effectively integrate the issues of labour migration and protection of migrants.

### **Box 1.9. Regional Consultative Process: the Puebla Process**

Formally known as the Regional Conference on Migration, the Puebla Process includes three countries of immigration (Canada, Costa Rica and the US) and a number of net emigration countries including El Salvador, Guatemala, Honduras, Nicaragua and Mexico. Most of these are also transit countries. In the early 1990s, most governments in the region regarded migration as an issue of national sovereignty, and did not share information or consult with other governments. By 1995, bilateral consultation mechanisms had been established by countries linked by strong population flows. The bilateral discussions revealed that the issues were of a regional character. Therefore, the Mexican government proposed a regional conference on migration. The first meeting took place in Puebla, Mexico in March 1996. The Puebla Process is organized as both an inter-governmental and a social regional forum, led by the vice ministers of immigration and foreign affairs of each country, as well as a parallel body consisting of national and international NGOs dealing with migrants and migration issues. A number of intergovernmental organizations have also joined the process as observers.

The specific aims include: objective knowledge and understanding of migration flows; condemnation of violations of the human rights of documented and undocumented migrants; fostering the cooperation of NGOs and governments; implementing mechanisms for intergovernmental consultation and discussion of migration affairs and for the protection of the rights of migrants; “early warning” mechanisms; allowing neighbouring countries to prepare for changes in migration law and border enforcement; exchange of laws and practices, in order to analyse and improve them; alerting society against trafficking, and promoting laws and practices that effectively reduce it; creating mechanisms for the systematic discussion of migration issues among member governments; promoting control of extra-regional migration; developing new and improved mechanisms to reduce forgery and the fraudulent use of migration-related documents.

Since its creation five ministerial conferences have been held, each of which was preceded by a technical meeting where officials, NGOs, and experts discuss specific migration issues and prepare the ground for agreements and recommendations scheduled for discussion at the ministerial conferences. The main achievements of the Puebla Process have been:

- Overcoming the lack of communication and mistrust which prevailed in the region;
- Providing a forum for the discussion of domestic and foreign policy developments likely to affect travellers and migrants;
- Informing foreign governments of the situation of their nationals in a destination country, thereby improving consular protection activities and ensuring due process;
- Arriving at procedural agreements for the return/deportation of undocumented and irregular migrants;
- Discussing and learning from each other’s best practices in migration management.

Source: International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003), pp.125-126.

See also <http://www.rcmvs.org/>

☑ ***Focusing on the root causes of the supply of and demand for migrant and trafficked workers:***

*A comprehensive approach should address the conditions that compel out-migration, reduce the widespread demand for clandestine and unregulated labour and replace restrictive barriers with regulated legal labour migration channels.*

Often, countries tend to emphasize only national security concerns and to focus on the control of migrants and the control of crimes related to trafficking, with the migration authorities, judiciary and law enforcement agencies the most involved. But restrictive migration measures are often adopted with little or no consideration of labour supply and demand factors. A comprehensive approach should address the conditions that compel out-migration, reduce the widespread demand for clandestine and unregulated labour and replace restrictive barriers with regulated legal labour migration channels. The important underlying reasons include:

- *The functioning of labour markets and the observance of fundamental labour standards* in both countries of origin and destination. The issues to be tackled include, for example, the reasons behind labour market failures and the disadvantaged position of women in the labour market; why and how the informalization and casualization of production and employment relationships is increasing the demand for migrant workers; how labour market institutions (including labour inspection and employment services) can be strengthened and labour standards enforced, how workers can be better organized to improve their bargaining power and defend their rights;
- *The feminization of poverty* and how both absolute and relative poverty affect the incentives to migrate;
- *Underlying gender discrimination* and women's unequal access to education, training, information, resources, decision-making powers; and
- *The failure of macroeconomic and social policies* that have emphasized the free flow of goods and capital but not of labour, that have neglected productive employment creation and that have resulted in a growing crisis of economic and social security.

It is worth emphasizing, therefore, that a comprehensive response

*Labour market and employment policies in origin and destination countries are essential to tackle the root causes of the vulnerability of women migrant workers.*

must address the labour market and employment situation, labour standards and working conditions in origin and destination countries. Labour market and employment policies are essential to tackle the root causes of the vulnerability of women migrant workers: these include labour market failures (high unemployment and under-employment and poor working conditions); persistent occupational segregation, unequal pay and the disadvantaged position of women relative to men in the labour market; and the growth of the informal economy. It is also important to improve employment services to inform job seekers of their options, and strengthen labour inspection and monitoring to ensure proper labour standards for all workers, national and migrant.

☑ ***Covering all stages of the migration process and trafficking cycle:***

Since discrimination, exploitation and abuse of women migrant workers are

not an isolated act but a “multi-layered string of events” involving many actors at the various stages of the migration process and trafficking cycle, countries of origin, transit and destination all need to take action – nationally, bilaterally and within regional and international frameworks – so as to:

- Prevent and combat trafficking, assist and protect trafficked persons, investigate and prosecute traffickers and provide redress to victims;
- Ensure that potential migrants (and their families) have the necessary information and understanding to make realistic decisions about migration;
- Adequately prepare those who intend to migrate for working and living in other countries;
- Regulate and monitor all intermediaries involved in the recruitment, transport and employment of migrant workers;
- Adopt effective sanctions against those involved either directly or indirectly in the exploitation and abuse of migrant workers;
- Promote fundamental principles and rights at work and core labour standards in both origin and destination countries and strengthen labour institutions to implement, monitor and inspect these rights;
- Provide support services and monitor the welfare of migrant workers in the destination countries;
- Facilitate the return and socio-economic reintegration of migrant workers, including taking special measures to protect the returned victims of trafficking from reprisals and from being re-trafficked.

☑ ***Combining initiatives at all levels:***

International organizations and civil society groups stress the importance of working at the grassroots/community level so as to directly reach vulnerable women and girls. Programmes should be community-based, “where the participation of families and the community are vital for empowerment and to reduce vulnerability in the migration process”;<sup>42</sup> and they should combine action on many fronts [👁️ **Box 1.10**].

These community level initiatives must also be linked to and supported by macro development policies and appropriate law reform and law enforcement at national level to address the root causes identified above, such as unemployment and under-employment, the feminization of poverty, persistent gender discrimination and to ensure proper working conditions and labour standards in all sectors of the economy and for all workers. Micro projects unlinked to macro processes are unsustainable [👁️ **Boxes 1.11 and 1.12**].

Ideally, there should also be a review of policies at regional and international/global levels [👁️ **Box 1.12**], including policies for improving migration regimes, such as regional or bilateral agreements for the temporary or permanent movement of persons across borders; and trade policies to cover the temporary movement of service providers, highly skilled, semi-skilled or unskilled. Foreign aid and development assistance from destination countries can target key origin

countries or specific out-migration communities to promote alternative economic opportunities and link these opportunities with cooperation on regulating legal migration and combating irregular migration and trafficking [👁️ **Box 5.12 in Booklet 5**, on the Cotonou Agreement between the European Union and 77 countries in Africa, the Caribbean and the Pacific in order to reduce and eventually eradicate poverty by promoting sustainable development, capacity building and integration into the world economy. A significant component of the agreement is on migration management, including “supporting the economic and social development of the regions from which migrants originate”].

There are regional action programmes to combat trafficking in human beings, such as the European Commission’s STOP Programme and DAPHNE Programme<sup>43</sup>, the Economic Community of West African States (ECOWAS) Declaration and Action Plan on Human Trafficking<sup>44</sup>, and the migrant workers section in the Summit of the Americas (SOA) Plan of Action [👁️ **Box 1.13**].

There are also global initiatives, such as the Berne Initiative of 2001, which was a global consultative process for inter-state cooperation on migration management<sup>45</sup>, and the United Nations Interregional Crime Prevention Institute (UNICRI) and Centre for International Crime Prevention (CRIC) Global Programme against Trafficking in Human Beings. Important monitoring and advocacy roles are played by, for example, the Office of the High Commissioner for Human Rights and the UN Special Rapporteur on the Human Rights of Migrants.

☑️ *Involving a wide range of actors with cooperation and coordination at all levels:*

*Migration is a labour market issue, and workers’ and employers’ organizations are the key players in the labour market. Unfortunately, all too often, only the role of NGOs is given attention.*

Measures should:

- Promote international, multilateral and bilateral cooperative action by countries involved in the different stages of the migration process. Such cooperation and coordination would include, for example, the adoption of labour migration agreements between origin and destination countries, the exchange of information on traffickers and trafficked persons, the implementation of assistance, return and integration programmes, judicial cooperation in investigations and judicial processes relating to trafficking and related offences, etc.;
- Encourage and facilitate cooperation between government, workers’ and employers’ organizations, and other non-governmental and civil society organizations in countries of origin, transit and destination. There should be mechanisms for consultation and coordination with the social partners in legislation and policy elaboration and practical implementation;
- Not ignore or omit the critical role of trade unions and employers organizations. Migration is a labour market issue, and workers’ and employers’ organizations are the key players in the labour market.



- Unfortunately, all too often, only the role of NGOs is given attention;
- Ensure the participation of potential migrants, migrants and returnees. They should not be merely targets of policies and programmes; they should be actively involved in the planning and design, having a say in decisions and playing a role in action. Migrant workers themselves have set up their own organizations in both countries of destination and origin – often with the support of existing trade unions;<sup>46</sup>
  - Encourage and support the efforts of trade unions to organize migrant women workers and to provide assistance and protection to them: “The circumstances now compel the trade unions to redefine a lot of their principles, methods and goals and to take up the growing working population that finds no place in the traditional trade unions. Since women workers are concerned, it is the duty of the trade unions to play their part in including in their struggles the specific needs of this group of women workers by organizing those who are in too many cases isolated and at the mercy of the exploitation networks”.<sup>47</sup>
  - Involve the media, which can play an important role in enhancing public awareness of the pros and cons of labour migration and the dangers of trafficking. The media should provide accurate information in accordance with professional ethical standards, not sensational reporting;
  - Strengthen research and data collection and the exchange and dissemination of information and experiences between countries, agencies and individuals. “Information is power and must be developed and organized in relating to the factors of vulnerability. Information has to be directed to all groups at all levels with the migrant worker as the key to change”.<sup>48</sup>

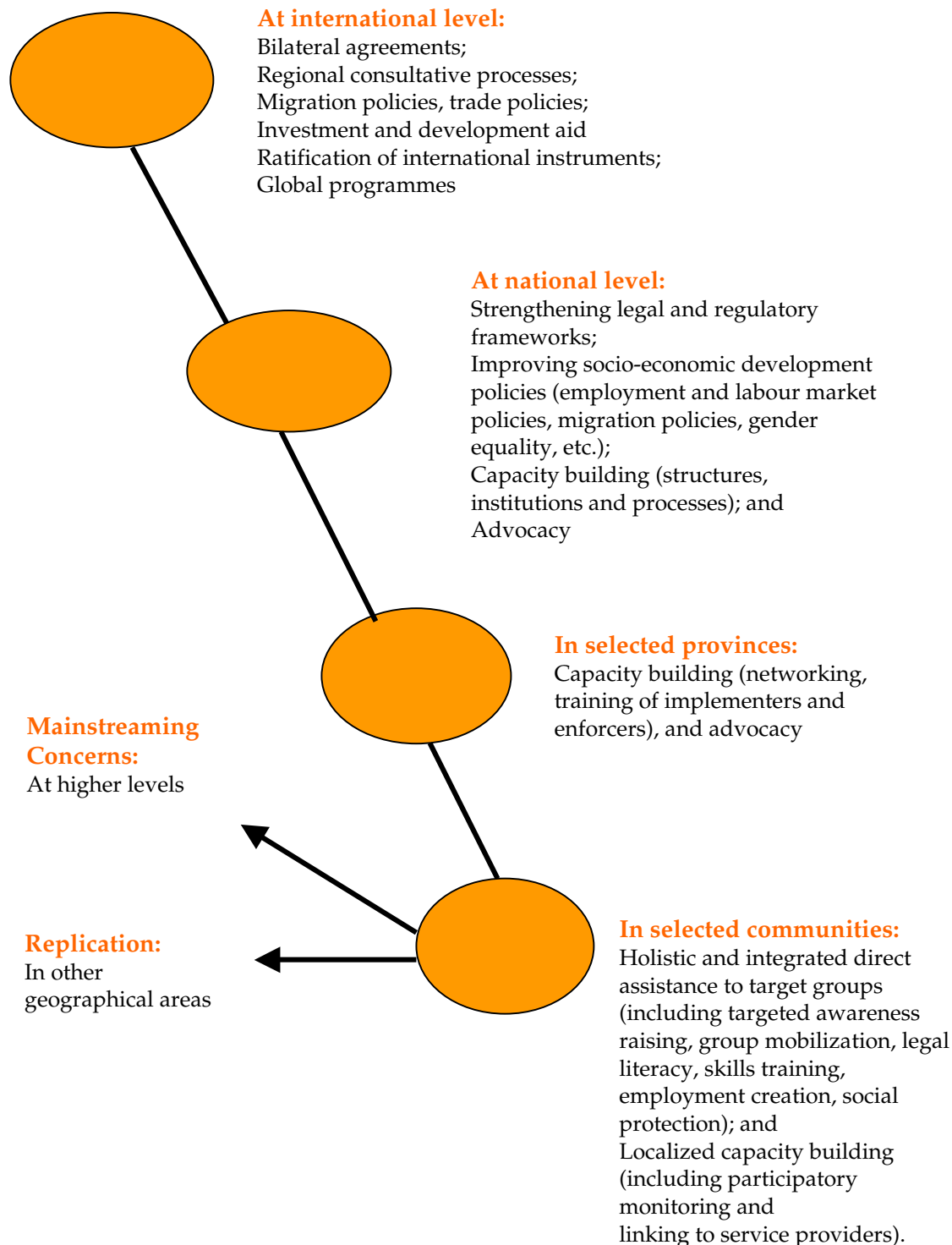
### Box 1.10. Integrated response at community level

In communities experiencing heavy out-migration or trafficking of women and children, a comprehensive, integrated action framework could involve:

- 👉 **Establishment of consultation and coordination mechanisms:** so as to involve a wide range of social actors and to make the most effective use of the networks to: identify the problems and prioritise areas for action; engender broad-based participation and support; collect and share information; develop and implement action plans; coordinate and share the use of limited human and financial resources and avoid duplication and wasted resources; strengthen monitoring, surveillance, prevention and protection potential; and widen the coverage of the target groups.
- 👉 **Community mobilization and outreach:** so as to reinforce community-level coalitions and to raise awareness, build capacity and empower grassroots actors. Engaging the entire community in working to prevent women and children from being vulnerable to trafficking is essential. In situations of return, community-level efforts could go a long way towards helping the returnees to reintegrate successfully and feel part of the community again.
- 👉 **Capacity building interventions:** These could include, firstly, investments in structures and mechanisms to improve coordination and networking not only within the community but also with the national level. They could also include investments in people through training and sensitisation so that, for example, law enforcers are able to more effectively combat trafficking and women are equipped with the skills for alternative livelihoods.
- 👉 **Advocacy and awareness raising:** so as to promote, on the one hand, positive attitudes and perceptions of gender equality and protection of the most vulnerable and, on the other hand, more realistic understanding of the costs and benefits of migration for employment. Legal literacy should be an important part of such activities, since it is crucial that women (and their families) understand the laws and regulations regarding emigration, immigration and employment in the destination country, including how to obtain assistance or seek redress against those exploiting them, and are able to claim and defend their labour rights.
- 👉 **Group mobilization and group dynamics:** so as to organize women and empower them through building their self confidence, strengthening their voice and ensuring that they are able to truly decide on and participate in their own upliftment. Innovative strategies could include organizing the groups in community watch/surveillance efforts to look out for vulnerable children, cases of violence and known traffickers, and also assisting returnees and victims of trafficking to be reintegrated into their communities.
- 👉 **Alternative livelihood opportunities and social protection:** Since poverty and lack of employment opportunities are at the root of the out-migration problem, including trafficking, community development is crucial. Income-generation and employment creation programmes can have an immediate positive impact on vulnerable people and fend off the pressures to move or to fall prey to traffickers. To ensure that such programmes are viable and sustainable, they should be stakeholder-owned, participatory and context-driven and should aim at increasing community options, sustainable alternative livelihood strategies and access to information and public services. Examples of successful integrated interventions normally include systematically conducted economic opportunity identification exercises (to engage the community in assessing viable livelihood alternatives)<sup>49</sup>; skills and small business training; improved access to credit, technology and markets; and savings and social protection schemes.
- 👉 **Links to national level plans and macro policies:** To ensure sustainability, community level efforts should be part of national development plans and supported/complemented by macro policies addressing the root causes of out-migration and gender inequalities.



**Box 1.11. Response at different levels**



## Box 1.12. Response Framework at all levels

### At the global level:

- **Migration policies:** Ratification, implementation and monitoring of the relevant international instruments relating to the rights of migrants;
- **Labour policies:** Ratification, implementation and monitoring of the relevant international instruments relating to the rights of workers, including migrant workers;
- **Trade regime:** Review the movement of persons – highly skilled, semi-skilled or unskilled service providers – vis-à-vis the flow of goods and capital;
- **Foreign development assistance:** Target foreign assistance at development strategies in key origin countries to provide economic alternatives; invest in developing the governance capacity of countries of origin and transit to manage migration flows (e.g. the Cotonou Agreement)
- **International initiatives:** The Berne Initiative, Global programme against Trafficking in Human Beings, monitoring and advocacy role of the UN Special Rapporteur on the Human Rights of Migrants and the UN Special Rapporteur on Violence against Women.

### At the regional level:

- **Regional consultative processes:** Regional Conference on Migration (Puebla Process); Bali Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime; Migration Dialogue for Southern Africa, West Africa;
- **Regional labour markets:** Agreements, Memorandums of Understanding (MOUs) on the movement of workers within the labour markets of a regional grouping of countries;
- **Regional migration regimes:** Agreements, MOUs on the temporary or permanent movement of persons across borders within a regional grouping of countries;
- **Regional anti-trafficking policies:** Examples are the EU Council Framework Decision on Combating Trafficking in Human Beings and SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution;
- **Regional Programmes:** such as the STOP Programme and the DAPHNE Programme.

### At the national level:

- **Macro socio-economic development policies:** Government policies to explicitly integrate migration and the protection of migrants into a development policy planning process;
- **Labour migration admissions system:** Informed and transparent labour migration admissions system based on systematic and realistic assessment of the demand for migrant workers in countries of destination;
- **Labour export policy:** For the source countries, a transparent and properly managed overseas employment policy <sup>50</sup>; policies to effectively utilize remittances and to reintegrate returned migrants;
- **Employment and labour market policies:** to promote employment-intensive growth in source countries, to strengthen labour market institutions – labour inspection, employment services, labour courts – in all countries;
- **Policies, including where appropriate, affirmative action, to promote gender equality and to fight all forms of discrimination:** both within and outside the labour market, in access to education, information, resources, and decision-making.

### At the community level (see Box 1.10):

- Establishment of consultation and coordination mechanisms to involve all social actors;
- Community mobilization and outreach;
- Capacity building;
- Advocacy and awareness raising;
- Group mobilization and group dynamics, especially among vulnerable women and girls;
- Alternative livelihood opportunities and social protection.

### **Box 1.13. Summit of the Americas Plan of Action on Migrants**

The migrant section of 1998 Santiago Summit of the Americas Plan of Action included a promise by 34 Western Hemisphere governments to “make a special effort to guarantee the human rights of all migrants, including migrant workers and their families”. The seven-item Plan of Action committed governments to:

- Reaffirm that the promotion and protection of human rights and the fundamental freedoms for all, without distinction by reasons of race, gender, language, nationality, or religion, is a priority for the international community and is the responsibility of every State.
- Comply with the applicable international human rights instruments and, consistent with the legal framework of each country, guarantee the human rights of all migrants, including migrant workers and their families.
- Seek full compliance with, and protection of, the human rights of all migrants, including migrant workers and their families, and adopt effective measures, including the strengthening of public awareness, to prevent and eradicate violations of human rights and eliminate all forms of discrimination against them, particularly racial discrimination, xenophobia, and related intolerance.
- Reaffirm the sovereign right of each State to formulate and apply its own legal framework and policies for migration, including the granting of permission to migrants to enter, stay or exercise economic activity, in full conformity with applicable international instruments relating to human rights and in a spirit of cooperation.
- Seek full respect for, and compliance with, the 1963 Vienna Convention on Consular Relations, especially as it relates to the right of nationals, regardless of their immigration status, to communicate with a consular officer of their own State in case of detention.
- Protect the rights of all migrant workers and their families, consistent with each country’s internal legal framework, by taking steps, in case they do not exist, to:
  - provide, with respect to working conditions, the same legal protection as for national workers;
  - facilitate, as appropriate, the payment of full wages owed when the worker has returned to his/her country, and allow them to arrange the transfer of their personal effects;
  - recognize the rights of citizenship and nationality of the children of all migrant workers who may be entitled to such rights, and any other rights they may have in each country;
  - encourage the negotiation of bilateral or multilateral agreements, regarding the remission of social security benefits accrued by migrant workers;
  - protect all migrant workers and their families, through law enforcement and information campaigns, from becoming victims of exploitation and abuse from alien smuggling;
  - prevent abuse and mistreatment of all migrant workers by employers or any authorities entrusted with the enforcement of migration policies and border control; and
  - encourage and promote respect for the cultural identity of all migrants.
- Support the activities of the Inter-American Commission on Human Rights with regard to the protection of the rights of migrant workers and their families, particularly through the Special Rapporteur for Migrant Workers.

The US Government is responsible for coordinating implementation of the Migrant Worker Initiative in the Santiago SOA Plan of Action; El Salvador and Mexico are designated as co-coordinators in this effort.

## 1.4.2. Human rights, gender equality, decent work and poverty reduction



Protecting women migrant workers who are vulnerable, improving their status and working conditions and preventing their discrimination, exploitation and abuse should be a priority concern for governments and all social actors as:

- ☑ *A matter of upholding basic human rights, including labour rights and migrant rights;*
- ☑ *A matter of promoting gender equality and ending all forms of discrimination, racism and xenophobia;*
- ☑ *A matter of promoting decent and productive work for all workers, women and men, in conditions of freedom, equity, security and human dignity; and*
- ☑ *A matter of poverty eradication and social inclusion.*

### 1.4.2.1. Upholding basic human rights

#### *Universal Declaration of Human Rights, 1948*

- *Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2);*
- *Everyone has the right to freedom of movement and residence within the borders of each State (Article 13.1);*
- *Everyone has the right to leave any country, including his own, and to return to his country (Article 13.2);*
- *Everyone has the right to a nationality (Article 15.1);*
- *No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality (Article 1.52).*

A human rights approach should be at the core of all efforts to protect women migrant workers from discrimination, exploitation and abuse:

*“Human rights recognize that certain principles are true and valid for all peoples, in all societies, under all conditions of economic, political, ethnic and cultural life. Human rights are universal – they apply everywhere; indivisible – in the sense that political and civil rights cannot be separated from social and cultural rights; and inalienable – they cannot be denied to any human being”.<sup>51</sup>*

Migrants, both women and men, should enjoy human rights as human beings, not primarily as migrants. However, movement and migration - coupled with the reactions of governments and their attempts to restrict such movements through immigration/emigration and labour market policies, and the exploitation of such attempts by traffickers and smugglers - place women in situations in which they are unprotected or only marginally protected by the law. As such, women who attempt

to exercise their freedom of movement are often placed in vulnerable positions vis-à-vis the protection of their human rights.



### Labour rights are part of human rights:

#### *Universal Declaration of Human Rights (Article 23):*

- *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment;*
- *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection;*
- *Everyone has the right to form and to join trade unions for the protection of his interests.*

*The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up*, which was unanimously adopted by ILO member States in 1998 [● **Section 1.4.3.1**], reaffirms that women and men workers have fundamental labour rights – to freedom of association and the right to collective bargaining, freedom from forced or compulsory labour, the abolition of child labour and non-discrimination in respect of employment and occupation. The Preamble of the Declaration makes specific reference to the protection of migrant workers:

#### *The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up, 1998:*

*Whereas the ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation.*



### Migrant rights are part of human rights:

The reality of the situation of migrants, in particular women migrant workers, qualifies them as especially vulnerable persons in a society. It is a vulnerability that is not innate but “rendered” as a result of social conditions and inadequate protection. Such vulnerability aggravates the risk that migrant workers’ rights might not be respected. The singular vulnerability of workers employed outside their countries of origin has been the subject of increasing concern throughout the United Nations system, as indicated, for example, in the *United Nations Millennium Declaration*,<sup>52</sup> adopted by the General Assembly in September 2000:

***United Nations Millennium Declaration:***

*“To combat all forms of violence against women and to implement the Convention on the Elimination of All forms of Discrimination Against Women.*

*To take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies”.*

States are obliged, according to international human rights standards, not only to refrain from violating the human rights of individuals, but also to take positive steps to ensure that individual women and men are able to enjoy these rights. This includes the duty to take appropriate measures to protect individuals against human rights infringements by private persons. The mere enactment of formal legal prohibitions is not sufficient. States are moreover obliged to act with due diligence to prevent, investigate and punish human rights violations and to provide compensation.<sup>53</sup>

### 1.4.2.2. Promoting gender equality and ending all forms of discrimination, racism and xenophobia

The principle of non-discrimination is a fundamental rule of international law. All efforts to deal with labour migration and trafficking should be carried out in a non-discriminatory manner without distinction of any kind - nationality, sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or other status. The aim should be to eliminate discrimination both within and outside the workplace.

Non-discrimination on the basis of sex is at the core of human rights. The *Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights* in 1993 reaffirmed that the human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights. Another important human rights instrument is the *United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979)*. This rights-based approach [👁️ **Box 1.14**] was endorsed at the *Copenhagen Summit for Social Development* in 1995 and reinforced at the *Fourth World Conference on Women* in Beijing in the same year.

#### **Box 1.14. Elements of a gender-sensitive, rights-based approach**

Policies and programmes should be framed within a rights-based framework. Gender-sensitive policies are necessarily rights-based policies. The key elements of a gender-sensitive, rights-based approach would include:

- ***The universality, inalienability, indivisibility and interdependence of basic rights:*** calling for a holistic and multi-sectoral approach to guaranteeing rights. Women should have the same social, economic, cultural, civil and political rights as men that cannot be taken away or denied, whatever the circumstances. All rights are equally important and interdependent;
- ***Non-discrimination and equality:*** Rights should be enjoyed by all on the basis of equality and non-discrimination. This does not necessarily mean equal treatment in all instances. Promoting gender equality may therefore include special provisions to compensate long-term discrimination, because equal treatment can sometimes reinforce and perpetuate inequalities [👁️ **Box 1.15**]
- ***Attention to vulnerable groups:*** Human rights are universal but priority should be accorded to those such as the poor, women, ethnic minorities and others, who may not be able to exercise their rights (Of course, not all women are vulnerable);
- ***Rights as empowering:*** Legal, policy, social and institutional environments must pervasively respect the rights and dignity of all human beings. Rights must be defined through standard setting and codified through law and policy to make them claimable, and there must be appropriate and enabling enforcement and monitoring institutions and machinery to give legal effect to these rights. At the same time, individuals and groups must be equipped to claim their rights;
- ***Obligation of States:*** States are obliged to respect and ensure that private persons and institutions respect, protect, promote and ensure practical realization of human rights according to the principle of non-discrimination.



The aim should be to realize human rights equitably for women and men. [👁️ **Box 1.15**]. Gender-blind policies and

*It is not only emigration and immigration policies that should be gender-sensitive. Broader economic and social policies and legal provisions that perpetuate or reinforce gender inequality or discrimination in a country should also be addressed.*

programmes are often not gender-neutral in impact. It is not only emigration and immigration policies that should be gender-sensitive. Broader economic and social policies and legal provisions that perpetuate or reinforce gender inequality or discrimination in a country should also be addressed. Policies that deny women equal rights with men to education, information, property and other resources - may not only entrench sex-based divisions in the labour market and in society but may also make women more vulnerable to abusive forms of migration and trafficking. It is also critical that there is equal representation of women and men in economic, political and judicial decision-making processes.

### **Box 1.15. Gender-sensitivity, Gender Equality and Non-Discrimination**

To ensure that human rights are equally enjoyed by women and men, legislation, policies and programmes should be assessed in terms of whether they are:

- **Gender-sensitive:** taking into account the differences in socio-cultural roles, needs, opportunities, constraints and vulnerabilities of women and men;
- **Gender-blind:** not taking into account these differences between women and men;
- **Gender-neutral:** having the same outcomes irrespective of sex (Gender-blind policies are often not gender-neutral in impact); or
- **Gender-selective:** having different outcomes for women and men.

Human rights should be equally enjoyed by all, on the basis of *equality and non-discrimination* on grounds of race, colour, sex, religion, political opinion, national extraction, social origin or other designated criteria. This does not necessarily mean same or *equal treatment* in all instances. In relation to gender, men and women are different and have unequal social positions. Equal treatment that enjoins women to behave like men or to be treated according to male standards blurs differences and can sometimes reinforce or perpetuate existing inequalities. Instead, a gender equality approach should be adopted – so as to address the different impacts of rights violations on women, because of their different and less valued roles – and can include special provisions, preferential treatment or affirmative action, to compensate for long years of discrimination. This is to ensure *equality of access and results* for both women and men.

Measures to promote the rights of women migrant workers require that in all countries, origin and destination, women have a legal status equal with men and are able to enjoy, exercise and defend their basic rights equally with men. The Twenty-third Special Session of the United Nations General Assembly that discussed further actions and initiatives to implement the Beijing Declaration and the Platform for Action of the Fourth World Conference on Women (the *Beijing + 5 Outcome Document*) called on governments, regional and international organizations, including the United Nations system and international financial institutions and other actors to:



*Beijing + 5 Outcome Document:*

- *“Promote and protect the human rights of all migrant women and implement policies to address the specific needs of documented migrant women and, where necessary, tackle the existing inequalities between men and women migrants to ensure gender equality” (paragraph 132b);*
- *“Enact social and economic policies and programmes, as well as information and awareness raising initiatives, to prevent and combat trafficking in persons, especially women and children; prosecute perpetrators of trafficking; provide measures to support, assist and protect trafficked persons in countries of origin and destination; and facilitate their return to and support their reintegration in countries of origin” (paragraph 131c).*

Women migrant workers may suffer discrimination within and outside their workplace not only because of their sex but also because they are foreigners or because of

*Women migrant workers may suffer discrimination within and outside their workplace not only because of their gender but also because they are foreigners or because of their ethnic origin – so that they are doubly or trebly disadvantaged. Therefore, there should also be concerted efforts to promote social cohesion and fight racism and xenophobia.*

their ethnic origin – so that they are doubly or trebly disadvantaged. Therefore, there should also be concerted efforts to promote social cohesion and fight racism and xenophobia – the attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.

An important reason behind restrictive immigration policies is the growing hostility and violence against non-nationals. There is increasing vilification of migrants and foreigners in the media, political discourse and public sentiments. Migrants and the migration phenomena are associated – especially through usage of terms such as *illegal migrants* and *combating illegal migration* -- with criminality and more recently with international terrorism. In this context, the increased occurrence of discrimination and outright violence against migrants reported in all regions of the world is clearly more than mere coincidence.

Women of certain racial or ethnic groups are also more likely to be subject to exploitation and abuse than other women migrants:

*“Because the overwhelming majority of trafficked persons are women, trafficking is usually considered to be a gender issue and the result of discrimination on the basis of sex. It is rarely analysed from the perspective of race discrimination [...] However, when attention is paid to which women are most at risk to being trafficked, the link of this risk to their racial and social marginalization becomes clear. Moreover, race and racial discrimination may not only constitute a risk factor for trafficking, it may also determine the treatment that women experience in countries of destination. In addition, racist ideology and racial, ethnic and gender discrimination may create a demand in the region or country of destination which could contribute to trafficking in women and girls”.<sup>54</sup>*

The *Durban Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001* has no less than 40 paragraphs on the treatment of migrant workers.<sup>55</sup> The text specifically urges States to address discrimination, racism and xenophobia at the workplace and to ensure full equality for all before the law, including labour law. The paragraphs that address women migrants and women and girl victims of trafficking include:

*Durban Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001*

- *“Urges States, in light of the increased proportion of women migrants, to place special focus on gender issues, including gender discrimination, particularly when the multiple barriers faced by migrant women intersect; detailed research should be undertaken not only in respect of human rights violations perpetrated against women migrants, but also on the contribution they make to the economies of their countries of origin and their host countries, and the findings should be included in reports to treaty bodies.” (Paragraph 31).*
- *“Urges States to incorporate a gender perspective in all programmes of action against racism, racial discrimination, xenophobia and related intolerance and to consider the burden of such discrimination which falls particularly on indigenous women, African women, Asian women, women of African descent, women of Asian descent, women migrants and women from other disadvantaged groups, ensuring their access to the resources of production on an equal footing with men, as a means of promoting their participation in the economic and productive development of their communities” (paragraph 50).*
- *“Urges States to devise, enforce and strengthen effective measures at the national, regional and international levels to prevent, combat and eliminate all forms of trafficking in women and children, in particular girls through comprehensive anti-trafficking strategies which include legislative measures, prevention campaigns and information exchange. Urges States to allocate resources, as appropriate, to provide comprehensive programmes designed to provide assistance to, protection for, healing, reintegration into society and rehabilitation of victims. States shall provide or strengthen training for law enforcement, immigration and other relevant officials who deal with victims of trafficking in this regard” (paragraph 64).*

### 1.4.2.3. Promoting decent work

The primary goal of the ILO is to promote opportunities for women and men to obtain decent

*Migration today is about work and governments, employers and workers are acknowledging it as a major concern. Addressing migration means promoting decent work.*

and productive work in conditions of freedom, equity, security and human dignity. The ILO views decent work as comprising four main pillars:

- The promotion of fundamental principles and rights at work for all workers, national and non-national, irrespective of where they work;
- The creation of productive and remunerative employment;
- The extension of social protection especially to marginalized and vulnerable groups; and
- The organization and representation of workers and employers in social dialogue institutions and processes.

The promotion of decent work incorporates a rights-based approach and a development approach. From a rights-based perspective, decent work is about fundamental human rights in the field of labour: non-discrimination in respect of employment and occupation, freedom from forced labour, freedom from child labour and freedom of association and the right to organize [👁️ **the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up and the core ILO Conventions in Section 1.4.3.1**].

Decent work is about securing human dignity - “about gender equality, equal recognition, and enabling women to make choices and take control of their lives”.<sup>56</sup> The promotion and protection of the rights of women migrant workers is critical because they often suffer, more than their male counterparts or even female nationals, from deprivation of their rights.

From a development perspective, decent work widens choices and increases capacities, whilst taking into account men’s and women’s basic needs. Decent work is also essential from the perspective of livelihood opportunities. It is because people are poor, unemployed or under-employed, lack livelihood choices and access to basic social services and information that they move or are moved to other places in search of more productive employment and income opportunities.

#### 1.4.2.4. Eradicating poverty and social exclusion

The ILO's Decent Work Agenda provides a coherent and integrated

*People migrate for employment as a survival strategy out of poverty and social exclusion. Women account for the majority of the poor in the world.*

framework for addressing poverty. Poverty eradication is a priority of the Millennium Development Goals; the resolution is to halve by the year 2015 the proportion of the world's people whose income is less than one dollar a day, and at the same time, "to promote gender equality and the empowerment of women as effective ways to combat poverty".<sup>57</sup>

A root cause of migration is poverty. People migrate for employment as a survival strategy out of poverty and social exclusion. Of course, not all vulnerable women migrant workers come from the poorest segment of society. As is widely known, potential irregular migrants may have to accumulate significant sums of money to pay for the services of smugglers. Even those going through legal channels may still have to pay substantial fees to recruiters and agents. However, it is still a fact that most women migrant workers are especially vulnerable to exploitation, abuse and trafficking because of their poverty. Women account for the majority of the poor in the world, especially when we take into account the intra-household distribution of income and resources. Worsening economic and social conditions in many sending countries may also have strengthened the linkages between the feminization of poverty or impoverishment and the incidence of abusive migration and trafficking.

Measures aimed at preventing migration in abusive conditions and trafficking emphasize poverty eradication and social inclusion. For example, the European Union is focussing on addressing poverty and unemployment at the roots of trafficking in the candidate countries seeking accession to the EU and the strategies give particular attention to enhancing women's participation in the labour market.<sup>58</sup>

Another example is the Asian Development Bank's guidelines for mainstreaming trafficking concerns into activities for poverty eradication<sup>59</sup> [👁️ **Box 6.12 in Booklet 6**]; the underlying aim is to identify the risks and vulnerabilities faced by specific groups of the poor, particularly women and children, to trafficking and to analyse how development and poverty eradication initiatives impact on or mitigate these risks.

### 1.4.3. International legal instruments

A response framework must have its foundation in the rule of law. There are a number of important human rights international instruments, and the aim should be to promote their adoption and implementation. For the purposes of this Guide, the sections below primarily focus on those instruments of the International Labour Organization and the United Nations relevant for protecting women migrant workers against discrimination, exploitation and abuse, including trafficking for labour and sexual exploitation. There are also regional instruments that are of potential value in addressing the rights of women migrant workers <sup>60</sup>

#### 1.4.3.1. ILO instruments

One of the ILO's major strengths is its role as a standard-setting organization. ILO Conventions have force of domestic law, once a member State ratifies an individual Convention. There are also a number of non-binding Recommendations. The ILO supervisory machinery for the application of its Conventions and Recommendations include a regular reporting system by member States supervised by an independent Committee of Experts on the Application of Conventions and Recommendations; a standing tripartite Committee on the same subject, which meets at the ILO's Annual Conference; and special procedures for representations and complaints on non-observance of ratified ILO Conventions. There is also the Committee on Freedom of Association that handles complaints regarding infringements of trade union rights.

International labour migration has been a central concern for the ILO since its inception, and the singular vulnerability of migrant workers remains a priority in the Organization's mandate. When the ILO was founded in 1919, the Treaty of Versailles addressed the situation of workers employed abroad:

*"The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein". (Article 427).*

The Preamble to the ILO Constitution also imposes on the Organization a Constitutional obligation for:

*".... The protection of the interests of workers when employed in countries other than their own."*

The ILO's obligation to protect migrant workers has traditionally been effected through the elaboration and supervision of international labour standards. It should be recalled that unless specified otherwise for specific categories of workers, all ILO Conventions and Recommendations are of general application, and apply to all workers, whether they are national or non-national. From the comments of the

ILO supervisory bodies, it is clear that the ILO fundamental Conventions [described below] apply to all migrant workers, whether they are temporary or permanent, and even if they are in an irregular situation. As highlighted in the text box on p.45, the *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, which was unanimously adopted by the member States in 1998, refers specifically to the protection of migrant workers in its Preamble. The Declaration states that all member States, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize the principles concerning the fundamental rights embodied in the core Conventions:



**The core labour standards covered in the Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998 are:**

- *Forced Labour Convention, 1930 (No.29);*
- *Abolition of Forced Labour Convention, 1957 (No.105);*
- *Minimum Age Convention, 1973 (No.138);*
- *Worst Forms of Child Labour Convention, 1999 (No.182);*
- *Equal Remuneration Convention, 1951 (No. 100);*
- *Discrimination (Employment and Occupation) Convention, 1958 (No.111);*
- *Freedom of Association Convention, 1948 (No.87);*
- *Right to Organize and Collective Bargaining Convention, 1949 (No.98).*

These core Conventions apply to all workers, nationals or non-nationals, whether they are regular or irregular status migrants.<sup>61</sup> The provisions that are of particular relevance for preventing discrimination, exploitation and abuse of women migrant workers are highlighted in the box below.

***Forced Labour Convention, 1930 (No.29):***

- *Aims at the immediate suppression of all forms of forced or compulsory labour;*
- *Defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”*
- *Calls for adequate and strictly enforceable penal sanctions for the illegal exaction of forced or compulsory labour.*

***Worst Forms of Child Labour Convention, 1999 (No.182):***

- *Confirms that child trafficking is a practice similar to slavery and as such a worst form of child labour;*
- *Calls for immediate and effective measures to secure the prohibition and elimination of trafficking of girls and boys under 18 years of age;*
- *Targets trafficking of children that leads to exploitation of boys and girls, including in illicit activities such as drug trafficking and prostitution;*
- *Provides guidelines to effectively eliminate child trafficking and to protect children that have fallen victim to traffickers or are at risk to do so;*
- *Requests Member States to establish mechanisms to monitor child trafficking and to draw up a programme of action to eliminate child trafficking as a matter of priority;*
- *Calls for effective and time-bound measures for prevention, to provide support for the removal of child victims of trafficking and their rehabilitation, to ensure access to basic education or vocational training for all children removed from trafficking situations; to*



- *identify children at special risk and to take account of the special situation of girls;*
- *Calls for international cooperation and assistance among the ratifying States to combat child trafficking.*

***Equal Remuneration Convention, 1951 (No.100):***

- *Aims to ensure that men and women workers receive equal remuneration for work of equal value, establishing rates of remuneration without discrimination based on sex;*
- *Aims to ensure equal remuneration in the public sector and promote equal remuneration in the private sector.*

***Discrimination (Employment and Occupation) Convention, 1958 (No.111):***

- *Defines discrimination as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;*
- *Requires the provision of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination thereof;*
- *The scope of the Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment;*
- *Protection against gender-based violence or exploitation in the sphere of work can be part of a national policy to promote equality of opportunity and treatment.*

***Convention on Freedom of Association and Protection of the Right to Organize, 1948 (No.87):***

- *Guarantees employers and workers the right to establish and join organizations, and to exercise freely their right to organize;*
- *Protects employers’ and workers’ organizations against interference or restrictions by public authorities.*

***The Right to Organize and Collective Bargaining Convention, 1949 (No.98):***

- *Protects workers who are exercising the right to organize;*
- *Upholds the principle of non-interference between workers’ and employers’ organizations;*
- *Promotes voluntary collective bargaining.*

The ILO has also developed a comprehensive body of international law dealing with the protection of migrant workers, and migrant women and girls in particular, including those trafficked into forced labour. The main standards that refer specifically to migrant workers or that contain provisions protecting their rights include the following:



**Relevant ILO Conventions:**

- *Migration for Employment Convention (Revised), 1949 (No. 97);*
- *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);*
- *Equality of Treatment (Social Security) Convention, 1962 (No.118);*
- *Maintenance of Social Security Rights Convention, 1982 (No.157);*
- *Private Employment Agencies Convention, 1997 (No.181).*

The two comprehensive ILO instruments relating specifically to migrant workers are the *Migration for Employment Convention (Revised), 1949 (No.97)* and the *Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)*. Their aims are twofold: to regulate the conditions under which labour migration takes place, and to provide specific protection for a very vulnerable category of workers while employed in countries other than their own.<sup>62</sup>

Generally, *Conventions Nos. 97 and 143* do not make a distinction between permanent or temporary migrants. However, certain provisions of *Convention No.97* only relate to migrant workers and their families who have been admitted on a permanent basis, for example the provisions that protect these workers against expulsion on the mere ground of incapacity to work.

The *Migration for Employment Convention (Revised), 1949 (No.97)* covers those regularly admitted as migrants for employment. It includes measures to regulate the conditions in which migration for employment should occur, general protection measures relating to the maintenance of free service to assist migrants, the provision of information, steps against misleading propaganda, the journey and arrival of migrants, transfer of their earnings and measures related to expulsion of permanent migrants. It provides for measures aiming to ensure equality of treatment between regular migrant workers and nationals with regard to social security, working and living conditions, employment taxes and access to justice.

#### *Migration for Employment Convention (Revised), 1949 (No.97)*

*Article 2:*

*Each Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information.*

*Article 3:*

*... undertakes that it will as far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.*

*Article 4:*

*Measures shall be taken as appropriate by each Member, within its jurisdiction, to facilitate the departure, journey and reception by migrants for employment.*

*Article 6:*

*... undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters (remuneration, membership of trade unions and enjoyment of the benefits of collective bargaining, accommodation, social security, employment taxes, legal proceedings)*

*Article 8:*

*A migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorized to accompany or join him shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party so provides.*

*Article 11:*

*For the purpose of this Convention, the term "migrant for employment" means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment.*



## *Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)*

### *Part 1: Migrations in Abusive Conditions*

#### *Article 1:*

*Each Member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers*

#### *Article 2:*

*Each Member for which this Convention is in force shall systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations [...]*

#### *Article 3:*

*Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members -- (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and (b) against the organizers of illicit or clandestine movement of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions [...].*

#### *Article 7:*

*The representative organizations of employers and workers shall be consulted [...].*

#### *Article 8:*

*On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence or, as the case may be, work permit [...].*

#### *Article 9:*

*With prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have been respected and in which his position cannot be regularized, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.*

### *Part II: Equality of Opportunity and Treatment*

#### *Article 10:*

*Each Member for which the Convention is in force undertakes to declare and pursue a national policy designed to promote and to guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, of social security, of trade union and cultural rights and of individual and collective freedoms for persons who as migrant workers or as members of their families are lawfully within its territory.*

The *Migrant Workers (Supplementary Provisions) Convention, 1975 (No.143)* (Part I, Articles 1-9) is the first attempt by the international community to deal with the problems arising out of irregular migration and illegal employment of migrants and also includes provisions for minimum standards of protection for both regular and irregular migrant workers. In laying down the general obligation to respect the basic human rights of all migrant workers (Article 1) and providing for certain protective measures for migrant workers who have lost their employment (Article 8) and for those in an irregular situation (Article 9), the Convention affirms, without challenging the right of States to regulate migratory flows, the right of migrant workers to be protected, whether or not they entered the country on a regular basis, with or without official documents. The Convention also stresses the importance of consulting representative organizations of employers and workers in regard to the

laws, regulations and other measures provided for and designed to prevent and eliminate migration in abusive conditions.

The implementation of a policy of *equality of treatment* between national and regular migrant workers is provided for in **Convention No.97**. In addition to the equality of treatment as regards the areas guaranteed by **Convention No. 97**, Part II of **Convention No.143** also provides *equality of opportunity* with regard to access to employment, trade union rights, cultural rights and individual and collective freedoms. Article 14 of Convention No.143, however, permits limited restrictions on equality of opportunity in access to employment. The national policy required under **Convention No.143** must not only promote but also guarantee equality of opportunity and treatment in employment and occupation for migration workers and members of their families who are lawfully within the territory of the country of employment.

It should be noted that both **Conventions Nos. 97 and 143** allow for a number of exceptions with respect to the categories of migrants covered by the Conventions. Seafarers, frontier workers and short-term entry members of the liberal profession and artists and the self-employed are not covered by the Conventions. In addition, **Convention No. 143** also excludes trainees and specific duty assignments. However, these exclusions in **Convention No. 143** only apply to Part II, which deals with equality of opportunity of regular women and men migrants with nationals. This means that all migrant workers, without distinction, have the right to some minimum protection with respect to their basic human rights and certain rights arising out of past employment.

ILO standards also address the very important issue of social security of migrant workers.<sup>63</sup> The most common forms of discrimination with respect to social security are non-coverage, conditional or optional coverage of migrant workers. The two principal instruments in this respect are the **Equality of Treatment (Social Security) Convention, 1962 (No. 118)** and the **Maintenance of Social Security Rights Convention, 1982 (No.157)**. Both instruments contain provisions relating to all nine branches of social security: medical care, sickness benefit, maternity benefit, invalidity benefit, old-age benefit, survivor's benefit, employment injury benefit, unemployment benefit and family benefit. However, while a State which ratifies **Convention No. 118** may limit its application to certain of these branches, such flexibility is not offered by **Convention No.157**. Under **Convention No. 118**, for each of the branches that it accepts, a State party undertakes to grant within its territory to nationals of any other State which has ratified the Convention equality of treatment in social security with its own nationals. Furthermore, equality of treatment must be granted to refugees and stateless persons. In addition, where, under the national legislation, entitlement to benefit is subject to a residence requirement, such a condition cannot in principle be imposed only on non-nationals.

The *maintenance of acquired rights* permits migrant workers to receive benefits which are due to them from a State, even when they cease to be resident on its territory. This principle, which is essential for the social protection of migrant

workers, is intended to ensure them real equality of treatment and not just legal equality. A State party to *Convention No.118* has to ensure the provision of benefits abroad in a specific branch for its own nationals and the nationals of any other State which has accepted the obligations of the Convention for the same branch, irrespective of the place of residence of the beneficiary. *Convention No. 157* establishes a similar obligation. However, as it does not allow for the exclusion of any branches at the time of ratification, the maintenance of acquired rights has to be ensured for the nationals of other States parties to the Convention in any branch of social security in which the States concerned have legislation that is in force.<sup>64</sup> Finally, both *Convention No.118* and *Convention No.157* provide that this principle shall apply, without any condition of reciprocity, to refugees and stateless persons.

Considering the growing role of private employment agencies in the recruitment and placement of migrant workers, and recalling the need to protect migrant workers against fraudulent and abusive practices, the *Private Employment Agencies Convention, 1997 (No.181)* offers guidance for designing a legal framework to address illegal recruitment practices and trafficking of human beings, especially women and girls. The purpose of this Convention is to allow the operation of private employment agencies while protecting the workers using their services against abuses and ensuring that these workers are entitled to their basic rights provided for under the core labour standards, as well as the provisions relating to recruitment and placement in Conventions No. 97 and No.143. To promote equality of opportunity and treatment in access to employment and occupations, Article 5 of the Convention stipulates that member States shall ensure that private employment agencies treat workers without discrimination on the basis of race, colour, sex, religion, political opinion, national extraction, social origin or any other form of discrimination covered by national law and practice. Article 7 of the Convention stipulates that, with certain exceptions, private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers. Article 8.1 requires ratifying States to adopt measures to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These measures shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses. Article 8.2 provides that member States concerned shall consider bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.

### 1.4.3.2. United Nations instruments



The relevant United Nations instruments include the:

- *Universal Declaration of Human Rights (UDHR), 1948;*
- *International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;*
- *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime, 2000;*
- *Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against Transnational Organized Crime, 2000;*
- *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965;*
- *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979;*
- *Convention on the Rights of the Child, 1989 and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, 2001.*

The *Universal Declaration of Human Rights (UDHR)*, adopted in 1948, specifies that all human beings, men and women alike, are born free and equal in dignity and rights. No man or woman shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms (Article 4). No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5). Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (Article 23).

The formulation of rights and freedoms stipulated in the UDHR apply equally to migrants as to any other individual, as do the provisions of the UN instruments, in particular *the UN Covenant on Civil and Political Rights (1966)* and *the UN Covenant on the Economic, Social and Cultural Rights (1966)*, that have been subsequently developed. States are not only obliged to refrain from violating the human rights embodied in these Conventions, but shall also take positive steps so that individuals can enjoy these rights.

*The International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (1990)* is the most important United Nations instrument of *direct* relevance to migrant workers [👁️ **Box 1.16**]. It recognizes and builds upon the provisions contained in the existing ILO Conventions and in many ways goes beyond them. The UN Convention, which came into force in 2003, extends considerably the legal framework for migration, treatment of migrants and prevention of exploitation and irregular migration. It extends to migrant workers who enter or reside in the host country illegally, rights which were previously limited to individuals involved in regular migration for employment. The objective of the Convention is to discourage and finally to eliminate irregular migration, but it

also aims to protect the fundamental rights of migrants during the migration process taking account of their vulnerable position. The definition of “family” is broader than that provided by the ILO Conventions and takes into account a more modern and up-to-date composition of the family. Ratifying States are no longer permitted to exclude any category of migrant worker from its application. There is greater rights protection given to the self-employed, which include informal economy workers.

**Box 1.16      Significance of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990**

- Migrant workers are viewed as more than labourers or economic entities. They are social entities with families and accordingly have rights, including those of family reunification;
- It recognizes that migrant workers and members of their families, being non-nationals residing in States of employment or in transit, are unprotected. Their rights are often not addressed by the national legislation of receiving States or by their own States of origin. Therefore, it is the responsibility of the international community, through the UN, to provide measures of protection;
- It provides, for the first time, an international definition of migrant worker, categories of migrant workers, and members of their families. It also establishes international standards of treatment through the elaboration of the particular human rights of migrant workers and members of their families. These standards would serve to uphold basic human rights of other vulnerable migrants as well as migrant workers;
- Fundamental human rights are extended to all migrant workers, both documented and undocumented, with additional rights being recognized for documented migrant workers and members of their families, notably equality of treatment with nationals of States of employment in a number of legal, political, economic, social and cultural areas;
- It seeks to play a role in preventing and eliminating the exploitation of all migrant workers and members of their families, including an end to their illegal or clandestine movements and to irregular or undocumented situations;
- It attempts to establish minimum standards of protection for migrant workers and members of their families that are universally acknowledged. It serves as a tool to encourage those States lacking national standards to bring their legislation in closer harmony with recognized international standards;
- While the Convention specifically addresses migrant workers and members of their families, its provisions are also important for the protection of the basic rights of all other migrants in vulnerable situations, notably those who are in irregular situations.

Source: International Labour Office, International Organization for Migration and Office of the High Commissioner for Human Rights, in consultation with the Office of the High Commissioner for Refugees, *International migration, racism, discrimination and xenophobia*. Publication for distribution at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Geneva, August 2001). p. 19.

*The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the Protocol Against Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against Transnational Organized Crime, 2000* [👁 Section 1.3.3 above and also Booklet 6] both contain important provisions aiming at the protection of the basic rights of women migrant workers who have ended up in situations of abuse and exploitation. <sup>65</sup>



The *Trafficking Protocol* is the first internationally binding anti-trafficking instrument that includes a definition of cross-border trafficking. It covers a wide range of obligations by ratifying States, mainly regarding international cooperation in the field of investigation and prosecution, but also in the field of protection and prevention. The purpose of the Protocol is to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist victims of such trafficking, with full respect for their human rights; and to promote cooperation among states in order to meet these objectives.

The *Smuggling Protocol* includes a number of provisions aimed at protecting the basic rights of smuggled migrants and preventing the worst forms of exploitation, which often accompany the smuggling process. The purpose of the Protocol is to prevent and combat smuggling of migrants, as well as to promote cooperation among States Parties to that end, as well as to protect the rights of smuggled migrants.

Taking note of the large and increasing number of migrants in the world and deeply concerned with the manifestations of racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants, and also bearing in mind the need for a focused and consistent approach towards migrants as a specific vulnerable group, particularly women and children migrants, the Commission on Human Rights of the United Nations appointed a *Special Rapporteur on the Human Rights of Migrants* (E/CN.4/1999/44). The Special Rapporteur is to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in irregular situations. The Special Rapporteur has the following functions:

- To request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families;
- To formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur;
- To promote the effective application of relevant international norms and standards on the issue;
- To recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants;
- To take into account a gender perspective when requesting and analyzing information, as well as to give special attention to the occurrence of multiple discrimination and violence against migrant women.

In its *Resolution of 24 February 2000 (A/RES/54/166), on the Protection of the Rights of Migrants*, the United Nations General Assembly requested all governments to cooperate fully with the Special Rapporteur in the performance of the tasks and duties mandated and to furnish all information requested, including by reacting promptly to his/her urgent appeals. In 2002, the Special Rapporteur on the Human Rights of Migrants specifically reported on violence against women migrant workers (E/CN.4/2002/94 and Add.1) and continues to address this issue, in particular the

problem of gender-based violence and discrimination.

A number of specialized human rights instruments provide further standards for the treatment of migrant women and men<sup>66</sup>. Among the most relevant is the *UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979*. Factors such as stereotypes about the roles of men and women, the (low) status of women in the family and society, as well as discriminatory law and practices against women may affect her employment status, level of education, access to and control over income and resources and decision-making power. They may also influence her decision to migrate and determine the ways she experiences the migration process. They may also lead to the circumstances under which trafficking disproportionately affects women and girls. CEDAW condemns discrimination against women in all its forms and obliges member States to pursue a national policy to eliminate discrimination and to ensure equal rights with men, *inter alia*, in the fields of education and vocational guidance, employment, remuneration, social security, marriage and maternity, health care, and equality before the law. Article 6 of CEDAW explicitly states that:

*“States parties shall take appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”.*

According to General Recommendation No. 19 (section 6) of the Committee on the Elimination of Discrimination against Women (the monitoring mechanism established under the Convention), discrimination against women includes:

*“...gender-based violence, that is violence that is directed against a woman because she is a woman, or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”.*

To the extent that racial discrimination is one of the root causes for exploitation and abuse of migrant workers, the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965* is of particular relevance to the situation of women migrant workers and trafficked women and girls. Due to the situation of vulnerability in which they frequently find themselves - owing to the departure from their country of origin, their legal status, the differences in languages and their isolated and controlled work situation – they are particularly exposed to violence, racism and racial discrimination. According to Article 1 of ICERD, racial discrimination means:

*“[...] any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”.*

ICERD prohibits racial discrimination with respect to, *inter alia*, the right to equal treatment before the tribunals and all other organs administering justice; the

right to security of person and protection against violence or bodily harm; the right to freedom of movement within the borders of a State, to freedom of thought, conscience and religion, to freedom of opinion and expression, to peaceful assembly and association; the right to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration; and the right to housing, public health, medical care, social security and social services. However, ICERD does not apply to “distinctions, exclusions, restrictions or preferences made by a State party [...] between citizens and non-citizens” (Article 1.2); that is to say, discrimination on the grounds of nationality - a type of discrimination to which migrants by definition are extremely vulnerable – is not outlawed by the Convention.

Children have distinct needs and rights that are protected and promoted by the *UN Convention on the Rights of the Child, 1989 (CRC) and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, 2001*. The CRC, while neither defining “trafficking” nor addressing it as a specific issue, spells out a clear rights-based approach that serves as an invaluable guide for action to combat trafficking and protect vulnerable children. It stipulates the “[...] right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development” (Article 32). Articles 9, 10 and 11 have provisions against the illicit movement of the child. The CRC also calls on States parties to protect the child from all forms of sexual exploitation and sexual abuse, including the coercion of a child to engage in prostitution or other unlawful practices (Article 34). Article 35 ensures the protection of children from being treated as chattels. The Optional Protocol, which came into effect in October 2001, explicitly relates to child prostitution and child trafficking, although it does not attempt to define trafficking.



## References and additional readings

- Abella, M.I., *Sending Workers Abroad A Manual for Low- And Middle-Income Countries* (Geneva, ILO, 1997).
- Asian Migrant Centre, Asia South Pacific Bureau for Adult Education, Migrant Forum in Asia, *Clearing a Hurried Path: Study on Education Programs for Migrant Workers in Six Asian Countries* (Hong Kong, 2001).
- Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook Migration Facts, Analysis and Issues* (various years) (Hong Kong, Asian Migrant Centre Ltd).
- Asian Migrant Centre and Mekong Migration Network, *Migration Needs, Issues and Responses in the Greater Mekong Subregion A Resource Book* (Hong Kong, Asian Migrant Centre with the support of the Rockefeller Foundation, December 2002).
- Asian Migrant Centre and Coalition for Migrants' Rights, "Strategies, Experiences and Lessons: Protecting the Rights and Empowering Asian Migrant Domestic Workers", power point presentation made at the ILO Programme Consultation Meeting on the Protection of Domestic Workers against the Threat of Forced Labour and Trafficking, 17-19 February, 2003, Hong Kong.
- Bilsborrow, R.E. G. Hugo, A.S. Oberai and H. Zlonik, *International Migration Statistics Guidelines for Improving Data Collection Systems* (Geneva, ILO, 1997).
- Bohning, W.R., *Employing Foreign Workers A Manual on Policies and Procedures of Special Interest to Middle and Low-Income Countries* (Geneva, ILO, 1996).
- Bohning, W.R., "Conceptualizing and simulating the impact of the Asian crisis on Filipinos' employment opportunities abroad" in *Asian and Pacific Migration Journal*, Vol.7, Nos. 2-3, 1998, pp.339-367.
- Boonpala, P. and J. Kane, *Trafficking of Children: the Problem and Responses Worldwide* (Geneva, ILO International Programme on the Elimination of Child Labour, 2001).
- Cox, D., The vulnerability of Asian women migrant workers to a lack of protection and to violence, *Asian and Pacific Migration Journal*, Vol.6, No.1, 1997. pp.
- D'Cunha, J., "Concept paper Gender equality, human rights and trafficking: a framework of analysis and action", Paper prepared for the Seminar on Promoting Gender Equality to Combat Trafficking in Women and Children, 7-9 October 2002, Bangkok (The Swedish Ministry for Foreign Affairs, The United Nations Development Fund for Women in cooperation with the United Nations Economic and Social Commission for Asia and the Pacific).
- European Commission Justice and Home Affairs, *Trafficking in women the misery behind the fantasy: from poverty to sex slavery a comprehensive European strategy*. See, [http://europa.eu.int/comm/justice\\_home/news/8mars\\_en.ht](http://europa.eu.int/comm/justice_home/news/8mars_en.ht)
- Global Alliance Against Trafficking in Women, *Human Rights and Trafficking in Persons: A Handbook* (Bangkok, GAATW, 2001).
- Human Rights Watch, *Human Rights Watch World Report 2002: Women's Human Rights*, <http://www.hrw.org/wr2k2/women.htm>

- International Labour Office, *Targeting the Intolerable Report VI (1)* International Labour Conference 86<sup>th</sup> Session, Geneva 1998.
- International Labour Office, *Migrant Workers International Labour Conference, 87<sup>th</sup> Session 1999* (Geneva: ILO, 1999).
- International Labour Office, *Meeting the challenge of global labour mobility Issues Paper* (Geneva, ILO, February 1999).
- International Labour Office, *Reducing the Decent Work Deficit A Global Challenge* (Geneva, ILO, 2001).
- International Labour Office, *Stopping Forced Labour Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work* (Geneva, ILO, 2001).
- International Labour Office, *Unbearable to the Human Heart Child Trafficking and Action to Eliminate It* (Geneva, ILO International Programme on the Elimination of Child Labour, 2002).
- International Labour Office, *Standards for the XXIst Century Social Security* (Geneva, ILO International Labour Standards Department, 2002).
- International Labour Office, International Organization for Migration and Office of the High Commissioner for Human Rights, in consultation with the Office of the High Commissioner for Refugees, *International migration, racism, discrimination and xenophobia*. Publication for distribution at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Geneva, August 2001).
- International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003).
- Josiah, I., S.F. Lee and J. Kee, "Protecting foreign domestic workers in Malaysia: Laws, policies, implications and intervention" Paper prepared by the Women's Aid Organisation for the Programme Consultation Meeting on the Protection of Domestic Workers against the Threat of Forced Labour and Trafficking, Hong Kong SAR, February 16-19 2003.
- Kapur, R. "The global war on trafficking, terror and human rights" in Global Alliance Against Traffic in Women (GAATW), *Alliance News* Issue 18, July 2002, pp.20-25.
- Kartusch, A., *Reference Guide for Anti-Trafficking Legislative Review with particular emphasis on South Eastern Europe* (Vienna, Ludwig Boltzmann Institute of Human Rights and Office for Democratic Institutions and Human Rights, September 2001).
- Lim, L. L., The processes generating the migration of women, Paper prepared for the Technical Symposium on International Migration and Development, The Hague, 29 June – 3 July 1998.
- Lim, L. L., Female migrants: winners or losers in global labour markets, Paper presented at the International Conference on Migrations Scenarios for the 21<sup>st</sup> Century, Rome, 12-14 July 2000.
- Lim, L.L. and N. Oishi, "International labour migration of Asian women: distinctive characteristics and policy concerns", *Asian and Pacific Migration Journal*, Vol.5 No.1 1996, pp.85-116.

- Organisation for Economic Co-operation and Development, *Bilateral Labour Agreements: Evaluation and Prospects* - Report for Seminar Jointly Organised by the OECD and the Swiss Federal Office of Immigration, Integration and Emigration (IMES), Montreux, 19-20 June, 2003.
- RESPECT European Network of Migrant Domestic Workers, *Migrant Domestic Workers in Europe A Case for Action*. Website: <http://www.solidar.org>
- Stalker, P., *The Work of Strangers: A Survey of International Labour Migration* (Geneva: ILO, 1994).
- Taran, P. and E. Geronimi, "Globalization, Labour and Migration: Protection is Paramount", Paper presented at the Hemispheric Conference on International Migration: Human Rights and the Trafficking in Persons in the Americas, organized by the Economic Commission for Latin America and the Caribbean (ECLAC) and the International Organization for Migration (IOM), Santiago, Chile 20-22 November 2002.
- The Economist, "The longest journey A survey of migration" in *The Economist*, November 2, 2002. Website: <http://www.economist.com/surveys>
- United Nations, *Further Actions and Initiatives to Implement the Beijing Declaration and the Platform for Action*. Final Outcome Document adopted by the Twenty-third Special Session of the General Assembly entitled "Women 2000: Gender Equality, Development and Peace for the Twenty-first Century" (New York, U.N., June 2000).
- United Nations, *Resolution adopted by the General Assembly 55/2. United Nations Millennium Declaration*. A/RES/55/2, 18 September 2000.
- United Nations, *Trafficking in women and girls: Report of the Secretary-General* (A/53/409), 21 September 1998.
- United Nations, *International Migration Policies ST/ESA/SER.A/161*, (New York, United Nations, 1998).
- United Nations, *International Migration Policies and the Status of Female Migrants* (New York, United Nations, 1995).
- United Nations Department of Public Information, "The racial dimensions of trafficking in persons – especially women and children", Backgrounder for World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, March, 2001.
- United Nations Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1, Substantive Session 2002, 1-26 July 2002.
- United Nations Economic and Social Council, *Integration of the human rights of women and the gender perspective violence against women* Report of the Special Rapporteur on violence against women, its causes and consequences. Commission on Human Rights, Fifty-sixth Session E/CN/4/2000/68, 29 February, 2000.
- United Nations Economic and Social Council, *Trafficking in women and girls Note prepared by the Office of the High Commissioner for Human Rights and the Economic Commission for Europe Secretariat* (E/ECE/RW.2/2000/3), 1 December 1999.

- UNIFEM and United Nations Interagency Project on Human Trafficking in the Mekong Sub-Region, *Trafficking in Persons A Gender and Rights Perspective Briefing Kit* (Bangkok, 2002).
- United States of America Department of State, *Trafficking in Persons Report June 2003 Trafficking Victims Protection Act of 2000*.  
(Website: <http://www.state.gov/documents/organization/21555.pdf>).
- Unlad Kabayan Migrant Services Foundation Inc., *Planning Your Re-entry Filipino Migrant Workers Orientation Course* (Quezon City, Unlad Kabayan, November 2001).
- Verghis, S. and I. Fernandez (eds.), *Regional Summit on Pre-Departure, Post Arrival and Reintegration Programs for Migrant Workers*, September 11-13, 2000, Genting Highlands, Malaysia (Kuala Lumpur, CARAM Asia, 2000).
- World Confederation of Labour Women and Work Department, *Protecting Women Migrant Workers Making It Work for Trade Unions* (Brussels, WCL, May 1999), Website: <http://www.cmt.-wcl.org>
- Zlotnik, H., "Data Insight The Global Dimensions of Female Migration" in United Nations, *International Migration Report: 2002*. No. E.03.XIII.4 (New York, United Nations, 2002).

## Useful websites

### **Amnesty International**

<http://www.web.amnesty.org>

### **Anti-Slavery International**

<http://www.antislavery.org>

### **Asian Migrant Centre**

<http://www.asian-migrants.org>

### **Asian Monitor Resource Centre**

<http://www.amrc.org.hk/>

### **Asian Pacific Forum on Women, Law and Development**

<http://www.apwld.org/lm.htm>

### **Asia-Pacific Migration Research Network**

<http://www.unesco.org/most/apmrn.htm>

### **Asian Partnership on International Migration**

<http://apim.apdip.net>

### **Asian Research Centre for Migration**

<http://www.chula.ac.th/INSTITUTE/ARCM/main.htm>

### **Bangkok Declaration on Irregular Migration**

<http://www.thaiembdc.org/info/bdim.html>

### **Coalition Against Trafficking in Women (CATW)**

<http://www.catwinternational.org/>

### **Charter for the Rights of Migrant Domestic Workers in Europe**

<http://www.philsol.nl/of/charter-domestics-oct99.htm>

### **Collection of resource and links on initiatives against trafficking in persons**

[http://www.hrlawgroup.org/initiatives/trafficking\\_persons/](http://www.hrlawgroup.org/initiatives/trafficking_persons/)

### **Coordination of Action Research on AIDS and Mobility –Asia (CARAM Asia)**

<http://www.caramasia.gn.apc.org>

### **Council of Europe**

[http://www.coe.int/T/E/Committee\\_of\\_Ministers/Home/](http://www.coe.int/T/E/Committee_of_Ministers/Home/)

### **Domestic Workers**

<http://www.asylumsupport.info/news/domesticworkers.htm>

### **Economic Commission for Europe (ECE)**

<http://www.unece.org>

### **European Commission Justice and Home Affairs**

[http://europa.eu.int/comm/justice\\_home](http://europa.eu.int/comm/justice_home)

**European Monitoring Centre on Racism and Xenophobia**

[http://europa.eu.int/agencies/eumc/index\\_en.htm](http://europa.eu.int/agencies/eumc/index_en.htm)

**European Strategy on Trafficking in Women**

[http://europa.eu.int/comm/justice\\_home/news/8mars\\_en.htm](http://europa.eu.int/comm/justice_home/news/8mars_en.htm)

**European Union policy documents**

[http://europa.eu.int/index\\_fi.htm](http://europa.eu.int/index_fi.htm)

**Femmigration**

<http://www.femmigration.net/>

**Filipino laws and Overseas Employment**

<http://www.chanrobles.com/republicactno8042.htm>

**Global Alliance Against Trafficking in Women (GAATW)**

<http://www.thai.net/gaatw>

**Global Campaign for the Ratification of the Convention on the Rights of Migrants**

<http://www.migrantsrights.org>

**Global Programme against Trafficking in Human Beings, UN Office for Drug and Crime Control Prevention, Vienna**

[http://www.odccp.org/trafficking\\_human\\_beings.html](http://www.odccp.org/trafficking_human_beings.html)

**International Human Rights Law Group**

<http://www.hrlawgroup.org/>

**Human Rights Watch (HRW)**

<http://www.hrw.org>

**Information for Domestic Workers Arriving in UK – Government Website**

<http://www.ind.homeoffice.gov.uk/>

**International Confederation of Free Trade Unions (ICFTU)**

<http://www.icftu.org/>

**International Labour Office (ILO)**

<http://www.ilo.org>

<http://www.ilo.org/public/english/standards/decl/>

<http://www.ilo.org/genprom>

<http://www.ilo.org/childlabour>

<http://www.ilo.org/asia/child/trafficking>

<http://ilolex.ilo.ch:1567>

<http://natlex.ilo.org>

**International Movement Against Discrimination and Racism**

<http://imadr.org>

**International Organization for Migration (IOM)**

<http://www.iom.int>

**Kalayaan. Justice for Overseas Domestic Workers**

<http://ourworld.compuserve.com/homepages/kalayaan/home.htm>

**Kanlungan Centre Foundation Inc.**

<http://www.kanlungan.ngo.ph>

**Link to anti-trafficking websites**

<http://stop-traffic.org/Countries.html>

**Migration Forum in Asia (MFA)**

<http://www.migrantnet.pair.com>

**Migrant Rights International**

<http://migrantwatch.org>

**Mission for Filipino Migrant Workers (MFMW)**

<http://www.migrants.net>

**Network of Migrant Workers Organisations**

<http://www.solidar.org>

**Network Women's Program (La Strada Foundation)**

[http://www.soros.org/women/html/info\\_trafficking.htm](http://www.soros.org/women/html/info_trafficking.htm)

**Office of the High Commissioner for Human Rights (OHCHR)**

<http://www.unhchr.ch/women/focus-trafficking.html>

<http://www.unhchr.ch/html/menu2/7/b/mwom.htm>

**Office of the UN High Commissioner for Refugees (OUNHCR)**

<http://www.unhcr.ch>

**Organization for Security and Cooperation in Europe (OSCE): Europe Against Trafficking in Persons**

[www.osce.org/europe-against-trafficking](http://www.osce.org/europe-against-trafficking)

**Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR)**

<http://www.osce.org/odihr/democratization/trafficking>

**Palermo Convention on Transnational Organized Crime and its Protocols**

<http://www.unodc.org/palermo/convmain.html>

**Promotion of the rights of migrants (December 18)**

<http://www.December18.net/intro.htm>

**Regional Conference on Migration (The Puebla Process)**

<http://www.rcmvs.org>

**Scalabrini Migration Center**

<http://www.scalabrini.asn.au/philsmc.htm>



**STOP-TRAFFIC**

<http://www.stop-traffic.org>

**Stop traffic listserv and archives**

<http://www.friends-partners.org/partners/stop-traffic/>

**Trafficking Directory**

[http://www.yorku.ca/iwrp/trafficking\\_directory.htm](http://www.yorku.ca/iwrp/trafficking_directory.htm)

**United Nations Crime Commission documents on the Trafficking Protocol**

[http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents/index.htm](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents/index.htm)

**United Nations Development Fund for Women (UNIFEM)**

<http://www.unifem.org>

**United Nations Division for the Advancement of Women (UNDAW)**

<http://www.un.org/womenwatch/daw>

**United Nations Interregional Crime Prevention Institute (UNICRI)**

<http://www.unicri.it>

**United Nations Secretariat**

<http://www.un.org>

**United Nations Treaty Collection**

<http://www.un.org/Depts/Treaty/>

**USA Government**

<http://usinfo.state.gov/topical/global/traffic/>

<http://www.state.gov/g/tip>

<http://cia.gov/csi/monograph/women/trafficking>

**US Anti-trafficking initiatives**

<http://www.state.gov/documents/organization/21555.pdf>

<http://secretary.state.gov/www/picw/trafficking/region.htm>

**UNICRI Global Programme Against Trafficking in Human Beings**

[http://www.unicri.it/trafficking\\_in\\_human\\_beings.htm](http://www.unicri.it/trafficking_in_human_beings.htm)

**Women's Aid Organisation, Malaysia (WAO)**

<http://wao.org.my>

**World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance**

<http://www.unhchr.ch/html/racism/>

**World Wide Web Virtual Library (WWWVL)- Migration and Ethnic Relations**

<http://www.ercomer.org/wwwvl/>

## Endnotes

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<sup>1</sup> It is worth noting, however, that the anti-immigration backlash in the wake of the terrorist attacks of September 11, 2001 in the United States has appeared to be more discriminatory for male than female migrants.

<sup>2</sup> See, for example, P. Boonpala and J. Kane, *Trafficking of children: the problem and responses worldwide* (Geneva, ILO, International Programme on the Elimination of Child Labour, 2001). Also ILO, *Unbearable to the human heart Child trafficking and action to eliminate it* (Geneva, ILO International Programme on the Elimination of Child Labour, 2002).

<sup>3</sup> Some of the background materials used to develop the Guide came from case studies in sending and receiving countries of the situation of the women migrant workers within their families, workplaces, communities and societies. The case studies also looked at the initiatives, policies and programmes, “good” and “bad” practices implemented by government, private recruitment and employment agencies and a wide range of social actors to assist and protect women migrants against discrimination, exploitation and abuse and to assist those vulnerable to being trafficked. See ILO Gender Promotion Programme (GENPROM), Working Paper Series on Women and Migration.

<sup>4</sup> International Labour Office, *Migrant Workers International Labour Conference, 87<sup>th</sup> Session 1999* (Geneva: ILO, 1999), p.245.

<sup>5</sup> See International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003), Chapters 1 and 17 for international migration statistics.

<sup>6</sup> International Labour Organization, “Facts on Migrant Labour”. For more information see, <http://www.ilo.org/migrant>

<sup>7</sup> Data from the United Nations Population Division. See H. Zlotnik, “Data Insight The Global Dimensions of Female Migration” in United Nations, *International Migration Report: 2002*. No. E.03.XIII.4 (New York, United Nations, 2002).

<sup>8</sup> Developed countries facilitate the admission of migrant women by permitting family reunification. Women who enter the country for purposes of family reunification do not always seek employment.

<sup>9</sup> See International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003), p.220.

<sup>10</sup> Ibid. p.215.

<sup>11</sup> Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook 2001 Migration Facts, Analysis and Issues in 2000* (Hong Kong, Asian Migrant Centre, 2000).

<sup>12</sup> Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook 2000 Migration Facts, Analysis and Issues in 1999* (Hong Kong, Asian Migrant Centre, 2000), p.133.

<sup>13</sup> Figure provided by Center for Indonesian Migrant Workers for ILO Consultation on the Protection of Domestic Workers against the Threat of Forced Labour and Trafficking on 16-19 February 2003, Hong Kong.

<sup>14</sup> I. Josiah, S.F. Lee and J. Kee, “Protecting foreign domestic workers in Malaysia: Laws, policies, implications and intervention” Paper prepared by the Women’s Aid Organisation for the Programme Consultation Meeting on the Protection of Domestic Workers against the Threat of Forced Labour and

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Trafficking, Hong Kong SAR, February 16-19 2003, p.2.

<sup>15</sup> RESPECT European Network of Migrant Domestic Workers, *Migrant Domestic Workers in Europe A Case for Action*. Website: <http://www.solidar.org>

<sup>16</sup> M. Matsuda, Japan: An Assessment of the International Labour Migration Situation the Case of Female Labour Migrants (Geneva, ILO GENPROM Series on Women and Migration, 2002), p.3.

<sup>17</sup> International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003). p.203.

<sup>18</sup> Editorial, *Asian Migrant*, Vol. VII No.2, April-June 1994.

<sup>19</sup> International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003), p.17.

<sup>20</sup> See United States of America Department of State, *Trafficking in Persons Report June 2003 Trafficking Victims Protection Act of 2000*. (Website, <http://www.state.gov/documents/organization/21555.pdf>).

<sup>21</sup> “Gender-specific” policies and programmes are those that distinguish targets, participants or beneficiaries by sex and “gender-blind” policies and programmes are those that do not distinguish targets, participants or beneficiaries by sex. Policies and programmes are often not “gender-neutral” in their impact, i.e. they do not affect men and women in the same way.

<sup>22</sup> See, for example, Asian Migrant Centre and Mekong Migration Network, *Migration Needs, Issues and Responses in the Greater Mekong Subregion A Resource Book* (Hong Kong, AMC with the support of the Rockefeller Foundation, December 2002), p.187.

<sup>23</sup> International Labour Office, *Migrant Workers International Labour Conference, 87<sup>th</sup> Session 1999* (Geneva: ILO, 1999), p.142.

<sup>24</sup> International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003), p.7.

<sup>25</sup> Ibid, pp.105-106.

<sup>26</sup> For example, in Pakistan, women migrants have to be over 35 years of age and have to obtain the permission of their fathers or husbands. Furthermore, they have to sign an indemnity stating that they themselves are responsible for all risks undertaken, including the risk of being exploited. Women under 35 in Nepal can no longer travel overseas for employment especially to the Gulf countries unless they are accompanied by a male relative or can show proof of consent from their guardian. Women under 40 in the United Arab Emirates are subject to similar restrictions.

<sup>27</sup> W.R. Bohning, “Conceptualizing and simulating the impact of the Asian crisis on Filipinos’ employment opportunities abroad” in *Asian and Pacific Migration Journal*, Vol.7, Nos. 2-3, 1998, pp.339-367.

<sup>28</sup> Article 2 (1) of the ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

<sup>29</sup> P. Taran and E. Geronimi, “Globalization, Labour and Migration: Protection is Paramount”, Paper presented at the Hemispheric Conference on International Migration: Human Rights and the Trafficking in Persons in the Americas, organized by the Economic Commission for Latin America and the Caribbean (ECLAC) and the International Organization for Migration (IOM), Santiago, Chile 20-22 November 2002, p.9.

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<sup>30</sup> See R.E. Bilborrow, G. Hugo, A.S. Oberai and H. Zlonik, *International Migration Statistics Guidelines for Improving Data Collection Systems*, (Geneva, ILO, 1997), Box 2.1, pp. 36-39 for a more detailed characterization of the different types of migrants.

<sup>31</sup> United Nations Convention relating to the Status of Refugees, 1951.

<sup>32</sup> See United Nations Economic and Social Council, *Recommended Principles and Guidelines on Human Rights and Human Trafficking* Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1, Substantive Session 2002, 1-26 July 2002.

<sup>33</sup> R. Kapur, "The global war on trafficking, terror and human rights" in Global Alliance Against Traffic in Women (GAATW), *Alliance News* Issue 18, July 2002, pp.21-22.

<sup>34</sup> Ibid, p. 22.

<sup>35</sup> Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook 2000 Migration Facts, Analysis and Issues in 1999* (Hong Kong, Asian Migrant Centre, 2000), p.18.

<sup>36</sup> International Labour Office, *Migrant Workers International Labour Conference, 87<sup>th</sup> Session 1999* (Geneva: ILO, 1999), p.10.

<sup>37</sup> See description of the foreign trainee scheme in Japan and the use of industrial training visas in South Korea in International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003), pp.201-202. See also Asian Migrant Centre and Migrant Forum in Asia, *Asian Migrant Yearbook 2001* and also 2000 (Hong Kong, AMC). For example, the Country Report on Korea notes that the Trainee Employment System introduced in January 2000 offers little opportunity for the "trainees" to either take examinations or to receive pay increases (Yearbook 2001, p.84). The Country Report on Japan reported a rise in the incidence of unpaid wages, confiscated passports, confinement, lack of job training and even violence against migrant trainees (Yearbook 2000, p 166).

<sup>38</sup> The Colombo Declaration of the Regional Summit on Foreign Migrant Domestic Workers, 26-28 August 2002 in Colombo, Sri Lanka was signed by 132 participants from 24 countries representing foreign migrant domestic workers, governments, trade unions, NGOs and international organizations. See CARAM Asia at [www.caramasia.gn.apc.org](http://www.caramasia.gn.apc.org)

<sup>39</sup> *United States of America Trafficking Victims Protection Act of 2000*, Section 102 Purposes and Findings paragraph (2).

<sup>40</sup> P. Taran and E. Geronimi, "Globalization, labour and migration: protection is paramount". Paper presented at the Hemispheric Conference on International Migration: Human Rights and the Trafficking in Persons in the Americas, organized by the Economic Commission for Latin America and the Caribbean (ECLAC) and the International Organization for Migration (IOM), Santiago, Chile 20-22 November 2002.

<sup>41</sup> For a detailed description of Regional Consultative Processes, see International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003), pp.123-138.

<sup>42</sup> S. Verghis and I. Fernandez (eds.), *Regional Summit on Pre-Departure, Post Arrival and Reintegration Programs for Migrant Workers*, September 11-13, 2000, Genting Highlands, Malaysia (Kuala Lumpur, CARAM Asia, 2000), pp.80-81.

<sup>43</sup> For description of these programmes, see

<sup>44</sup> For description see <http://www.ecowas.int/sitecedea0/english/pub-4-83-2001.htm>

<sup>45</sup> For a description of the Berne Initiative, see Textbox 15.2 in International Organization for Migration, *World Migration 2003 Managing Migration Challenges and Responses for People on the Move* (Geneva, IOM, 2003), pp.286-287.

<sup>46</sup> Examples include the Kalayaan Organization in the United Kingdom, which is a self-help group of migrant domestic workers affiliated to the Transport and General Workers' Union, the Asian Domestic Workers Union in Hong Kong which was established with the assistance of the Hong Kong Confederation of Trade Unions, etc. See the relevant text boxes describing these organizations in Booklet 4.

<sup>47</sup> World Confederation of Labour Women and Work Department, *Protecting Women Migrant Workers Making It Work for Trade Unions* (Brussels, WCL, May 1999), preface.

<sup>48</sup> S. Verghis and I. Fernandez (eds.), *Regional Summit on Pre-Departure, Post Arrival and Reintegration Programs for Migrant Workers*, September 11-13, 2000, Genting Highlands, Malaysia (Kuala Lumpur, CARAM Asia, 2000), p.81.

<sup>49</sup> See for example, G. Hyde, *Practical guide on identification of economic opportunities for women groups and communities* (Geneva, ILO Gender Promotion Programme, 2002).

<sup>50</sup> See M. Abella, *Sending workers abroad* (Geneva, ILO, 1997), Chart 3.1, p.29 for a list of policy interventions and measures a sending country can implement as part of a comprehensive policy for foreign employment of its nationals.

<sup>51</sup> International Labour Office, International Organization for Migration and Office of the High Commissioner for Human Rights, in consultation with the Office of the High Commissioner for Refugees, *International migration, racism, discrimination and xenophobia*. Publication for distribution at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Geneva, August 2001), p.3.

<sup>52</sup> United Nations, *Resolution adopted by the General Assembly 55/2. United Nations Millennium Declaration*. A/RES/55/2, 18 September 2000.

<sup>53</sup> Kartusch, A., Reference Guide for Anti-Trafficking Legislative Review with particular emphasis on South Eastern Europe (Vienna, Ludwig Boltzmann Institute of Human Rights and Office for Democratic Institutions and Human Rights, September 2001), pp.15-16.

<sup>54</sup> United Nations Department of Public Information, "The racial dimensions of trafficking in persons – especially women and children", Backgrounder for World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, March, 2001.

<sup>55</sup> See Office of the High Commissioner for Human Rights Commission and Sub-Commission Team and Anti-Discrimination Unit, "List of Paragraphs in the Durban Declaration and Programme of Action which include provisions relating to migrants and refugees", May 3, 2002.

<sup>56</sup> International Labour Office, *Reducing the Decent Work Deficit A Global Challenge* (Geneva, ILO, 2001), p.7).

<sup>57</sup> United Nations, *Resolution adopted by the General Assembly 55/2. United Nations Millennium Declaration*. A/RES/55/2, 18 September 2000. Paragraphs 19 and 20.

<sup>58</sup> The European Commission Justice and Home Affairs, *Trafficking in women the misery behind the*

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*fantasy: from poverty to sex slavery a comprehensive European strategy*. See, [http://europa.eu.int/comm/justice\\_home/news/8mars\\_en.ht](http://europa.eu.int/comm/justice_home/news/8mars_en.ht)

<sup>59</sup> See, for example, Asian Development Bank, *Handbook on Poverty and Social Analysis* (Manila, ADB, 2001).

<sup>60</sup> Examples of regional instruments include:

- *European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950;*
- *American Convention on Human Rights or San José Pact, 1969 and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights or San Salvador Protocol, 1998;*
- *Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 adopted by the South Asian Association for Regional Cooperation (SAARC);*
- *Economic Community of West African States (ECOWAS) Declaration and Action Plan on Human Trafficking, 2001;*
- *European Social Charter (Revised) (1996);*
- *African Charter on Human and People's Rights, 1981;*
- *Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation, 1997;*
- *European Union Council Framework Decision of 19 July 2002 on Combating Trafficking in Human Beings;*
- *Palermo Anti-Trafficking Declaration of South Eastern Europe, 2000;*
- *Committee of Minister's Recommendation R 2000 (11) of the Council of Europe on action against trafficking in human beings.*

<sup>61</sup> The Committee of Experts on the Application of Conventions and Recommendations has also referred to the situation of migrant workers in supervising the application of the core conventions.

<sup>62</sup> Although Convention No. 97 does refer to non-discrimination by sex and to women's work (Article 6), Conventions No. 97 and No.143 are not truly gender-sensitive. Most of the language is male-oriented, referring to the migrant as "he" and to the migrant's family as "his family", or "his wife and minor children" (Recommendation concerning Migration for Employment, Revised 1949, No. 86). While the formulations then were based on the perception that the typical migrant was male, it is obvious that the Conventions are as relevant for autonomous female migrants.

<sup>63</sup> See ILO, *Standards for the XXIst Century Social Security* (Geneva, ILO International Labour Standards Department, 2002), pp.41-45.

<sup>64</sup> Convention No. 157, however, offers the alternative of allowing the States concerned to guarantee the provision of such benefits through bilateral or multilateral instruments.


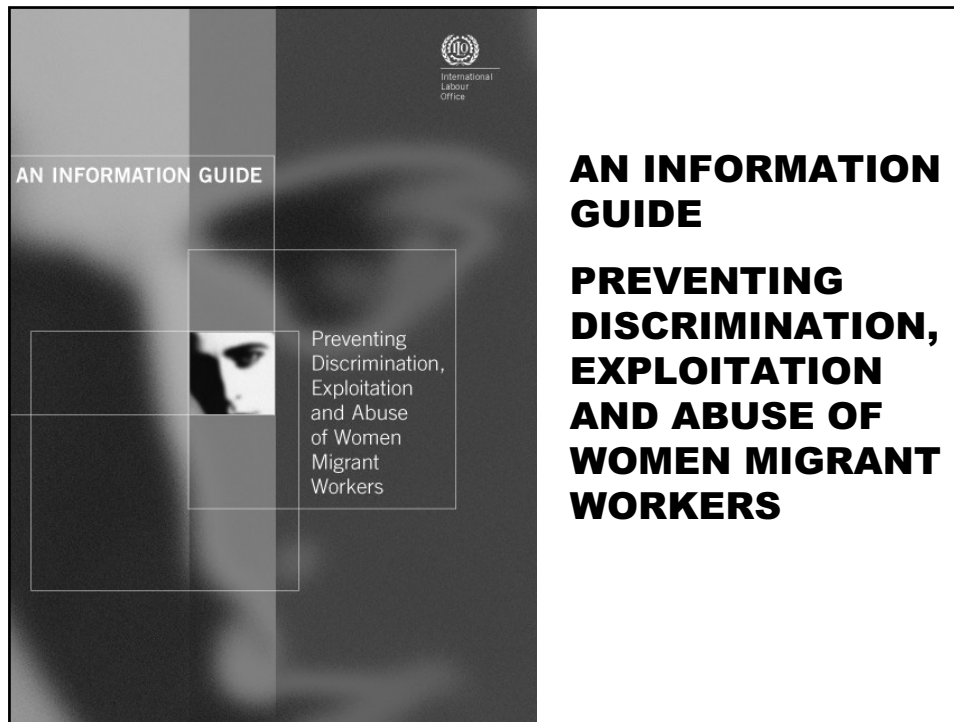
<sup>65</sup> In addition to the Trafficking and Smuggling Protocol, the Slavery Convention (1926) and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) are important human rights instruments that condemn slavery, slavery trade and servitude as well as slavery-like practices such as debt bondage and forced marriages. The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949) also punishes national and international trafficking in persons but focuses exclusively on trafficking for prostitution. Art. 1 obliges States to punish any person who "gratifies the passions of another": 1) Procures, entices or leads away, for the purposes of prostitution, another person, even with the consent of that persons; 2) Exploits the prostitution of another persons, even with the consent of that person; 3) Knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.

<sup>66</sup> Over the past few years, the human rights treaty-monitoring bodies have paid particular attention to the issue of trafficking in persons in examining the reports of State parties. In particular, the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on the Rights of the Child (CRC), the Human Rights Committee (HRC) and the Committee on Economic,

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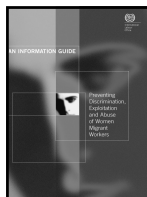
Social and Cultural Rights (CESCR) have made specific reference to trafficking and related exploitation in a number of observations and comments.





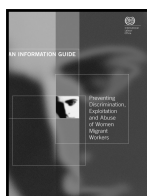
## AIMS OF THE INFORMATION GUIDE

- ❑ To enhance knowledge and understanding of the vulnerability of migrant workers, especially women, to discrimination, exploitation and abuse;
- ❑ To promote and improve legislation, policies and action to better protect those women migrant workers who are vulnerable;
- ❑ To emphasize and explain why and how discrimination, exploitation and abuse should be addressed within a framework aimed at promoting regulated and orderly labour migration and as a matter of:
  - Upholding human rights, including labour and migrant rights;
  - Promoting gender equality and ending all forms of discrimination;
  - Promoting decent work for all workers;
  - Eradicating poverty and social exclusion.



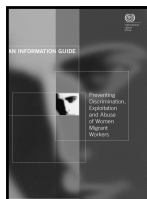
## WHY THE FOCUS ON WOMEN

- Feminization of migration for employment;**
- Links to feminization of poverty;**
- Changing role of women in families, society, economies;**
- Men migrate for range of jobs. Women migrants concentrated in traditional, female-dominated occupations, “3-D” jobs;**
- For many women and men, migration leads to better lives and livelihoods. But many others vulnerable to discrimination, exploitation and abuse, including trafficking;**
- Women likely to be more vulnerable – relative to male migrants and native-born women – to discrimination, exploitation and abuse.**



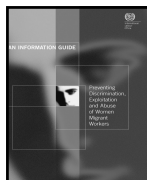
## RIGHTS-BASED, GENDER PERSPECTIVE

- Focus on women, but not women-exclusive;**
- Gender perspective recognizes similarities and differences in migration experiences of women and men;**
- Gender-based discrimination interacts with other forms of discrimination;**
- Migration and labour market policies often gender insensitive and not gender inclusive in intent or impact;**
- Gender equality and non-discrimination is a human right and core to addressing vulnerability of migrant workers;**
- Empower and not just protect women and men migrants so that they can equally claim their rights.**



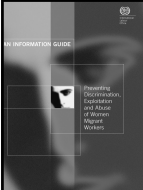
## **SIGNIFICANCE OF A GENDER PERSPECTIVE**

*“The concern is that the overall feminization of international migration is likely to continue and that the vulnerability of women migrants to discrimination, exploitation and abuse is also likely to increase - because of hardened attitudes towards migrants in general and because gender-based attitudes and perceptions continue to be slow in changing. Gender inequalities persist and labour markets remain highly segmented and segregated in both origin and destination countries”.*



## **INFORMATION GUIDE: THE BOOKLETS**

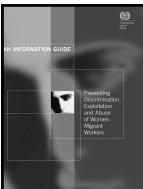
- Booklet 1:**  
Introduction: Why the focus on women international migrant workers
- Booklet 2:**  
Decision-making and preparing for employment abroad
- Booklet 3:**  
Recruitment and the journey for employment abroad
- Booklet 4:**  
Working and living abroad
- Booklet 5:**  
Back home: return and reintegration
- Booklet 6:**  
Trafficking of women and girls



## TARGET AUDIENCE OF THE GUIDE

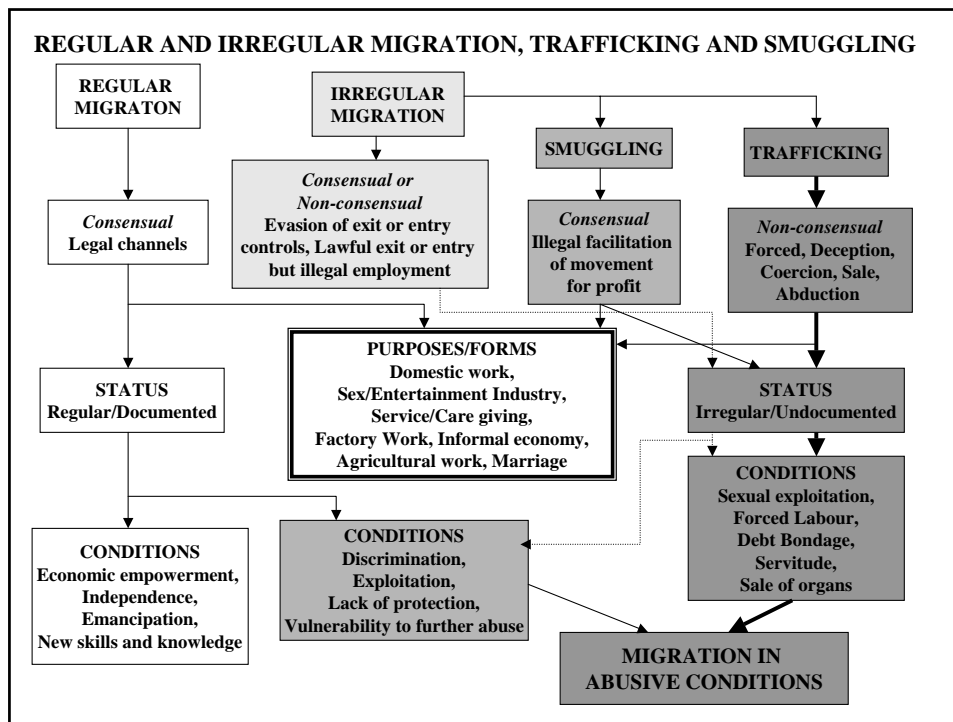
- Advocates and activists, policy makers and implementers in origin, transit and destination countries concerned with migration issues and human rights;**
- Government officials: from ministries of labour, immigration/emigration, embassies, social and health services, judiciary and law enforcement, women's bureaus;**
- Workers' and employers' organizations, associations of migrant workers, NGOs and civil society groups;**
- Public and private recruitment and employment agencies;**

*To directly address individual migrants, users may have to adapt or simplify the materials*



## USES OF THE INFORMATION GUIDE

- An information source to be used in flexible manner and adapted at local level and for target audience;**
- Notes, bibliography, useful websites, summary presentation;**
- Can be used for:**
  - **Awareness raising and sensitization: on vulnerabilities faced by migrant workers, especially women, and how to address them;**
  - **Advocacy and publicity: to place the discrimination, exploitation and abuse of migrant workers on the international radar screen;**
  - **Tool for action: highlights international instruments, examples of national legislation, good and bad practices;**
  - **Training and education: serve as background materials for training eg. of labour attaches, law enforcement officers; preparation courses for migrants before they go abroad;**
  - **Networking tool: generating discussion and collaboration among stakeholders.**



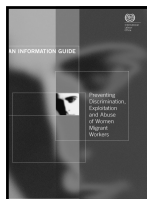
**INFORMATION GUIDE**

**PREVENTING DISCRIMINATION, EXPLOITATION AND ABUSE OF WOMEN WORKERS**

## COMPREHENSIVE FRAMEWORK OF RESPONSE

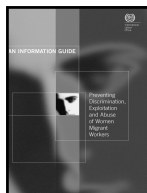
*Address discrimination, exploitation and abuse of migrant workers, including trafficking, within framework aimed at promoting regulated and orderly migration and as a matter of:*

- Human rights, including labour rights and migrant rights;**
- Gender equality and the elimination of all forms of discrimination, racism and xenophobia;**
- Decent and productive work for all workers, women and men, national or non-national, in conditions of freedom, equity, security and human dignity;**
- Poverty reduction and social inclusion.**



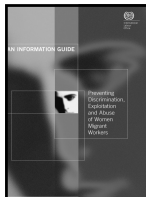
## COMPREHENSIVE FRAMEWORK OF RESPONSE

- Aimed at achieving regulated and orderly labour migration;
- Based on international standards;
- Deal with the root causes of the supply of and demand for migrant and trafficked workers, including labour market failures and employment problems, poverty and deep-rooted gender discrimination;
- Cover all stages of the migration process and trafficking cycle;
- Action at all levels: community, national, regional and global;
- Involve tripartite partners and civil society.



## RELEVANT ILO INSTRUMENTS

- Declaration on Fundamental Principles and Rights at Work and its Follow-Up, 1998 and the core labour standards;
- Migration for Employment Convention (Revised), 1949 (No.97);
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143);
- Equality of Treatment (Social Security) Convention, 1962 (No.118);
- Maintenance of Social Security Rights Convention, 1982 (No.157);
- Private Employment Agencies Convention, 1997 (No.181).



## RELEVANT UN INSTRUMENTS

- Universal Declaration of Human Rights, 1948;**
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990;**
- International Convention on the Elimination of All Forms of Discrimination Against Women, 1979;**
- Convention on the Rights of the Child, 1989 and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2001;**
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, 2000;**
- Protocol Against the Smuggling of Migrants by Land, Sea and Air, 2000.**