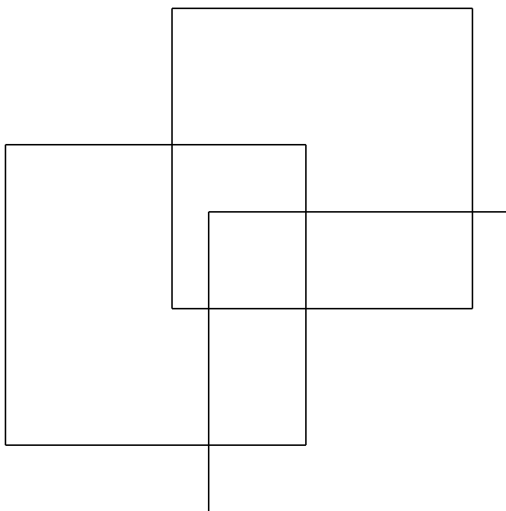




The access of refugees and other forcibly displaced persons to the labour market

**Background paper and draft ILO guiding principles
for discussion at the ILO tripartite technical
meeting on the access of refugees and other
forcibly displaced persons to the labour market
(Geneva, 5–7 July 2016)**



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INTERNATIONAL LABOUR ORGANIZATION

Labour Migration Branch

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INTERNATIONAL LABOUR OFFICE, GENEVA

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Introduction, aims and objectives

1. Large movements of refugees and persons forcibly displaced by violence, conflict, human rights abuse, deprivation of social and economic rights, disasters and environmental change are creating considerable challenges for countries of first asylum, transit and destination, as well as countries of origin. These challenges include the actual and potential impact of these populations on labour markets, particularly those in difficulty even prior to large movements.
2. Of the 17.4 million recognized refugees and registered asylum seekers, and millions of forcibly displaced persons, only a very small minority gain access to labour markets in the formal economy, opportunities for decent work and satisfactory conditions of employment and rights protection in the workplace. Access to work may be prohibited or restricted by law and those that do manage to find work do so, in many instances, in the informal economy – the main labour market in many of the refugee-impacted countries.
3. The precarious situation of these populations renders them vulnerable to discriminatory practices which can lead to exploitation and the denial of fundamental principles and rights at work. The failure to uphold fundamental principles and rights at work can result in situations of forced labour, bonded labour and child labour.
4. The wider socio-economic consequences of forced displacement have triggered intense debates globally on how to develop appropriate and sustainable policy responses to these challenges. Discussions have taken place within the ILO during a side event organized at the 104th Session of the International Labour Conference (ILC) in June 2015 and during the 325th and 326th Sessions of the Governing Body in November 2015 and March 2016 respectively. In this context, the Governing Body at its 326th Session agreed to convene a tripartite technical meeting on the access of refugees and other forcibly displaced persons to the labour market.
5. The purposes of the Tripartite Technical Meeting are to:
 - Discuss for adoption a set of guiding principles to inform policy measures on the access of refugees and other forcibly displaced persons to the labour market based on relevant ILO standards and other related human rights instruments, as well as good practices where these exist.
 - Recommend ways to disseminate and give practical effect to such ILO guidance, including to inform national and multilateral responses and forums.
 - Prepare the ILO and its constituents to contribute to international events addressing global concern about refugees and forced displacement, in particular the UN General Assembly Summit addressing large movements of refugees and migrants and the US Summit on the refugee crisis both to be held in September 2016.
6. This background paper and draft ILO guiding principles have been prepared to provide a basis and framework for the Technical Meeting's deliberations. The paper is in four parts. Part I provides the setting and context exploring the challenges posed by the contemporary phenomena of refugees and forcibly displaced persons. Part II briefly sets out the normative context for the ILO's role in addressing labour market impacts of refugees and other forcibly displaced persons. Part III then examines access to labour markets – diagnosing the challenges, identifying the normative guidance and exemplifying good practices. Based upon the preceding analysis, Part IV presents possible draft guiding principles for consideration by the Tripartite Technical Meeting.

Part I. Setting the context: Refugees and forced migration

A. International migration, refugees and displaced persons – Scope and scale

7. Large-scale international mobility of people is one of the defining characteristics of the twenty-first century and is a complex and growing global phenomenon. In 2015, more than 244 million international migrants were estimated to live outside their countries of origin for more than 12 months.¹ Of these, the ILO estimates that over 150 million (almost 62 per cent) are migrant workers.² International mobility is a major force for economic and social development in both origin and receiving countries – a consequence and a driver of the globalization of the world’s economy. The ILO has recently reiterated the importance of international migration through its Fair Migration Agenda.³
8. An equally significant, and rapidly increasing, international migratory movement comprises people who leave their homes and countries “involuntarily” as refugees and other forcibly displaced persons. This population is of concern to the ILO where they seek to enter the labour force or are employed as workers outside their own countries and thus covered by the ILO instruments. This population is the focus of this background paper.
9. Globally, almost 61 million people are forcibly displaced by conflict, violence and human rights violations, overwhelmingly in emerging economies.⁴ This is more than at any other time since the Second World War.
10. As figure 1 below illustrates, by mid-2015, an estimated 15.1 million of this total were refugees,⁵ half of whom were women and children. This is the highest overall number of refugees in 20 years and a rise of 45 per cent or 4.7 million persons in three-and-a-half years, while a further 2.3 million people claiming asylum were awaiting determination of their status. The top five countries of origin – the Syrian Arab Republic, Afghanistan, Somalia, Sudan and South Sudan – account for over 10 million refugees, 68 per cent of the total, while the top five hosting countries in absolute numbers – Turkey, Pakistan, Lebanon, the Islamic Republic of Iran and Ethiopia – accommodate 6.1 million refugees, some 34 per cent of the

¹ UNDESA (2015). “Trends in International Migration”, Population Facts No. 2015/4, UN Department of Economic and Social Affairs, Population Division.

² ILO (2015). *ILO global estimates on migrant workers: Results and methodology*.

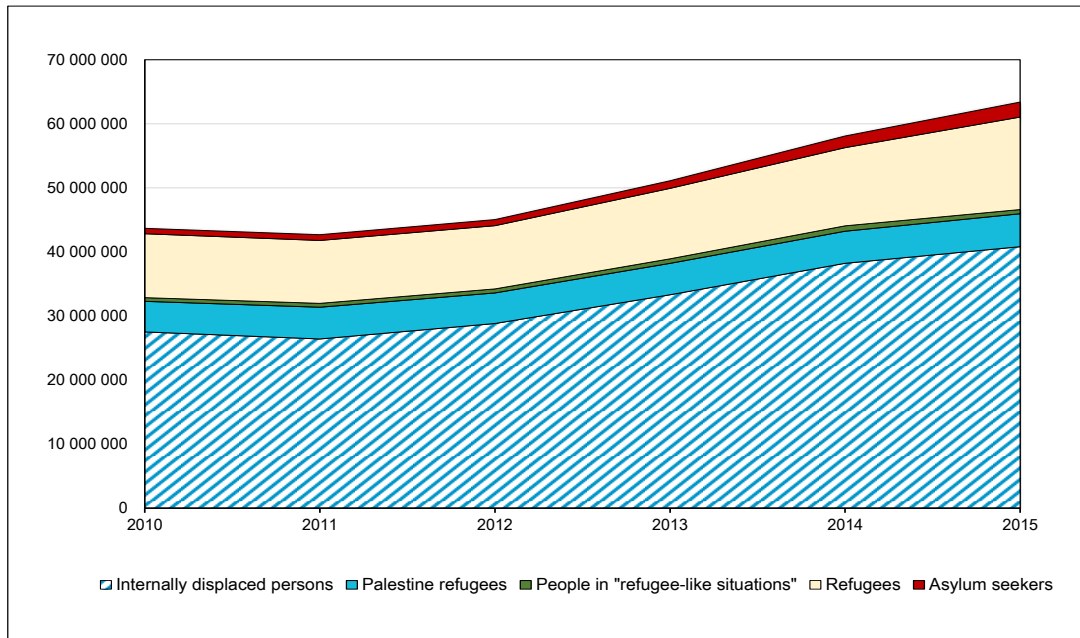
³ ILO (2014). *Fair migration: Setting an ILO agenda*, Report of the Director-General, Report I(B), and *ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration*.

⁴ UNHCR (2015). Mid-year estimates 2015; UNHCR data refer to “people of concern” which include, in addition to Convention refugees other related categories such as people in refugee-like situations, asylum seekers, IDPs under the protection of UNHCR (a slightly smaller total than the total number of IDPs), returnees, and stateless people: <http://www.unhcr.org/56701b969.html>.

⁵ The 15.1 million includes 14.441 million recognized refugees and, in addition, 656,000 “people in refugee-like situations and people of concern (to the UNHCR)” which are technical categories delineating people who receive protection from the UNHCR although they do not have refugee status under the terms of the 1951 Geneva Convention on the Status of Refugees. The 1951 Geneva Convention on the Status of Refugees defines the refugees covered by the protections of the Convention. (Article 1(A)(2)).

total. However, beyond these major aggregates and the challenges they present, 169 countries worldwide host refugees and, for example, 23 countries individually host more than 200,000 refugees. These more widely representative situations also pose many, equally profound, challenges for the impacted countries, the UN system, and donors.

Figure. Scale of forced displacement 2010–15



11. The aggregate data include 5.1 million Palestinian refugees⁶ and an estimated 40.8 million⁷ who are internally displaced persons (IDPs)⁸ as a result of conflict and who are protected, as applicable, by the 1998 Guiding Principles on Internal Displacement and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) which came into force in 2012. Neither Palestinian refugees nor IDPs are the concern of this background paper. Nevertheless, IDPs may in time cross borders and become refugees.
12. Beyond this documented total of 60.7 million people, are millions more people forcibly displaced by conflict or natural disaster who do not meet the legal and normative international definition of a refugee contained in the 1951 Refugee Convention and 1967 Protocol: namely, those fleeing “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside

⁶ UNWRA (2015). UNWRA in figures 2015, Communications Division UNWRA, Jerusalem, http://www.unrwa.org/sites/default/files/unrwa_in_figures_2015.pdf.

⁷ IDMC (2015). Provisional estimate for 2015.

⁸ The 1998 Guiding Principles on Internal Displacement define IDPs as “persons or groups of persons ... have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border” (United Nations, 1998, E/CN.4/1998/53/Add.2).

the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country”.⁹

B. Drivers and patterns of displacement

- 13.** A short discussion of the complex drivers and patterns of forced displacement explains how the fluidity of categories and the fragmentation of protection standards for refugees and other forcibly displaced persons give rise to a number of labour market and labour rights challenges as explored further in part 2.
- 14.** The majority of forced displacement situations relevant to this background paper are precipitated by intra-national armed conflict, other situations of violence, and human rights violations perpetrated by States on their own people and by armed non-state groups.¹⁰ Either directly or indirectly, violence is usually the outcome of, or exacerbated by, underlying structural conditions such as poor governance, political instability, human rights violations, poverty, contested land rights, and environmental degradation (increasing susceptibility to climate change). These factors often act in combination, for example food insecurity and livelihoods vulnerability exacerbated by conflict and the incidence of drought. Where this happens, displacement occurs in less discernible ways than conflict-induced displacement, the numbers may be smaller and the patterns of movement incremental.
- 15.** The drivers of forced displacement are often episodic and oscillate unpredictably between different phases rather than a single or a sustained event. Consequently, forcibly displaced persons may first become IDPs and then refugees. Refugees may temporarily return home, as conditions allow, while others may be in transit. In the same country, mixed populations of IDPs, former IDPs who are now refugees, transit refugees, more permanently settled refugees and voluntary migrants may coexist. The mixture of secondary and multiple displacements reaches across a region, rather than a neighbouring country as in the past, and is increasingly global. It is no longer possible to speak of simple categories of countries of first asylum, transit countries and countries of settlement and/or resettlement. Many countries host populations across this whole spectrum.
- 16.** A related feature is that globally, the majority of refugees, forcibly displaced persons, IDPs and returnees, now live in urban and rural areas usually among their host communities, not in refugee camps. As displacement becomes increasingly protracted, cities may offer better economic prospects than camps and rural areas. But access to urban labour markets is usually constrained by unclear legal status and degree of enjoyment of economic and social rights. Competition in the highly crowded informal economy, where most forcibly displaced persons search for work, results in unfair competition for unauthorized and unprotected jobs.
- 17.** The multivariate drivers, the fluidity of categories and the complex, onward pressure of movement, illustrate the difficulty of establishing clear-cut typologies of migrants, refugees, and forcibly displaced persons on which protection and rights-based norms, such as access to labour markets, can be developed. As we have seen, many of those who are forcibly

⁹ See footnote 5 (Article 1(A)(2)). Two regional instruments, the 1969 OAU (now AU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees, provide a broader definition of refugee than provided by the 1951 Refugee Convention.

¹⁰ Natural disasters are also a significant driver of forced displacement. During 2015, natural disasters displaced around 19.2 million people within their own countries. Because there are significant fluctuations from year to year, accounted for by relatively infrequent but huge events, an eight-year average of 25.4 million per annum gives a more realistic picture of the scale of natural disaster displacement. <http://www.internal-displacement.org/assets/publications/2016/2016-global-report-internal-displacement-IDMC.pdf>.

displaced are covered in only a generalized way by existing international human rights, protection norms or legal frameworks, especially as their movement is mostly unauthorized. Even for refugees, where states permit access to “wage earning employment” under the 1951 Refugee Convention, this is usually applied with conditions. In addition, although freedom of movement embodied in the 1951 Refugee Convention is an important right for refugees accessing work, many countries that have ratified this Convention do not apply it, and actively prevent their movement.

C. Protracted displacement, humanitarianism and development

- 18.** The UNHCR calculates that recognized refugees are displaced, on average, for 17 years which reflects both the ongoing nature of conflicts which drive forced displacement and for which political solutions remain elusive, for example, in Somalia, Iraq, Afghanistan and increasingly in the Syrian Arab Republic, and the rapidly decreasing traction of the three so called “durable solutions” – refugee return, local integration and third-country resettlement. A more recent fourth “durable solution”, labour mobility has been advocated, for example by the UNHCR, and is discussed in more detail in the third part of this paper. Thus, there is seldom a predictable path from displacement to a finite end point, although some may “return” or be resettled. For others, a continuum of mobility may be key to livelihoods strategies.
- 19.** Although there is increased mobility, nevertheless the majority of forcibly displaced persons and refugees still remain in their country of first asylum or their region of origin. Informally, socio-economic inclusion unfolds over time, although it is officially “resisted” in many countries, for example by restricting labour market access, limiting freedom of movement and other rights. Although self-reliance may increase, refugees and other forcibly displaced persons have continuing needs that can only be realized through livelihoods assistance and rights protection.
- 20.** At the same time, there is widespread recognition that refugees and other forcibly displaced persons contribute to host societies by bringing skills, extensive social capital, know-how and talents that can contribute to the development strategies of host countries and, in some circumstances, help meet labour shortages due to changing demographics, that is to say, ageing populations and declining workforces.
- 21.** For host countries and populations, protracted displacement can also impose socio-economic costs and impacts where not properly managed, affecting human and social capital, economic growth, poverty reduction efforts, environmental sustainability, societal fragility and, of course, substantial pressure on the structure and functioning of labour markets. For some countries, public services come under particular strain. This fiscal stress is paralleled by pressure on micro- and macroeconomic performance: labour markets may be particularly vulnerable and macroeconomic development gains can be reversed. These pressures may translate into political tensions between host and forcibly displaced populations, especially in already poorly served and overcrowded urban areas where refugees settle. This reinforces the reluctance of some host countries to promote their integration or even non-permanent, but more sustainable responses.
- 22.** Recognizing these challenges, a paradigm shift is taking place among international development and humanitarian actors and donors ¹¹ which is framed around sustainability

¹¹ Notably the World Bank, UNHCR, UNDP.

and underpinned by development-led approaches and resilience-based strategies.¹² While humanitarian assistance is of crucial importance to ensure the provision of basic life-saving services, it has to sit alongside the early intervention of development actors. This is essential to: mitigate acute fiscal stress; reverse macroeconomic shocks; stabilize and support longer term development strategies of impacted economies; address labour market disequilibria; and promote sustainable livelihoods that harness the productive capacities of the forcibly displaced *and* their hosts. Comprehensive analysis and joint programming of interventions for hosts and the forcibly displaced are key elements. Affected governments have the lead role because they are responsible for the legal and policy frameworks which address the combined needs of these populations.

23. The challenges of displacement dynamics, fragmented protection standards, and protracted displacement have created the sharpening focus on development-oriented responses to refugee crises and highlight the entry point to labour markets as the instrumental link. Successful development strategies typically presume labour market access. The rise in consumption, generated by the rapid increase of refugees and other forcibly displaced persons, potentially creates a correspondingly rapid economic and labour market growth. Conversely, where labour market access is restricted, development strategies are less likely to be effective.
24. The ILO has a mandate to protect the interests of all workers “when employed in countries other than their own” including refugees.¹³ In its 2016 General Survey concerning the ILO’s migrant worker instruments, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) has stated that: “Refugees and displaced persons, where they are employed as workers outside their own countries, are covered by the instruments.”¹⁴ Against this backdrop, the ILO is challenged to further define, enhance and implement its contribution both to the overall international effort to assist refugees and other forcibly displaced persons and through its own distinctive expertise and services to member States to support them in facing these challenges. Past and current experience help to highlight the areas in which the ILO can bring added value and specialized knowledge to the challenges that host countries may face, including: defining the terms of access to labour markets which also meet the needs of host communities and the local workforce; skills recognition, matching and development; enterprise development; occupational safety and health; addressing informality; protecting fundamental principles and rights at work; and employment-intensive investment programmes. International labour standards provide the indispensable normative framework for interventions and, more than ever, the active involvement of the ILO’s tripartite constituents acquires crucial importance in this context.

¹² See e.g. The World Bank Group (2015). “A Response to Global Forced Displacement”, Staff Working Paper, November 2015. European Commission (2016). “Lives in Dignity from Aid-dependence to Self-reliance”, Draft title for forthcoming Communication from the Commission to the Council and European Parliament. Zetter, R. (2014). *Reframing Displacement Crises as Development Opportunities*, Development Solutions Initiative, Copenhagen, Danish Ministry of Foreign Affairs, <http://www.rsc.ox.ac.uk/files/publications/other/pn-reframing-displacement-crisis-2014.pdf>, UNDP-led *Regional Refugee and Resilience Plan (3RP) 2016–2017 in response to the Syria crisis*, <http://arabstates.undp.org/content/dam/rbas/doc/SyriaResponse/3RPbrochure-draft-AB-FINAL-lowres.pdf>, and the Dead Sea Resilience Agenda.

¹³ ILO: Constitution of the International Labour Organisation preamble.

¹⁴ ILO: *Promoting Fair Migration*, General Survey concerning the migrant workers’ instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 105th Session, Geneva, 2016 (hereinafter General Survey on migrant workers, 2016), para. 113.

25. Thus, the critical importance of access to work underscores the ILO's turnkey role with its mandate to promote principles grounded in ILO standards on decent work for refugees and other forcibly displaced persons entering the labour market.

D. Refugees, forced displacement and legal protection

26. Refugees enjoy a distinct status and protection under international law. Yet, despite the relatively narrow legal definition of the 1951 Refugee Convention,¹⁵ the term “refugee” has become a generic label for a wide spectrum of forcibly displaced persons including asylum seekers,¹⁶ people displaced by environmental degradation and disasters, and “mixed migration flows”. However, because these categories are not subject to the normative and legal conditions of persecution which determine refugee status, the terms “forced displacement” and “forcibly displaced persons” have gained increasing traction with intergovernmental and international organizations, and humanitarian and development actors. The wider scope of the term “forcibly displaced persons” captures the complex and multivariate drivers and processes which characterize contemporary displacement dynamics discussed below.¹⁷

27. Nevertheless, there is no global consensus on the meaning of the term “forcibly displaced persons” and, compared to refugees, they enjoy much more limited rights of international protection (and other entitlements) in the host country. The two main regional refugee instruments – 1969 OAU (now AU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1984 Cartagena Declaration on Refugees – offer a broader definition of refugee than the 1951 Refugee Convention, but their application is still geographically limited by region.

28. People who fall outside the provisions of these Conventions are nevertheless still eligible for protection. Core international human rights instruments, most notably the Convention against Torture, provides that no State party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. In addition, where the widely ratified International Covenant on Economic, Social and Cultural Rights (ICESCR) and International Covenant on Civil and Political Rights (ICCPR) apply, any person within the jurisdiction of the State party, including forcibly displaced persons, are subject to their protection, thus compensating to some degree for their lack of protection vis-à-vis the 1951 Refugee Convention. These

¹⁵ Article 1(A)(2).

¹⁶ Strictly speaking the 1951 Refugee Convention also provides protection to asylum seekers as, at the very least, they are protected from refoulement until such time as their status is determined. However, their protection status is often, in practice, unclear rendering them vulnerable.

¹⁷ For fuller discussion see Zetter, R. (2014). *Protecting Forced Migrants: A State of the Art Report of Concepts, Challenges and Ways Forward*, Monograph for Swiss Federal Commission on Migration (FCM) Art.-Nr. 420.933 E, Bern, Switzerland, <https://www.ekm.admin.ch/ekm/de/home.html> and Zetter, R. (2015). *Protection in Crisis: Forced Migration and Protection in a Global Era*, Policy Paper for Transatlantic Council on Migration – Migration Policy Institute, Washington DC. <http://migrationpolicy.org/research/protection-crisis-forced-migration-and-protection-global-era>.

Covenants apply to everyone, including refugees and asylum seekers, regardless of legal status and documentation.¹⁸

- 29.** Of central relevance to this background paper is access to labour markets for forcibly displaced persons, especially refugees, and the different forms of protection and entitlements this access confers. A refugee recognized under the provisions of the 1951 Refugee Convention may also benefit from certain labour rights spelled out in Articles 17 to 19 (access to employment), Articles 15 and 24 (labour rights), and Article 15 (right of association through trade unions). Importantly, Article 17 of the Refugee Convention mandates to refugees¹⁹ the most favourable treatment accorded to nationals of a foreign country in the same circumstances as regards the right to engage in wage-earning employment. Refugees are privileged under these Articles over other categories of forcibly displaced persons, even though many countries constrain or limit the application of these rights. Even those with refugee status work mainly in the informal economy because of labour market constraints and legal impediments to their access to work,²⁰ while for those without refugee status,²¹ those with temporary protection, and other forcibly displaced persons, their only option may be to work informally.²²
- 30.** Article 6 of the ICESCR, referenced above, affirms that States parties are under the obligation to respect the right to work by ensuring equal access to decent work for all persons, including migrant workers,²³ which arguably encompasses refugees as long as they are workers. It has been interpreted, based on the law and practice of States parties, to mean that “the labour market must be open to everyone under the jurisdiction of States parties”.²⁴ Further, in contrast to the Refugee Convention, the ICESCR does not permit different levels of protection between States.
- 31.** The ILO normative framework provides further guidance. The ILO Conventions protect all workers, including refugees and other forcibly displaced persons who are working, seeking

¹⁸ UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (Art. 2, para. 2), E/C.12/GC/20 (2 July 2009), para. 30; UN Human Rights Committee, CCPR General Comment No. 18 (1989).

¹⁹ It can be argued that persons enjoying temporary protection and, to a limited extent, asylum seekers (if, for example, a State fails to determine or comply with a refugee status determinations system or where the procedure is unduly prolonged) are also covered by Article 17 of the Refugee Convention. See, further, for example: University of Michigan Law School, *The Michigan Guidelines on the Right to Work*, Guideline 8, 16 Mar. 2010, available at: <http://www.refworld.org/docid/4bbaf1242.html>.

²⁰ According to the ILO–FAO study “Impact of Syrian refugees on the Jordanian labour market”, 2015, around 99 per cent of the sample of Syrian refugee workers were employed in the informal economy, compared with 50 per cent of Jordanian workers in the sample.

²¹ In a very few countries, asylum seekers may be permitted to work, although usually with time and other constraints.

²² Between 25 per cent and 40 per cent of annual GDP in developing countries in Asia and Africa is thought to come from the informal economy (World Bank Group, 2015). The IMF (2015) estimates that 26 per cent of overall GDP in Jordan, a major refugee-hosting country, comes from the informal economy. Thirty-five per cent of the Turkish population work in the informal economy. This figure is thought to be higher for youth, at 48 per cent, not including refugees or other forcibly displaced persons (World Bank Group, 2015).

²³ CESCR, General comment No. 18: The Right to Work (Art. 6), para. 23.

²⁴ CESCR GC No. 18, para 12(b) on the right to work, <http://www.refworld.org/docid/4415453b4.html>.

work or in need of income security, unless otherwise stated. These considerations provide the entry points for the ILO and its mandate for the world of work, discussed in the following sections.

Part II. ILO: Addressing labour market impacts of refugees and other forcibly displaced persons

32. The dynamics of increased flows of refugees and other forcibly displaced persons have placed a series of interconnected challenges at the top of international and national policy agendas. The ILO, alongside the international community, has increasingly acknowledged the need to strengthen the nexus between humanitarian assistance and the development dimensions of the overall response with jobs strategically placed at this intersection. Further, the importance of decent work in the broader protection framework will be highlighted during the revision of the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71) in 2016–17.²⁵
33. As pointed out in part 1, there is growing consensus that access to productive employment and decent work is the most important strategy for a sustainable response to the presence of refugees and other forcibly displaced persons, enabling them to participate in and contribute effectively to the economies and societies of host countries, ensuring that this approach does not disadvantage national workers and host communities. While programmes that enable access to labour markets may entail costs in the short run, there can be considerable long-term benefits, including ensuring social cohesion. Moreover, expenditure on inclusion policies and programmes can be seen as a form of expansionary fiscal policy in advanced, emerging and more recently emerging economies and hence boost aggregate demand.²⁶ Another key positive externality of successful inclusion is the potential offsetting effect to the emerging challenge of ageing of working populations in most advanced countries, for example.
34. Nevertheless, frontline States are the most heavily impacted by large flows of refugees and other forcibly displaced persons: they need strong support from the international community to address the challenges laid out in part 3 of this background paper, particularly labour market governance, inclusive economic growth and job creation.
35. From the perspective of the ILO and its mandate, access to labour markets for refugees and other forcibly displaced persons is the turnkey to these developmental objectives alongside managing the wider socio-economic impacts of labour market access. How access and rights are addressed in relation to the tripartite interests of the ILO – governments, employers and workers – is a central concern.

²⁵ See Employment and decent work for peace and resilience: Revision of the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_358383.pdf.

²⁶ IMF estimates show that additional expenditure on refugees increased from an average of 0.13 per cent to 0.19 per cent of GDP in 19 countries of the EU between 2015 and 2016 with more favourable long-term impacts when accompanied by successful labour market integration of up to 0.25 per cent of GDP for the EU by 2020 and up to 1.1 per cent of GDP for the three main countries of destination (Austria, Germany and Sweden). [International Monetary Fund (2016). The Refugee Surge in Europe: Economic Challenges. SDN/16/02]. The OECD (2015) argues that such additional spending may propel EU aggregate demand up to 0.2 per cent of GDP (European Parliament, 2016). [OECD (2015) Migration Policy Debate No. 8 Nov. 2015].

A. ILO – Principal Conventions and normative framework

36. The ILO’s comprehensive normative framework aims, among others, at improving working conditions for women and men, labour market governance, addressing unacceptable forms of work and protecting the most vulnerable, including the “protection of the interests of workers when employed in countries other than their own”.²⁷ Fundamental rights at work, as embodied in the eight fundamental ILO Conventions and defined in the 1998 Declaration on Fundamental Principles and Rights at Work,²⁸ apply to all categories of workers, and represent minimum standards of protection, which should also be applicable to refugees and other forcibly displaced persons.²⁹
37. Two Conventions specifically protect migrant workers and provide a framework for addressing refugees and forcibly displaced persons who enter labour markets outside their home countries: the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). These explicitly prohibit discrimination based on nationality, and pertain to refugees and other forcibly displaced persons.
38. In its 2016 General Survey concerning the ILO’s migrant worker instruments, the CEACR stated that it was “mindful of the very large numbers of displaced persons, refugees and asylum seekers globally”, and that “[t]he migrant workers instruments cover displaced persons and refugees where they are employed as workers outside their country of origin”.³⁰
39. Under ILO Convention No. 143 member States are required to adopt a national equality policy in respect of employment and occupation. “Employment and occupation” includes: access to vocational training, employment and particular occupations, and to terms and conditions of employment.³¹ At the same time, it is acknowledged that member States retain the right to admit or refuse to admit a foreigner to their territory. The Convention does not regulate the issuance or renewal of work permits.³²
40. Restrictions to free choice of employment are possible under Convention No. 143. General restrictions on the free choice of employment may be authorized for a certain period not exceeding two years. If restrictions continue past two years, the CEACR considers that such provisions run counter to the principle of equality of treatment between foreign and national workers.³³ However, restrictions on the right to geographical mobility are not acceptable.

²⁷ ILO: Constitution of the International Labour Organisation preamble.

²⁸ The four fundamental principles are: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation.

²⁹ In the past, the CEACR has underscored the universal application of the ILO fundamental Conventions to all persons in the world. See further General Survey on migrant workers, 2016.

³⁰ General Survey on migrant workers, 2016, para. 371.

³¹ General Survey on migrant workers, 2016, para. 349. See also Article 1(3) of Convention No. 111.

³² General Survey on migrant workers, 2016, para. 350.

³³ General Survey on migrant workers, 2016, paras 354, 357 and 359.

Restrictions on permanent access to limited categories of employment or functions, where this is necessary in the interests of the State, are also permitted.³⁴

41. Of relevance to refugees and other forcibly displaced persons are provisions regarding the obligation of ILO member States to provide information to migrant workers and importantly, to facilitate their departure, journey and reception under Convention No. 97. In this respect, the CEACR refers to certain governments that implemented anti-discrimination training sessions, training for newly arrived migrant workers, including employment education sessions, and support aimed at social and employment integration. Certain member States also referred to special services for women migrant workers who are at particular risk of exploitation, a risk that can also affect refugees and other forcibly displaced persons.

B. ILO technical cooperation

42. In response to the current situation, the ILO is providing technical support to member States in supporting both refugees and national workers. For example: (i) it has implemented pioneering assessments of the impact of the growing number of refugees inside Lebanon and Jordan, as well as a survey of their employment status;³⁵ (ii) joint ILO–UNHCR collaboration in Egypt and in Zambia focused on providing integrated value chain development projects for refugees, linking both the demand and the supply side of the labour market in order to create employment in promising and/or fast-growing sectors and match these with skills development interventions for refugees; (iii) further joint ILO–UNHCR collaboration with the tripartite partners in the garment sector in Jordan is piloting the initial creation of up to 2,000 jobs for Syrian refugees underpinned by the Better Work programme; and (iv) the Local Economic Recovery approach to provide jobs and income opportunities for host communities and refugees, returnees and IDPs.³⁶
43. The launching of the ILO’s Flagship Programme on Jobs for Peace and Resilience (JPR)³⁷ will play a major role in the provision of the ILO’s technical expertise. The JPR combines large-scale employment-centred interventions with skills and vocational training, entrepreneurship development and awareness raising of fundamental principles and rights at work in fragile settings, with a specific focus on youth as the primary beneficiary group. This programme offers a selected package of technical inputs as entry points in fragile settings, consisting of Employment Intensive Investment Programmes (EIIP) complemented by skills and enterprise development initiatives to create an enabling policy environment for socio-economic recovery. These and other approaches are anchored in addressing root causes of population movements in particular in countries of origin, first asylum and transit.

³⁴ General Survey on migrant workers, 2016, para. 354.

³⁵ These and other examples are presented as good practices in part 2 of the report.

³⁶ See: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/instructionalmaterial/wcms_141270.pdf.

³⁷ See: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting_document/wcms_413765.pdf.

Part III. Access to labour markets – Challenges, normative guidance, and emerging practices

44. The UN Secretary-General has noted that refugees have the “will and potential to become self-reliant in their places of refuge. This is in their own interests and in those of the communities in which they live. Supporting viable and sustainable livelihoods for both refugees and host communities enables refugees to secure the basic necessities of life, such as food, water, shelter and clothing, and to contribute to the development of local economies. Self-reliance of refugees should be facilitated by Member States recognition of refugees’ rights to reside, and a commitment to expand access to legal employment wherever possible ...”³⁸
45. Access to labour markets for refugees and other forcibly displaced persons is the bridge between moving from the humanitarian to the development dimensions in managing large-scale movement of refugees and other forcibly displaced persons. This part of the paper explores the challenges to widening access to labour markets for these populations, the ILO standards and normative guidance that should be considered, and the emerging practices member States and the social partners are undertaking in response.
46. It is organized by considering five perspectives:
- (1) Governing access to labour markets.
 - (2) Economic and employment policies for inclusive labour markets.
 - (3) Labour rights, equality of treatment and social dialogue.
 - (4) Partnership, coordination and coherence.
 - (5) Alternative pathways for labour mobility.
47. Based upon the analysis of this section, part 4 follows with a set of potential guiding principles within these five areas for further consideration.

A. Governing the access of refugees and other forcibly displaced persons to the labour market

48. A range of factors influence States’ policy responses on access of refugees and other forcibly displaced persons to the labour market. Inconsistent legal, policy and administrative practices are widely evident. Furthermore, refugee-hosting States are not all signatories to the 1951 Convention or some have made reservations to Articles 17 to 19 affording refugees the right to engage in different kinds of employment. However, it is crucial to recognize that host countries are themselves often facing significant labour market challenges which can be further compounded in situations of large arrivals.
49. Access to labour markets is rarely provided with the clarity envisaged in international law; rather, it is mediated by political and economic considerations. Countries may seek to limit large movements, or prevent the long-term stay of refugees, especially where economic or political conditions are not conducive to the socio-economic inclusion of these populations or refugee return is expected when conditions improve.

³⁸ Report of the UN Secretary-General, “In Safety and Dignity: Addressing large movements of refugees and migrants”, paras 80–81, A/70__, 9 May 2016.

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- 50.** Access to formal and decent work remains an issue for many citizens in emerging economies and low and upper middle-income countries. In the case of refugees and other forcibly displaced persons, the right and access to work are further conditioned by their overall status. The fact that few countries display a systematic correlation between the legal and normative provisions for status determination and protection on the one hand, and right to work on the other, is a major constraint. Moreover, in general, weak overall protection regimes frequently translate into weak labour market access regimes and limited workplace protection for refugees and other forcibly displaced persons.
 - 51.** In some countries, refugee and/or labour legislation may be outdated and no longer apply to the complexity of displacement patterns. Very few States have undertaken legislative or administrative reform to improve access to labour markets for refugees and forcibly displaced persons. Indeed, the legislative machinery governing access to labour markets is often becoming more restrictive in so far as these populations are concerned.
 - 52.** Moreover, linked to these legislative constraints, administrative challenges may constrain access to work. Generally, refugee and forced migration issues fall under the remit of interior or immigration ministries with varying degrees of centralization and decentralization of functions such as status determination, and renewal of permits and visas. There is often weak coordination between these mainline ministries and labour ministries and social partners who may thus have limited to no involvement in responses to these large movements, in spite of their key role in labour market interventions. The result is that even where there is legal provision for access to labour markets, there might be little consistency with refugee policy as a whole.
 - 53.** Turning from legal to economic challenges, countries receiving the largest numbers of refugees and forcibly displaced persons are emerging economies and middle-income countries, for example, Ethiopia and Kenya respectively, and some upper middle-income countries, such as Jordan and Lebanon. Refugee-hosting countries may have weak labour market institutions, oversupplied labour markets which tend to be concentrated in a rather narrow range of predominantly high-skilled public sector jobs and large informal economies concentrating low-skilled, low-wage jobs, and often include a significant quantum of migrant workers. These countries tend to be more restrictive on labour market access and the variety of employment opportunities is also more limited. Conversely, countries where access to labour markets is easier are those with proportionally fewer refugees, stronger economies and potential labour supply gaps and/or skills shortages.
 - 54.** Pre-existing institutional and underlying structural weaknesses in host country economies as well as high rates of poverty and un- or underemployment, are further unfavourable conditions for labour market access exacerbated by large movements of refugees and forcibly displaced persons. Such large movements may overwhelm the labour market, at least in the short term, such as in Lebanon and Jordan where the presence of large numbers of refugees is a challenge for labour market governance and economic development. This presence also creates political and fiscal challenges already discussed in part 1. Heavily impacted countries such as these frontline States cannot easily “create” jobs and increase labour market capacity for refugees and forcibly displaced persons without significant investment from donors, multilateral and intergovernmental agencies and the private sector.
 - 55.** Moving on to consider more operational and procedural challenges, in countries where refugees are able to access work, this entitlement is rarely automatic. Thus, most countries apply specific criteria or requirements in addition to refugee status, such as: work permits, which are most often required and which are usually granted only for limited time periods, requiring regular (often yearly) renewal or extension; and payment of fees of variable amounts and which are often expensive relative to the wages of the applicants. Some countries may require a pre-existing job offer from an employer or work permits before employers can take on non-nationals, or quotas on the total number of foreigners that can be

hired either at national or enterprise level; in other cases sometimes a valid resident permit may also be required.

56. Countries may also protect sectors of their labour markets by restricting these populations from employment in certain professions – usually those related to security, defence and government employment. But the list can extend to a much wider range of work.
57. Often restrictions on access to work are paired with other legal limitations for refugees and other forcibly displaced persons to access livelihoods and self-reliance capacity. In countries where refugees are legally permitted to set up their own businesses and micro-enterprises, they often face difficulties in registration procedures. For example, there may be limitations, or substantial bureaucratic hurdles, ownership of property or land, capital and the right to enter into contracts.
58. Many countries confine refugees and displaced populations to camps and/or apply movement restrictions even to refugees who, in principle, should enjoy freedom of movement under the 1951 Refugee Convention. Restrictions on mobility inevitably limit the potential for access to work.
59. Limitations on access to labour markets and on other rights such as freedom of movement, often lead to the emergence of situations of significant economic insecurity and recourse to negative coping mechanisms is widespread, including child labour, sexual exploitation and bonded labour. In situations where the displacement of refugees is protracted, unacceptable forms of work are rising in magnitude. For example, in Jordan, Lebanon and Turkey, the incidence of child labour among the Syrian refugee population has increased dramatically in the last few years, reversing gains made in addressing the phenomenon among the national population.³⁹

ILO standards and normative guidance

60. A number of Conventions provide the legal and normative basis for addressing some of these challenges. Within this context, the sustained promotion of decent work for all workers including refugees and forcibly displaced persons, relies on national institutions and capacities that serve to promote employment while strengthening national systems for ensuring compliance with labour standards. Relevant here is the Social Justice Declaration which designates four Conventions that relate to tripartism, employment policy and labour inspection as “most significant from the viewpoint of governance”: the Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122), the Labour Inspection (Agriculture) Convention, 1969 (No. 129) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).⁴⁰

³⁹ Children living and working on the streets in Lebanon: Profile and Magnitude, ILO, UNICEF, Save the Children and Ministry of Labour, February 2015: http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_344799.pdf. Rapid assessment on child labour in the agricultural sector in Jordan, ILO, June 2014: http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/genericdocument/wcms_246206.pdf. Rapid assessment on child labour in the urban informal sector in three governorates of Jordan, ILO, June 2014: http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/genericdocument/wcms_246207.pdf.

⁴⁰ ILO: *Towards widespread ratification and effective implementation of the governance Conventions*, Plan of Action 2010–2016, 2011, para. 1.

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61. Promoting full, decent, productive and freely chosen employment in line with the Employment Policy Convention, 1964 (No. 122), is of vital importance to attaining the effective protection of persons working abroad.⁴¹
 62. The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), acknowledges that most people enter the informal economy not by choice but to a lack of opportunities in the formal economy and an absence of any other means of livelihood as is often the case with refugees and other forcibly displaced persons. This new labour standard provides strategies and practical guidance on policies and measures that can facilitate the transition from the informal to the formal economy, assisting countries to set up the necessary measures to promote decent job creation and sustainable enterprises.
 63. Likewise, ILO instruments recognize the pivotal role that the social partners play in the effective governance of labour migration issues,⁴² which is equally important in supporting access of refugees and other forcibly displaced persons to the labour market and ensuring compliance with labour standards. Of fundamental importance in this context is the Tripartite Consultation (International Labour Standards) Convention, 1967 (No. 144).

Current and emerging practice

64. Despite the challenges and constraints, some governments are reforming their refugee and/or labour legislation and have adopted positive strategies to promote refugee livelihoods through granting access to the labour market. In February 2016, the Turkish Government adopted the Regulation on Work Permits of Foreigners under Temporary Protection, allowing Syrian refugees in possession of their temporary identity cards and residing in Turkey for six months, to apply for work permits.
65. Jordan is also engaged in labour market reform with respect to refugees' access to its labour markets and has developed a pioneering strategy, the Jordan Compact,⁴³ to provide work permits for up to 200,000 Syrian refugees in the coming years and a sector specific provision of 2,000 jobs in the garment industry. The permits are both to help regularize the situation of refugees working in the informal economy, and to create new work opportunities for these refugees and Jordanians in special economic zones. In addition, the Minister of Labour in Jordan issued a directive in April 2016 to all labour directorates in the country to waive all fees relating to issuing 12-month work permits for Syrian refugees for a grace period of three months.
66. Responding to large-scale movements in recent years, Germany has also allowed access to its labour market to large numbers of, mainly Syrian, refugees with few limited sectors.
67. Some States streamline procedures by removing or minimizing obstacles to accessing the labour market. For example, in the United States, access to the labour market is directly correlated with refugee status determination procedures without the need for a work permit. Resettled refugees can work immediately upon arrival, while asylum seekers are granted access as soon as their status is approved. Since 2012, Ecuador has waived the need for work permits for refugees and asylum seekers.

⁴¹ General Survey on migrant workers, 2016, para. 193; see, further, Employment Policy Recommendation, 1964 (No. 122), para. 33.

⁴² General Survey on migrant workers, 2016, para. 131.

⁴³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/498021/Supporting_Syria_the_Region_London_2016_-_Jordan_Statement.pdf.

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68. As noted, restrictions on refugee mobility generally limit access to work. But States like Ethiopia, for example, are tackling this issue by gradually relaxing their approach on “out-of-camp” work policies. Specifically addressing the needs of rural refugees, in 2006 the Government of Chad, following an ILO mission, provided refugees unlimited access to agricultural land in the south of the country on the condition that they were prepared to make productive use of it.
69. Despite the lack of clarity, recognized refugees are generally privileged over other categories of forcibly displaced persons who tend to be “invisible” to the law and thus de facto excluded from protection and rights, including accessing the formal labour market and contingent benefits. To reverse some of these limitations, Belgium, for example, provides work permits for foreign nationals temporarily residing in Belgium or who are awaiting a decision on their right to stay. The permit allows asylum seekers to work in any sector in Belgium for up to one year. Similar provisions apply in Turkey, as noted above.

B. Economic and employment policies for inclusive labour markets

70. The extent to which refugees and other forcibly displaced persons experience inclusive labour market conditions is also mediated by concerns about labour market structure and economic conditions in host countries. In particular, when the size of these populations is significantly larger than the local workforce, it is crucial to develop a sustainable job-creation programme through effective combination of economic and employment policies and active resource mobilization. This combined policy effort would help avoid potentially disruptive competition for jobs between local workers and refugees and other forcibly displaced persons for limited opportunities. In this respect, a pro-employment policy framework which integrates a wide range of policies is key. These could include boosting investment, improving business environments, enhancing skills and training, improving job matching through effective employment services, and improving labour market information systems. It is also important to ensure that development assistance and donors’ financial support is geared towards creating a sustainable job creation programme in host countries.
71. Creating the enabling environment of job creation can be particularly challenging for countries experiencing significant decent work deficits and/or whose resources are already stretched when large movements of refugee and other forcibly displaced persons occur.
72. The reach of institutional support to improve refugees’ inclusion in labour markets may be further limited by in-camp policies. Most assistance is only offered in camps not in urban areas where many refugees and other forcibly displaced persons reside. Urban locations are also where many host States have the most restrictive access to labour markets.
73. Another significant challenge is the lack or limited capacity of labour market information systems and research to inform policy and legislative development, particularly to assist in examining labour market shortages and potential areas for skills and jobs matching for refugees. Institutional capacity may be needed to support particularly countries that are receiving the bulk of refugees and other forcibly displaced persons. Research on labour market impacts of these populations on local economies and communities could provide a number of positive benefits for managing employment in both host and refugee communities. Labour market information can indicate more precisely the challenges for labour markets and provide a platform for governments to better understand the actual and potential economic contributions these populations might make, such as through new skills available and filling labour market gaps. Collecting data such as through enterprise or labour force surveys can help to identify blockages in law and legal practice, and lay the foundation for new skills training and vocational programmes.

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74. A further factor inhibiting labour market inclusion is the lack of certification or other proof of skills, qualifications and accreditation that refugees and other forcibly displaced persons have obtained in their countries of origin. Some States have acknowledged the need for rapid skills assessment tools, and for obtaining skills and qualifications certification and recognition quickly and efficiently.

ILO standards and normative guidance

75. Article 1 of the ILO's Employment Policy Convention, 1964 (No. 122), referenced earlier, recognizes that stimulating economic growth and development can be best accomplished through an active policy designed to promote full, productive, and freely chosen employment. The policy should aim, among other things, to ensure there is "the fullest opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of ... national extraction or social origin." (Article 1(c)).
76. In supporting access to employment, ILO member States should pursue, on an inclusive basis, comprehensive and coordinated policies and programmes of vocational guidance and vocational training, closely linked with employment according to the Human Resources Development Convention, 1975 (No. 142).
77. Strengthening the capacity of institutions and governance systems to enable sustainable enterprise creation is also important to increasing productivity and employment opportunities. A number of ILO instruments provide guidance in this context, including the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189); the Promotion of Cooperatives Recommendation, 2002 (No. 193); and the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (revised 2006).

Current and emerging practice

78. While there is a growing need for a pro-employment policy framework for sustainable job creation, there is a wide range of positive practices which address some important challenges in this respect. The Federal Employment Agency of Germany makes refugees and asylum seekers eligible for Type II unemployment benefits which are designed to secure a livelihood by screening their competences and offering individualized services with intensive counselling and language courses. In addition, the highly developed resettlement programme in the United States is proactive with the expectation that refugees will rapidly enter the labour market.
79. The ILO, in collaboration with the UNHCR, is piloting through its Better Work programme in Jordan the creation of jobs in the garment manufacturing sector which particularly target women refugees, including through skills training. The ILO is seeking to undertake examination for expansion of other potential sectors to follow this Better Work model.
80. Some States, such as Ecuador, in partnership with the UNHCR and civil society organizations, have taken positive measures to facilitate inclusion in the labour market through small enterprise loan schemes, skills upgrading and training programmes and self-reliance programmes. However, initiatives such as these are often time-limited and are not capable of scaling up. They are also difficult to afford for low-income countries.
81. Public and private employment services play an active role in adapting services and labour market programmes to meet the needs of refugees and other forcibly displaced persons. The tourist industry in Sweden, for example, has helped fast-tracking access by validating or upgrading skills of qualified asylum seekers and refugees. In Turkey, the ILO is supporting vocational training and language courses delivered to refugees by public education centres to ease their access into the Turkish labour market.

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- 82.** The ILO is also publishing a “Joint ILO–UNHCR Guide to Market-based Livelihoods Interventions for Refugees” providing guidance on entrepreneurship, vocational training and financial education to enable refugees to set up micro-enterprises or small income-generating activities to improve livelihoods and self-reliance. A key element includes examining market trends and labour demands more closely at sub-sectors and value chains for potential growth. The joint intervention model combines the UNHCR’s know-how and experience in protection and livelihoods interventions for refugees with ILO expertise in market systems development and employment creation.
- 83.** Cooperatives also play a role in all phases of refugee crisis response and contribute significantly to refugees’ and internally displaced peoples’ livelihoods and overall well-being. In some cases they provide direct assistance to refugees and deliver basic goods and services, or have been established with refugees as members and workers to serve refugees. Refugees have also joined existing cooperatives in growth-oriented sectors of host country economies as members and workers. They can also benefit from services of cooperatives as users of such services even when these cooperatives may not have been set up especially for refugees.⁴⁴

C. Labour rights, equality of treatment and social dialogue

- 84.** Because of their vulnerable position, refugees and other forcibly displaced persons are often highly susceptible to unequal treatment compared with host and regular migrant workers. Unequal treatment, which can amount to discrimination, including in wages and working conditions, increases the magnitude of impoverishment and social rejection, leading to “social dumping” and unequal pay.
- 85.** The attitudes and knowledge of employers’ and workers’ organizations are significant variables mediating labour market access and rights at work for refugees and other forcibly displaced persons. Employers may be reluctant to employ refugees because of: social stigma and stereotypes; mistaken assumptions that the law prohibits them from hiring refugees; fear of detection if a law is violated; or bureaucratic confusion between different rights to work as between refugees and foreign nationals. However, some employers are hiring refugees and other forcibly displaced persons irregularly as a source of “cheap labour”, without work contracts which would otherwise provide grounds for equal payment, respect for minimum wage levels and social security contributions. In addition, there may be limitations on the right of refugees to join trade unions, impacting protection of their fundamental principles and rights at work.
- 86.** Fostering social dialogue and tripartism can help to ensure mechanisms are in place to promote ILO standards and avoid exploitation of vulnerable workers, and to ensure employers are aware of and participate in implementing ILO standards and approaches.
- 87.** Some countries may be affected by wider, frequently negative, attitudes adopted by host populations. Ill-informed perceptions of national citizens about refugees and other forcibly displaced persons may induce a sense that these populations take jobs that could benefit nationals and negatively affect the quality of public services. Manifestations of xenophobia and discrimination also arise if initiatives to support access to work for these populations are perceived as detrimental to national citizens and where States tolerate negative media public discourse. Such attitudes and, sometimes, violent social tensions occur when underpaid refugees have been substituted for national or migrant workers, and are perceived as taking

⁴⁴ See: ILO’s Study on Cooperatives and Refugees at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---coop/documents/genericdocument/wcms_455734.pdf.

jobs from them and increasing the downward pressure on wages and related working conditions.

- 88.** Because of the barriers to finding regular wage employment, refugees and other forcibly displaced persons may resort to self-employment opportunities. Yet in setting up a micro-enterprise, they often face financial and social constraints, for example, their status and lack of capital can exclude them from accessing financial services and borrowing start-up finance.
- 89.** Some factors which act as constraints on rights and equal treatment replicate constraints discussed under access to inclusive labour markets. For example, factors limiting equality of access to work include: lack of local or technical language skills in the host country; limited level of pre-displacement education and training; and cultural differences in attitudes to work. In this context, the lack of systems for rapid and effective skills assessment and jobs–skills matching, particularly for women, is frequently a gap in host countries which underpins the often low success rate of their access to labour markets.

ILO standards and normative guidance

90. Extensive protection of rights and equality of treatment and opportunity are provided by ILO standards as indicated below.

(a) **Equality of opportunity and treatment**

91. The fundamental right to non-discrimination embodied in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), aims to eliminate all discrimination based on at least the specific grounds of race, colour, sex, religion, national extraction, political opinion and social origin, in employment and occupation. It applies to all workers, nationals and non-nationals, in the countries which have ratified it.⁴⁵ In addition, it should be recalled that Migration Conventions Nos 97 and 143 aim to eliminate discrimination on the grounds of nationality. The Equal Remuneration Convention, 1951 (No. 100), was adopted with the specific objective of promoting equality and eliminating discrimination and requires member States to apply equal remuneration for men and women for work of equal value.

92. Further, to promote the principle of equality of opportunity and treatment, ILO member States have the obligation to combat racism and xenophobia relating to immigrants, potentially including refugees and other forcibly displaced persons, under Convention No. 97.⁴⁶ The CEACR underlines the necessity to ensure that the national equality policy is well disseminated and observed, not only by workers and employers, but also by the general public.

(b) **Labour Rights**

(i) ***Working conditions***

93. Refugees and other forcibly displaced persons, in their capacity as workers, are protected by the Protection of Wages Convention, 1949 (No. 95). In the past, this Convention has been found to be applicable to migrant workers, whose right to remuneration had been violated.⁴⁷

⁴⁵ General Survey on migrant workers, 2016, para. 290.

⁴⁶ CEACR – *France*, Convention No. 97, direct request, 2016.

⁴⁷ *Libya* – CEACR, Convention No. 95, observation, 2012.

Both Conventions Nos 97 and 143 underscore the right to remuneration without discrimination and Recommendation No. 151 refers to equality of treatment with respect to remuneration for work of equal value.⁴⁸ Further, the CEACR highlights the importance of establishing a minimum wage system pursuant to the Minimum Wage Fixing Convention, 1970 (No. 131), which can act as a safety net for workers not covered by a sectoral minimum wage or for workers excluded from minimum wage legislation.⁴⁹

94. The right to just and favourable conditions of work is protected by Article 7 of the ICESCR. Article 7(a) spells out the right to remuneration and Article 7(b) the right to safe and healthy working conditions. The Committee on Economic, Social and Cultural Rights (CESCR) – the body supervising the implementation of the ICESCR – in its general comment on the right to just and favourable conditions of work underlines that refugees, who “[b]ecause of their often precarious status, remain vulnerable to exploitation, discrimination and abuse in the workplace, may be less well paid than nationals, have longer working hours and more dangerous working conditions. States parties should enact legislation enabling refugees to work and in conditions no less favourable than for nationals.”⁵⁰

(ii) Occupational Safety and Health

95. According to the ILO Constitution, all workers should be protected from work-related injuries and illnesses. The ILO has adopted numerous Conventions on occupational safety and health that establish fundamental principles related to the prevention of work-related injuries and diseases as well as health and safety measures in particular sectors of economic activity. The Occupational Safety and Health Convention, 1981 (No. 155), requires the adoption of a national occupational safety and health policy and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), promotes the creation of a preventative safety and health culture through the implementation of a national policy, systems and programmes that will progressively achieve safe and healthy working environments.

96. In most member States, labour inspection is a primary mechanism for achieving compliance with laws related to working conditions and the protection of workers.⁵¹ The Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), articulate the role, responsibilities, and necessary authority and capacity of labour inspectorates and are fundamental to ensuring the protection of the labour rights of refugees and displaced persons in workplaces.

97. In the case of migrant workers, potentially including working refugees and other forcibly displaced persons, the CEACR reiterates the importance of taking appropriate measures to prevent any special health risks to which these workers may be exposed, in particular those employed in hazardous occupations. Member States are therefore urged to make every effort

⁴⁸ General Survey on migrant workers, 2016, paras 375–376.

⁴⁹ General Survey on migrant workers, 2016, para. 377.

⁵⁰ CESCR, General comment No. 23: Right to just and favourable conditions of work, 8 Mar. 2016, E/C.12/GC/23, para. 47.

⁵¹ General Survey on migrant workers, 2016, para. 477.

to ensure that workers receive training and instruction in occupational safety and health in connection with their practical training or other work preparation.⁵²

The right to social security and social protection⁵³

- 98.** To protect workers from insecurities related to work, the ILO has adopted numerous Conventions on social security and social protection. The Social Security (Minimum Standards) Convention, 1952 (No. 102), lays down the minimum standard for the level of social security benefits and the conditions under which they are granted, as well as the principle of equality of treatment between non-national and national residents.
- 99.** In the case of refugees and other displaced persons, the Equality of Treatment (Social Security) Convention, 1962 (No. 118), is of particular importance. As such, the CEACR has requested governments to ensure the application of social security schemes to refugees under Convention No. 118, notably the application of compulsory social protection systems and the provision of employment injury benefits.⁵⁴ Further, both Conventions Nos 97 and 143 provide for equality of treatment with regard to social security.
- 100.** With the adoption of the Social Protection Floors Recommendation, 2012 (No. 202), member States recognized “that social security is an important tool to prevent and reduce poverty, inequality, social exclusion and social insecurity, to promote equal opportunity and gender and racial equality, and to support the transition from informal to formal employment” In addition, it states that basic social security guarantees apply to “at least all residents and children” with no distinctions stated regarding nationality or migrant status.
- 101.** The right to social security is protected by Article 9 of the ICESCR, which applies to everyone within the territory or jurisdiction of the State party. The CESCR underlines that “[w]hereas everyone has the right to social security, States parties should give special attention to those individuals and groups who traditionally face difficulties in exercising this right, in particular ... refugees, asylum seekers, internally displaced persons, returnees, non-nationals ...”.⁵⁵

⁵² General Survey, 2016, para. 388.

⁵³ There are varying definitions of the terms “social protection” and “social security”. In many contexts, as in this report, the two terms are used interchangeably. The ILO usually uses the term “social security”, with reference to the human right to social security. This term encompasses a broad variety of policy instruments, including social insurance, social assistance, universal benefits and other forms of cash transfers, as well as measures to ensure effective access to health care and other benefits in kind aiming at securing social protection. For more details, see the *World Social Protection Report 2014/15: Building economic recovery, inclusive development and social justice*, International Labour Organization (ILO), Geneva. Further, both the Refugee Convention and the ICESCR provide protection in this regard. Articles 23 and 24(b) of the Refugee Convention protect the right to social assistance and social security, respectively. Article 9 of the ICESCR protects the right of everyone to social security, including social assistance.

⁵⁴ *Cabo Verde* – CEACR, Convention No. 118, direct request, 2012 and *Uruguay* – CEACR, Convention No. 118, direct request, 2002.

⁵⁵ CESCR, General Comment No. 19: The right to social security (Art. 9 of the Covenant), 4 Feb. 2008, E/C.12/GC/19, para. 31.

Trade union rights ⁵⁶

- 102.** To ensure greater equality of refugees and other forcibly displaced persons with nationals and to give them the opportunity to negotiate terms and conditions of work, it is of fundamental importance that refugees and other forcibly displaced persons have the right to join and form trade unions. Both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Right to Organise and Collective Bargaining Convention, 1949 (No. 98), protect trade union rights.

Current and emerging practice

- 103.** Although there is extensive legal and normative provision to protect the rights and quality of opportunity that can apply to refugees and forcibly displaced persons, conversely there is limited available evidence of good practice.
- 104.** Meaningful involvement of social partners in designing and promoting policies and practices that underline the potentially positive socio-economic outcomes of the presence of refugees and other forcibly displaced persons can help to challenge negative attitudes. For example, in Turkey, the ILO supports the meaningful engagement of workers' and employers' organizations in efforts to facilitate the access of Syrian refugees to decent work, and facilitates tripartite committees at the local level in refugee-affected communities.
- 105.** Interventions that enable nationals also to benefit from decent work created to assist refugees and other forcibly displaced persons, potentially lowers the risk of social tension. Examples of other actors are: Community-based organizations facilitating access to work in Kenya; refugees' self-help micro-enterprise support by Somali refugees in South Africa, while in Zambia, there have been several initiatives to support access to labour markets while promoting community cohesion through the formation of host and refugee networks and cooperatives.
- 106.** Governments and employers' and workers' organizations have a key role to play in information campaigns which proactively promote and facilitate access to decent work. In Ecuador, the Ministry of Labour has underlined the employment rights of refugees and asylum seekers by initiating training for its staff, for private companies, and for refugees on their employment rights.
- 107.** Challenging conditions of unequal treatment and "social dumping", Belgian trade unions have stressed the importance of parity on pay and other working conditions to prevent refugees being used as "cheap labour" while safeguarding wages for existing citizens. In addition, the European social partners issued a joint declaration in March 2016 to affirm their commitment and willingness to work with governments and other stakeholders to design and develop policies to support inclusion of refugees into work and society. ⁵⁷ The

⁵⁶ Further, the Refugee Convention, the ICCPR and the ICESCR provide protection in this regard. Article 22 of the ICCPR and Article 8 of the ICESCR protect the right to form and join trade unions and Article 15 of the Refugee Convention protects the right of association through trade unions.

⁵⁷ Statement of the European Economic and Social Partners on the Refugee Crisis, Tripartite Social Summit, 16 March 2016: http://www.eurochambres.eu/custom/14_03_16_final_eco_soc_partners_message_refugee_crisis_002-2016-00048-01.pdf.

International Trade Union Confederation (ITUC) also published a special briefing note on the global refugee crisis ahead of the G20 Summit in Turkey in November 2015.⁵⁸

- 108.** The labour inspectorates and judicial bodies responsible for enforcing and adjudicating labour protections play a pivotal role in informing employers and workers about the application of labour protections to refugees and forcibly displaced persons and ensuring compliance with those labour protections in workplaces. If those bodies' knowledge of refugee law and rights is limited or they erroneously presume refugees and other forcibly displaced persons are excluded from labour protections, they will not provide necessary information to employers and their workers, and workers who are refugees or who have been forcibly displaced will be left unprotected and without recourse when subject to violations. This lack of information further compounds a likely general reluctance to complain about mistreatment. The importance of the role of these bodies in ensuring compliance, is demonstrated by the actions of the judiciary in South Africa, which has on several occasions affirmed refugees' and asylum seekers' access to work where that right has been denied.

D. Partnership, coordination and coherence

- 109.** The responsibility for responding to the global refugee crisis cannot be shared by one or only several countries by accident of geography. The paradigm shift to provide developmental responses alongside humanitarian assistance demands effective partnership, coordination and coherence involving a range of development and humanitarian actors. Crucially, since development-led responses impact the economy and the labour markets of countries receiving refugees and other forcibly displaced persons, the host governments must have a central role in determining policies.
- 110.** The UN Secretary-General has called for further strengthening of international cooperation and action to address large movements of refugees and other displaced persons so that no country is forced to manage these flows in isolation. To address the growing challenge, policy coherence should be ensured between policy areas both at the regional and global levels.⁵⁹

ILO standards and normative guidance and current and emerging practice

- 111.** In a number of areas, international labour standards provide for coordination between ILO members on a range of important issues relevant to responding to the refugee crisis. This coordination takes various forms, including exchange of information and best practices (for example, the Employment Relationship Recommendation, 2006 (No. 198)), coordination of legislation and regulatory responses to the needs of workers in countries outside their own (for example, the Maritime Labour Convention, 2006 (MLC, 2006) and the Domestic Workers Convention, 2011 (No. 189)), and concerted action to curb transnational abuses (for example, the Forced Labour Protocol).
- 112.** The Social Justice Declaration emphasizes that sharing knowledge and understanding through empirical analysis and tripartite discussion among countries facing common challenges builds capacity of the ILO and its Members to respond coherently to crises and

⁵⁸ The Global Refugee Crisis, ITUC, Nov. 2015 http://www.ituc-csi.org/IMG/pdf/global_refugee_crisis.pdf.

⁵⁹ United Nations (2016). Report of the Secretary-General, In Safety and dignity: addressing large movements of refugees and migrants. Seventieth session, agenda items 15 and 16. <http://reliefweb.int/sites/reliefweb.int/files/resources/N1611262.pdf>, p. 5.

the demands of social justice (SJD, II (A)(3)). The recurrent discussions at the Conference also provide an opportunity for Members to exchange their practice and knowledge on how decent work can be applied in the face of the challenges of globalization including major human movements.

- 113.** Convention No. 97 calls for cooperation among member States in a number of areas, including among public employment services, and where numbers of persons moving across borders are sufficiently large, to enter into agreements as desirable and necessary to regulate matters of common concern.⁶⁰ Recommendation No. 86 provides in its Annex a “Model agreement on temporary and permanent migration for employment, including migration of refugees and displaced persons.” The conclusions of the ILO 2013 Tripartite Technical Meeting on Labour Migration⁶¹ support policy development that is coherent, comprehensive, consistent and transparent as a means to effectively manage cross-border movement with full respect for human rights.
- 114.** There have been some regional coordinated efforts to enhance the protection of forcibly displaced persons. The Cartagena Declaration on Refugees governing refugee and forced displacement in the Latin American region calls on countries of the region to adopt national laws and regulations that facilitate the application and implementation of an enlarged concept of a refugee beyond the 1951 Convention definition. Point 11 of the associated Colloquium on International Protection of Refugees in Central America called for a further study in countries hosting a large number of refugees, to explore the possibilities of integrating the refugee population into “productive life” through the creation of generation of employment.⁶² In 2014, Latin American States adopted the Brazil Declaration which calls for the promotion of income-generating projects, as well as vocational training programmes and the active participation of the public and private sectors in generating employment for refugees through “corporate social responsibility programs, access to productive projects, microcredit, state social programmes and bank loans”.⁶³
- 115.** The EU has developed a clear legal framework that seeks to promote greater region-wide consistency on access of refugees and asylum seekers to the labour market that is applied in 25 of its 28 Member States, through the Refugee Qualification⁶⁴ and Reception Conditions Directives.⁶⁵ Article 26(1) of the Refugee Qualification Directive states that: “Member States shall authorize beneficiaries of international protection to engage in employed or self-employed activities subject to the rules generally applicable to the profession and to the public service, immediately after protection has been granted”. Further, Article 15(1) of the Reception Conditions Directive highlights that: “States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority

⁶⁰ See, e.g., Article 7 and Article 10, of Convention No. 97, and Annex II, Article 12.

⁶¹ International Labour Organization (2013). Tripartite Technical Meeting on Labour Migration. TTMLM/2013.

⁶² https://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf.

⁶³ Brazil Plan of Action, p. 13.

⁶⁴ Directive 2011/95/EU of the European Parliament and the Council of 13 December 2011 on standards for qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ 2011 L 337/9.

⁶⁵ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of the applicants for international protection (recast), OJ 2013 L 180/96.

has not been taken and the delay cannot be attributed to the applicant”. In the case of the beneficiaries of international protection (both refugees and those with subsidiary protection status), this framework also includes provisions relating to access to education, training and retraining, and procedures for recognition of diplomas and qualifications.

- 116.** In the African region, a Joint Labour Migration Programme (JLMP) was developed by the African Union Commission (AUC) together with the ILO, IOM and the United Nations Economic Commission for Africa (UNECA). The JLMP was adopted by AU Heads of State and Government in January 2015 as a comprehensive programme on labour migration governance for the region and supports the implementation of the labour migration component of the AU’s Migration Policy Framework for Africa (2006) and the Ouagadougou + 10 Plan of Action.

E. Alternative pathways for labour mobility

- 117.** Where resettlement is not possible, several governments and organizations such as the UNHCR, have been promoting labour mobility as alternative entry pathways for refugees, which may relieve some of the burden of refugee-hosting countries. For example, the European Commission issued a recent communication entitled “Towards a Reform of the Common European Asylum System and Enhancing Legal Avenues to Europe”, in which it states that “Member States should also consider other ways to increase legal entry options for people in need of international protection”.⁶⁶ One of the explicitly mentioned pathways in the communication is through labour mobility.
- 118.** The intention of these pathways is to facilitate the movement of refugees by matching them with labour market needs in host countries as compared with conventional refugee resettlement programmes which usually target vulnerable households for resettlement. However, labour mobility is often seasonal, circular, temporary and only sometimes leads to permanent residence, while “durable solutions” need to reflect a path to permanent residence and family reunification. Thus a question hangs over the extent to which labour mobility pathways for refugees and other forcibly displaced persons are indeed a “durable” solution.
- 119.** Although labour mobility pathways are unlikely to make a significant impact in reducing the millions of refugees globally in cases where this is pursued by States and social partners, the approach is nonetheless a potentially important element of the overall global response and the ILO has a role to play in ensuring that labour mobility pathways adhere to international labour norms and practices.

ILO standards and normative guidance

- 120.** When supporting labour mobility pathways as an emerging fourth durable solution, it should be of fundamental importance to the protection of refugees and other forcibly displaced persons recruited or placed in the territory of a member State for those States to respect the provisions of the Employment Service Convention, 1948 (No. 88), the Private Employment Agencies Convention, 1997 (No. 181), and the Migration for Employment Convention (Revised), 1949 (No. 97). Further, the CEACR recalls that as with many other aspects of the

⁶⁶ Refugee-specific schemes, such as resettlement and humanitarian admissions, should be complemented by making existing regular admission schemes for general categories such as students, researchers or workers, more accessible to refugees, and initiatives already in place should be fully supported.

migration process, cooperation between countries of origin and destination may prove one of the most effective ways of ensuring that migrants are recruited under non-abusive and non-exploitative conditions.⁶⁷ This may also apply to refugees in resettlement programmes.

- 121.** In this context, the objectives of the ILO’s “Fair Recruitment Initiative” may be applied to ensure the protection of refugees and other forcibly displaced persons in labour mobility pathways, including: (1) to help prevent trafficking in persons and forced labour; (2) to protect the rights of workers, including migrant workers, from abusive and fraudulent practices during the recruitment process (including pre-selection, selection, transportation, placement and possibility to return); and (3) to reduce the cost of labour migration and enhance development outcomes for migrant workers and their families, as well as for countries of origin and destination. Moreover, maintaining refugee protection in this context is critical. The ILO is organizing a Tripartite Meeting of Experts on Fair Recruitment in September 2016 where guidelines addressed to all relevant actors (governments, employers, labour recruiters and workers’ and employers’ organizations) will be discussed.

Current and emerging practice

- 122.** Brazil is one country providing temporary labour mobility pathways. Following the 2010 earthquake, large numbers of Haitians entered Brazil and upon consultation between the National Immigration Council (CNIg) and the National Committee for Refugees (CONARE) granted five-year permanent residence on humanitarian grounds (based on RN No. 27/98) to approximately 45,000 Haitians who did not meet the 1951 Refugee Convention definition of a refugee. After expiration of the permit, Haitians who wished to remain in the country had to prove their employment status and, in cases where employment was verified, issued with a Foreigners Identity Card. In 2013, Brazil also invoked a form of a temporary mobility pathway through a special visa policy for people affected by the conflict in the Syrian Arab Republic. Resolution 17 of CONARE applies not only to Syrians, but also to individuals of other nationalities directly affected by the Syrian conflict or in the border regions.⁶⁸ The visa requirements are those applicable to a tourist visa, excluding certain conditions.⁶⁹ Those granted the visas are permitted to work but may, in practice, struggle to actually find jobs in Brazil.
- 123.** Those affected by climate-related displacement in Pacific Island States may seek seasonal work opportunities in Australia and New Zealand. In New Zealand, employers participating in the scheme are in the agricultural and viticultural industry, while Australia has also opened the scheme to the accommodation and hospitality sector. In the case of Kiribati, seasonal work opportunities have been systematically integrated into a national labour migration policy and a national climate adaptation strategy.
- 124.** Multilateral and regional cooperation between member States has been a consistent feature of ILO initiatives in relation to governance of labour migration and should also play a key role when governing labour mobility of refugees and other forcibly displaced persons in

⁶⁷ General Survey on migrant workers, 2016, para. 226.

⁶⁸ Normative Resolution No. 17 of 20 Sep. 2013.

⁶⁹ These are: proof of means of subsistence compatible with the status of an international tourist; proof of means of transportation of entry and exit from national territory; and any additional documents required in specific situations.

partnership, including the UNHCR, the IOM, the UNDP and the OHCHR.⁷⁰ The ILO Multilateral Framework on Labour Migration gives useful guidance in this regard. To more closely coordinate field and global activities, the ILO and the UNHCR are revising their joint plan of action and Memorandum of Understanding.

- 125.** A platform for coordinating public employment services at regional level, such as the *Accueil Emploi* database piloted in collaboration with the Economic Community of West African States (ECOWAS) in the West Africa region, could provide a model to help coordinate action between these services in different countries that could also support the labour mobility of refugees.⁷¹

Conclusion

- 126.** Of the many challenges posed to the international community by the growing scale of forced migration, the actual and potential impacts on labour markets are among the most demanding, as earlier sections of this background paper have explained. While there is growing agreement that the access of refugees and other forcibly displaced persons to labour markets and productive employment with decent work conditions is of critical importance, experience demonstrates that member States have found this particularly challenging in the context of the current crisis. Nevertheless, ILO standards and norms provide a framework for guidance, and there is increasing evidence that States, often with the support of international organizations such as the ILO, are proactively addressing some of these constraints. In pursuing a shift from humanitarian to development assistance for refugees and displaced populations, employment opportunities for decent work through livelihoods creation and access to labour markets, when well-managed, can provide a critical bridge. The ILO with its unique tripartite structure and its global mandate plays a critical role conceptually and operationally.
- 127.** To facilitate the ILO's role, and to ensure that legal and normative provisions for decent work and adequate protection give shape to a comprehensive, coherent and positive response to the widespread challenges, part 4 suggests a set of draft guiding principles for consideration. Adopting guiding principles provide the ILO and its tripartite membership with a platform to address the labour market impacts of refugees and other forcibly displaced persons, and signal its commitment to promote positive labour market responses that can contribute to national development and refugee protection.

⁷⁰ See ILO Governing Body, 326th Session, Geneva, 10–24 March 2016, Agenda and programme, Doc. GB.326.

⁷¹ Feasibility study to expand *Accueil Emploi* employment database to a subregional database and network for ECOWAS Member States' Public Employment Services, Final Report, ILO, IOM, ICMPD, ECOWAS, EU, 2015.

Part IV. Draft guiding principles

These draft “guiding principles” are addressed to all ILO Members and constituents as a basis for national tripartite dialogue on the access of refugees and other forcibly displaced people to the labour market.

They respond to the call made at the high-level panel at the Governing Body session in March 2016 and have been developed in parallel with, and are informed by, the supporting background paper.

They set out core principles to support Members on the access of refugees and other forcibly displaced people to the labour market and to assist those Members impacted by these situations, in particular frontline States affected by large movements, in ensuring responses that meet the needs and expectations of all stakeholders: host and refugee and forced displacement communities. These guiding principles can further inform responses aligned with ILO Recommendation No. 71.

ILO constituents are encouraged to give due consideration to these guiding principles in developing national and regional responses to refugee and forced displacement situations.

A. Governance frameworks on access to labour markets

1. Members should formulate national policy, and national action plans as appropriate, to ensure the protection of refugees and forcibly displaced persons in the labour market, including in respect of access to work and livelihood.
2. National policies and action plans should be formulated in conformity with international labour standards, decent work principles, humanitarian and human rights norms and in consultation with labour ministries as well as representative organizations of workers and employers.
3. National policies and action plans to foster opportunities for formal work and self-reliance for refugees and other forcibly displaced persons should at a minimum include measures to:
 - (a) Guide all stakeholders, including employment agencies, employers and workers organizations, on access of refugees and other forcibly displaced persons to labour markets.
 - (b) Examine work opportunities available for refugees and other forcibly displaced persons, based on reliable information concerning the impact of refugees and other forcibly displaced persons on labour markets, and the needs of national workers and employers.
 - (c) Consider removing or relaxing refugee encampment policies and other restrictions that hinder decent work opportunities, promote discrimination or lead to irregular employment.
 - (d) Ensure, where access to work is subject to specific legal criteria or requirements, such as work permits, employment authorization for employers or quotas, that these conditions are in accordance with international labour standards, humanitarian and human rights norms, including the principle of equality of opportunity and treatment in the labour market.

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- (e) Eliminate inconsistencies in legal, policy and administrative practice related to implementation of applicable international labour standards and human rights norms.

B. Economic and employment policies for inclusive labour markets

4. Members should formulate economic growth strategies that support investment in job creation that benefit both national workers and men and women refugees and displaced persons.
5. Members should develop and implement, together with representative employers' and workers' organizations, national employment policies that include refugees and other forcibly displaced persons.
6. Employment strategies should include measures to:
 - (a) Enhance the capacity of public and private employment agencies to support the access of refugees and other forcibly displaced persons to the labour market, particularly as regards job placements and career counselling.
 - (b) Strengthen specific efforts to support the inclusion in labour markets of youth and women from refugee and other forcibly displaced populations, including through access to education, childcare and after-school programmes.
 - (c) Support recognition of informally acquired skills and competencies by refugees and forcibly displaced persons.
 - (d) facilitate tailored vocational training, including OSH training, with a strong on-the-job component (for example, apprenticeships), and intensive language teaching.
 - (e) strengthen access to skills development and upgrading opportunities, and entrepreneurship and business start-up training for refugees and other forcibly displaced persons.
 - (f) facilitate increased access to decent work opportunities for refugees and other forcibly displaced persons and host communities, including by fostering transitions of employment from the informal to formal economy.
7. Members should take steps to ensure the portability of work-related entitlements (such as social security benefits, including pensions), skills accreditation and recognition of refugees and other forcibly displaced persons between countries of origin, transit and destination.
8. Members should strengthen the capacity of national labour market governance systems, including in respect of information and data collection concerning the impact of refugees and other forcibly displaced persons on host communities, labour markets and economies more generally.

C. Labour rights and equality of opportunity and treatment

9. Members should adopt or reinforce national policies to promote equality of opportunity and treatment for all, recognizing the specific needs of women, youth and persons with disabilities, with regard to fundamental principles and rights at work, working conditions,

wages and the right to social security benefits for refugees and other forcibly displaced persons, and to ensure they understand their labour rights and protections.

10. National policies at a minimum should include measures to:

- (a) Combat and prevent all forms of discrimination in law and in practice, forced labour and child labour, as they affect men, women and children refugees and other forcibly displaced persons.
- (b) Facilitate the participation of refugees and forcibly displaced persons in representative organizations, including in relation to their right to form and join trade unions, participate in collective bargaining mechanisms and to access justice and judicial remedies against abusive working conditions.
- (c) Facilitate information, advocacy and awareness campaigns that combat xenophobic behaviour and highlight the positive contributions of refugees and other forcibly displaced persons, with meaningful engagement of employers' and workers' organizations, civil society and other relevant stakeholders.
- (d) Ensure that refugees and other forcibly displaced persons in the workplace are covered under relevant law and regulations, including on minimum wages, maternity protection, working time, occupational safety and health, and ensure that training and instruction is provided on the rights and obligations of workers, and the means of redress for violations, in a language they understand.
- (e) Provide necessary education and training for labour inspectorates and judicial bodies on refugee law and labour rights, and ensure that information and training for workers is provided where possible in a language that workers understand.

D. Partnership, coordination and coherence

11. Members should promote national, bilateral, regional and global dialogue on the labour market implications of large influxes of refugees and forcibly displaced persons, and the importance of access to livelihoods and decent work.

12. Cooperation among member States should include measures to:

- (a) Strengthen the role of local government, regional bodies, and particularly regional economic commissions, and regional initiatives to foster consistent regional responses, including with the support of the ILO and other international agencies, notably the UNHCR.
- (b) Encourage development assistance and private sector investment in strengthening labour markets, business development and self-employment to benefit national workers, refugees and other forcibly displaced persons
- (c) Enhance the roles and capacities of the social partners and civil society to promote and protect the fundamental principles and rights at work of refugees and other forcibly displaced persons

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- (d) Promote the inclusion of refugees and other forcibly displaced persons in national development planning processes, including through UN Development Assistance Frameworks (UNDAFs) mechanisms.¹

E. Alternative pathways for labour mobility

- 13.** Members should integrate ILO standards, the Decent Work Agenda, and the Multilateral Framework on Labour Migration into national policies and regional and bilateral agreements governing the development and expansion of labour mobility pathways for refugees, whether through permanent resettlement or immigration laws granting temporary labour market access.
- 14.** National, and where appropriate regional, policies should include measures to:
- (a) Ensure appropriate protection frameworks, in consultation with countries of origin, to support refugees and forcibly displaced persons upon their voluntary return and reintegration to their home countries, in accordance with refugee law standards, humanitarian and human rights norms
 - (b) Respect the principle of non-refoulement for refugees and other forcibly displaced persons participating in labour mobility schemes
 - (c) Foster inclusion, and for those persons resettled, foster integration in host societies by providing skills development opportunities to support refugees and other forcibly displaced persons that would also help them bring new skills to their home countries when they return.
 - (d) Ensure equality of treatment in wages and working conditions, with particular attention to workers in low-skilled and low wage work for which refugees and other forcibly displaced persons may be recruited, in accordance with ILO standards and the guidelines on fair recruitment to be adopted by the Tripartite Meeting of Experts on this subject to be held in Geneva from 5 to 7 September 2016.
- 15.** Members should facilitate the engagement of diaspora communities in developing national policy and regional and bilateral agreements to help refugees and other forcibly displaced persons to better contribute to the economic and social development of their countries of origin.

¹ This activity would be aligned with the development of guidance by the Global Migration Group (GMG) to integrate migration and displacement into development planning.