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Promoting fair migration

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General Survey concerning the migrant workers instruments

**Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations**

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on the Application of Conventions and Recommendations
(articles 19, 22 and 35 of the Constitution)**

Report III (Part 1B)

International Labour Office, Geneva

Promoting fair migration

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Introduction

1. General Surveys allow the Committee of Experts on the Application of Conventions and Recommendations to provide guidance on the scope of instruments, examine difficulties raised by governments as standing in the way of their application, and indicate possible means of overcoming obstacles to their ratification and implementation.

2. Their potential to become “an ideal vehicle for evaluation” of existing instruments, effectively enabling the Organization to carry out audits of the relevance of existing standards and of the advisability of maintaining them, was highlighted in 1994 by the Director-General.¹ General Surveys have been acknowledged to be an important source of information on the law and practice of member States, which could also highlight their needs and the areas to be targeted by ILO technical assistance.²

3. At its 321st Session (June 2014), the Governing Body decided that the Committee of Experts 2016 General Survey would cover the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migration for Employment Recommendation (Revised), 1949 (No. 86), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151).³ During informal tripartite consultations (April–May 2014), a consensus emerged that the topic of the General Survey to be prepared by the Committee of Experts in 2015 should relate to these four labour migration instruments.⁴

4. In supporting the selection by the Governing Body of these instruments for the General Survey, the Worker Vice-Chairperson noted that a General Survey on labour migration instruments would raise the profile of migration issues and identify how the ILO could best provide assistance. The Employer coordinator also indicated support for the choice of these instruments for the General Survey.⁵

5. The Governing Body accordingly requested governments to submit reports for 2015, under article 19 of the ILO Constitution, on Conventions Nos 97 and 143 and Recommendations Nos 86 and 151, pursuant to a report form that it approved at the same session.⁶ The Committee is pleased to record that 122 governments provided

¹ ILO: *Defending values, promoting change: Social justice in a global economy – An ILO agenda*, Report of the Director-General (Part I), International Labour Conference (ILC), 81st Session, Geneva, 1994, pp. 49–50.

² ILO: *Minutes of the 317th Session of the Governing Body of the International Labour Office*, Governing Body, 317th Session, Geneva, Mar. 2013, GB.317/PV, para. 510.

³ See Appendix I.

⁴ ILO: *Choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution in 2015*, Governing Body, 321st Session, Geneva, June 2014, GB.321/INS/7, paras 7–9.

⁵ ILO: *Minutes of the 321st Session of the Governing Body of the International Labour Office*, Governing Body, 321st Session, Geneva, June 2014, GB.321/PV, paras 76–78.

⁶ See Appendix II.

reports on the position of national law and practice in respect of matters dealt with in the abovementioned instruments.⁷ In addition, the Committee is pleased to note that 43 workers' organizations and 18 employers' organizations provided information and observations regarding these instruments.⁸

6. This General Survey is based on those reports communicated under article 19 of the Constitution by countries that have not ratified either or both of the Conventions, and on the reports submitted under articles 22 and 35 of the Constitution by countries that have ratified either or both of the Conventions. In examining the reports, the Committee has taken into account relevant law and practice, and highlighted its main observations on the application of the instruments. It builds on, and updates, the information contained in the previous General Survey on migrant workers.⁹

7. The General Survey gives a global picture of the law and practice of member States' application of Conventions Nos 97 and 143, regardless of ratification, and of Recommendations Nos 86 and 151, describing both the positive initiatives undertaken and the challenges encountered. It discusses the rationale, objectives and scope of the instruments, thereby assessing their potential and impact, identifying difficulties impeding their ratification and full application, and considering means to realize the full potential of the instruments.

Context

8. As was set out in the Office document concerning the choice of Conventions and Recommendations on which this General Survey should be undertaken, “[i]n an ever more globalized world, international labour migration has become a central and rapidly evolving issue affecting virtually all countries, whether as origin, destination or transit countries”.¹⁰ In the ILO Declaration on Social Justice for a Fair Globalization, 2008, migration is identified as one of the characteristics of globalization that is reshaping the world of work in profound ways.¹¹ The Director-General's Report to the International Labour Conference in 2014 set out eight components of a fair migration agenda, highlighting that migration is “a key feature of today's world of work and one which raises complex policy challenges”. While seeking better opportunities abroad through migration should remain a choice, the Report identified increased income inequality, demographic trends, conflict or repression, or increasingly the consequences of climate change, as the main drivers of migration. At the same time, “the dramatic circumstances to which such situations can give rise can and do stretch the capacity of member States and the international community to react adequately”.¹²

9. To fully understand the instruments, it is essential to consider their context.

⁷ See Appendix III. 185 member States were requested to submit the report.

⁸ See Appendix IV.

⁹ ILO: *Migrant Workers: General Survey on the reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949, and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 87th Session, Geneva, 1999 (hereinafter *General Survey on migrant workers*, 1999).

¹⁰ Document GB.321/INS/7, para. 10.

¹¹ ILO Declaration on Social Justice for a Fair Globalization, 2008, ILC, 97th Session (adopted on 10 June 2008), Preamble.

¹² ILO: *Fair migration – Setting an ILO agenda*, Report of the Director-General, Report I(B), ILC, 103rd Session, 2014, paras 5, 32–36. See also para. 64 of this General Survey.

A global view of international labour migration¹³

10. For most countries in the world, international labour migration¹⁴ is a major global issue and ranks high on international, regional and national policy agendas. In 2015, there were 243.7 million international migrants¹⁵ in the world, about 3 per cent of the global population, compared with 172.7 million in 2000; 48.2 per cent of migrants globally are women (compared to 49.1 per cent in 2000).¹⁶ While significant numbers of workers migrate internally within countries, migration internal to a country's borders is outside the scope of this General Survey.¹⁷

ILO global estimates on migrant workers

Effective labour market policies inclusive of labour migration issues are complex and require reliable quantitative and qualitative data. The ILO's Multilateral Framework on Labour Migration (2006) states that "Knowledge and information are critical to formulate, implement and evaluate labour migration policy and practice and therefore its collection and application should be given priority (Principle III – Global Knowledge base)." The UN High-level Dialogue on International Migration and Development (2013) also called for more data on international migration to facilitate links to development – labour migration data is key to this link. The 19th International Conference of Labour Statisticians (October 2013) adopted Resolution IV concerning further work on labour migration statistics. The ILO Tripartite Technical Meeting on Labour Migration (2013) recommended strengthening of data collection, research and capacity development in order to facilitate evidence-based policy-making and to develop tools for dealing with the internationalization of labour markets to the benefit of all (TTMLM/2013/15, Geneva).

The ILO developed a methodology for a global estimate of migrant domestic workers in 2013, which was tested and refined in 2014–15. In December 2015, the ILO launched the first global and regional estimates of men and women migrant workers and an update of the migrant domestic workers estimates based on national and international available data.

The data used to calculate the estimates refer to migrant workers in the country of destination and measure the migrant stock in 2013. Data from 176 countries and territories representing 99.8 per cent of the world working age population (15 years old and over) have been included. The term "migrant worker" refers to all international migrants who are currently employed or are unemployed and seeking employment in their present country of residence. Some international migrants including certain temporary migrant workers, family reunification migrants or refugees and asylum seekers are normally excluded from the estimates although some may be captured in the data. The ILO Report explains basic concepts and definitions, as well as the scope of what is covered by the estimates (Chapter 3), and also explains the methodology used (Part II).

See: ILO: *Global estimates on migrant workers. Results and methodology. Special focus on migrant domestic workers*, Geneva, 2015.

¹³ This section is drawn from *The contribution of labour mobility to economic growth*, a paper jointly prepared by the ILO, the Organisation for Economic Co-operation and Development (OECD) and the World Bank for the G20 Labour and Employment Ministers' Meeting, Ankara, Turkey, 3–4 September 2015.

¹⁴ It has to be taken into account that in French, the term "migration" normally implies that an international border is crossed and therefore, the term "international migration" may appear tautological.

¹⁵ The UN recommendations on statistics of international migration defines the "stock of international migrants present in a country" as "the set of persons who have ever changed their country of usual residence, that is to say, persons who have spent at least one year of their lives in a country other than the one in which they live at the time the data are gathered." UN Department of Economic and Social Affairs, Statistics Division: *Recommendations on statistics of international migration revision 1*, Statistical papers series M, No. 58, Rev. 1, United Nations, New York, 1998, para. 185.

¹⁶ United Nations Department of Economic and Social Affairs (UNDESA). Population Division, *Trends in international migration*, No. 2015/4, December 2015, p.1.

¹⁷ See para. 93 infra.

11. The main driver of migration continues to be employment related.¹⁸ Recent ILO figures on migrant workers in the country of destination estimate that, in 2013, 207 million international migrants were of working age (15 years and over). Of these, 150.3 million were working or economically active (72.7 per cent of the estimated working age migrant population). There are 66.6 million women migrant workers.¹⁹

12. While labour migration is a phenomenon that concerns all regions of the world, almost half (48.5 per cent) of migrant workers are concentrated in two broad regions: Northern America, and Northern, Southern and Western Europe. Together these represent 52.9 per cent of all female migrant workers and 45.1 per cent of all male migrant workers. The Arab States account for over a tenth of the world's migrant workers (11.7 per cent) corresponding to 17.9 per cent of all male migrant workers and 4.0 per cent of all female migrant workers. These subregions are followed by Eastern Europe (9.2 per cent), South-East Asia and the Pacific (7.8 per cent), southern Asia (5.8 per cent), sub-Saharan Africa (5.3 per cent), central and western Asia (4.7 per cent), eastern Asia (including China (3.6 per cent), Latin America and the Caribbean (2.9 per cent) and (northern Africa (0.5 per cent)).²⁰

13. As a proportion of all workers, migrant workers represent a very significant share of the workforce. ILO estimates show that, globally, migrant workers constitute 4.4 per cent of all workers. They are 35.6 per cent of all workers in the Arab states, 20.2 per cent in Northern America and 16.4 per cent in northern, southern and Western Europe. By contrast, in some sub-regions, including eastern and southern Asia, northern Africa and Latin America and the Caribbean, the proportion of migrant workers is below 2 per cent. The higher proportion of migrant workers of all workers than the proportion of migrants in the total population is reflected in the higher overall labour force participation rates among migrants (72.2 per cent) compared to that among non-migrants (63.9 per cent). This difference is related to the fact that more migrant women than non-migrant women work (67.0 per cent versus 50.8 per cent), while there is almost no difference between migrant and non-migrant men in respect of their labour force participation rates (78.0 per cent versus 77.2 per cent).²¹

14. Preliminary ILO results further estimate that 74.7 per cent of the world's migrant workers are in high-income countries, with an even larger proportion of migrant domestic workers (79.2 per cent) concentrated in these countries. One in six workers in high-income countries is a migrant. However, migrant female participation rates are lower by 11.0 percentage points than male migrant rates in high-income countries, but by as much as 15.9 percentage points in upper-middle income countries. In low-income countries, this gender differential is 3.5 percentage points.²²

15. The ILO data show that migrants are concentrated in certain economic sectors. In 2013, most migrant workers were in services: 106.8 million out of a total of 150.3 million migrant workers amounting to 71.1 per cent. Industry, including manufacturing and construction, accounted for 26.7 million (17.8 per cent) and agriculture for 16.7 million (11.1 per cent). Among the 71.1 per cent of migrant workers who were in the service sector, about 7.7 per cent worked as domestic workers and the

¹⁸ ILO: *World of Work Report: Developing with jobs*, (Geneva, 2014) p. 181.

¹⁹ ILO: *Global estimates on migrant workers. Results and methodology. Special focus on migrant domestic workers*, Geneva, 2015, pp. 5–6.

²⁰ *ibid.*, pp. 9, 10 and 17.

²¹ *ibid.*, pp. 6, 7 and 19.

²² *ibid.*, pp. 10 and 13.

remaining 63.4 per cent in other services. However, gender differences exist in the distribution of migrant workers per sector. While in agriculture men and women accounted for almost exactly the same proportion (around 11 per cent), men were more often engaged in industry than women (19.8 per cent versus 15.3 per cent), and less in the service sector (69.1 per cent versus 73.7 per cent). However, in relative terms, a higher proportion of male migrant workers was engaged in services other than domestic work compared to female migrant workers (65.4 per cent of men versus 61.0 per cent of women).²³

16. In 2013, of the estimated 67.1 million domestic workers in the world, 11.5 million were international migrants (17.2 per cent). About 73.4 per cent (or around 8.5 million) of all migrant domestic workers were women. South-East Asia and the Pacific host the largest share, with 24.0 per cent of the global number of female migrant domestic workers, followed by northern, southern and Western Europe, with 22.1 per cent of the total, and the Arab States with 19.0 per cent. The Arab States host the largest share of the global number of male migrant domestic workers (50.0 per cent).²⁴

17. Regions with a higher incidence of working poverty and lower levels of social protection coverage tend to have higher emigration rates.²⁵ Those fleeing conflicts, violence and persecution often seek to emigrate and to enter the labour market of destination countries. At the same time, family members joining migrant workers abroad may also take up work, either as employees or in self-employment.²⁶

18. A significant number of young migrant workers (between 15 and 24 years old), representing one in eight migrant workers, are moving in search of better livelihoods.²⁷ Young people now constitute the bulk of migration movements annually, and represented 12 per cent (or 28.2 million) of the total population of international migrants in 2013.²⁸

19. Temporary migrant workers form a mixed group ranging from lower-skilled seasonal workers and working holidaymakers to posted workers and intra-company transferees (ICTs) who are often highly skilled.²⁹ Other groups of temporary migrants, who also access the labour market to a certain degree, include trainees and students. Further, a number of countries also rely on circular migration schemes to respond to temporary labour market needs.³⁰ While the number of seasonal migrant workers, despite some large variations in certain countries, has remained stable overall in destination countries of the Organisation of Economic Co-operation and Development

²³ ILO: *Global estimates on migrant workers*, op. cit., p. 8.

²⁴ *ibid.*, pp. 8 and 19–21: for further details of the distribution of migrant domestic workers by sex and broad subregion.

²⁵ ILO: *World of Work Report: Developing with jobs* (Geneva, 2014).

²⁶ ILO, OECD and World Bank: *The contribution of labour mobility to economic growth*, pp. 3–4.

²⁷ Global Migration Group (GMG): *Migration and youth: Challenges and opportunities*, 2014, “Youth Migration: Facts and Figures”, p. 5. Available at: <http://www.globalmigrationgroup.org/migrationandyouth> [consulted 10 July 2015].

²⁸ *ibid.*, p. 14.

²⁹ In this context, certain member States. Such as *Australia, France, New Zealand* and *Sweden*, reported to have working holiday programmes in place.

³⁰ See, for example, Hawthorne, L.: *Circular migration of health professionals*, Policy brief 1, (Manila, ILO, 2014).

(OECD), in recent years there has been a steady rise in the numbers of posted workers, ICTs, international students and working holidaymakers.³¹

20. Temporary labour migration ebbs and flows with fluctuations in the labour market and short-term demands for both high- and low-skilled workers,³² and tends to reflect current economic conditions.³³ The ILO Director-General has observed that “traditional permanent immigration countries such as *Australia*, *Canada* and *New Zealand* have come to rely increasingly on temporary schemes to fill immediate gaps in the labour market, while former ‘guest worker’ countries such as *Germany* are seeking to attract highly skilled professionals with offers of permanent residency rights on arrival”.³⁴ He noted a general policy trend according to which the higher the level of skills a worker has, the easier it is for him or her to enter and settle.³⁵

21. In 2013–14, a growth in newly admitted temporary foreign workers, including seasonal workers, was recorded in *Canada*, *Republic of Korea*, *New Zealand* and *United States*,³⁶ while decreases were experienced in *Australia* and *Mexico*, consistent with a softening of demand in the national/domestic labour market.³⁷ With regard to non-OECD countries, *Brazil* experienced a steady increase in temporary migration (generally work or study-related) between 2009 and 2013. Moreover, labour migration is almost exclusively of a temporary nature in certain parts of the world. In 2013, the Gulf States hosted over 22 million migrant workers or almost 10 per cent of international migrants globally, with *Saudi Arabia* and the *United Arab Emirates* hosting over 9 million and almost 8 million respectively.³⁸

22. While there may be implementation challenges, regional labour mobility in its varied forms is now a key priority, principally for skilled workers in regional economic communities, such as the Southern African Development Community (SADC), the Association of Southeast Asian Nations (ASEAN), and the Southern Common Market (MERCOSUR).

23. Ageing populations and declining labour forces in most advanced economies and some large emerging economies suggest that migrant workers will have an important role in maintaining labour supply and filling labour shortages, and contributing to social protection funds in these countries.³⁹ While one fifth of the population in advanced economies is already aged 60 or above, with the expectation that this share will rise to more than 30 per cent by 2050,⁴⁰ in many developing countries, less than 10 per cent of

³¹ OECD: *International Migration Outlook 2015*, OECD Publishing, Paris, pp. 21–26.

³² *ibid.*, p. 21.

³³ ILO: *Labour migration and development*, Background paper for discussion at the ILO Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013, p. 4.

³⁴ ILO: *Fair migration – Setting an ILO agenda*, *op. cit.*, para. 72.

³⁵ *ibid.*, para. 74.

³⁶ OECD: *International Migration Outlook 2015*, *op. cit.*, pp. 192, 220, 232 and 258, respectively.

³⁷ *ibid.*, pp. 184 and 228 respectively.

³⁸ ILO: *Realizing a fair migration agenda: Labour flows between Asia and Arab States*, Background paper for discussion, ILO Interregional Experts’ Meeting, Kathmandu, 3–4 Dec. 2014, p. 6. According to the Gulf Cooperation Council 2010 census, foreigners represented 43.5 per cent of the total population of the Gulf countries (excluding Qatar). In *Kuwait*, non-nationals represented 64.4 per cent of the total population (60.6 per cent men and 39.4 per cent women) while in the *United Arab Emirates* this was 88.5 per cent (men non-nationals represented 77.7 per cent and women non-nationals 22.3 per cent).

³⁹ ILO, OECD and World Bank: *The contribution of labour mobility to economic growth*, p. 4.

⁴⁰ ILO: *World of Work Report: Developing with jobs*, p. 189.

the population is aged 60 or above. Labour migration could, therefore, leverage this difference in population age profiles, potentially benefiting both developed and developing economies.⁴¹

24. ILO research suggests that there are significant decent work deficits in relation to migrant workers' fundamental rights at work. For example, it is estimated that 9.1 million victims of forced labour (44 per cent of the total of 20.9 million) have moved either internally or internationally.⁴² Migrant workers are often denied freedom of association, access to equal and fair wages, proper skills matching, decent working conditions, and adequate social protection, including due to non-portability of social security benefits. Migrant workers are also often disproportionately affected by a higher rate of occupational injuries compared to the native population.⁴³ Many child migrants end up in agriculture or services such as domestic work and some are victims of trafficking in persons.⁴⁴

Global policy debates on migration governance

25. Global, regional and national debates on labour migration and the protection of migrants, including migrant workers and their families, are fundamental elements of the global context within which the labour migration instruments are understood and applied by member States. There have been significant developments since the last General Survey on migrant workers was discussed by the Conference in 1999.

26. In particular, a number of UN initiatives in the area of labour migration took place from 1999–2001, often with the involvement of the ILO Office. In 1999, the mandate of the UN Special Rapporteur on the human rights of migrants was established;⁴⁵ the UN Convention against Transnational Organized Crime and its associated Protocols (including on trafficking in persons and migrant smuggling) were adopted in 2000;⁴⁶ and, in 2001, the UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance adopted a Declaration,⁴⁷ referring to the necessity of eliminating racial discrimination against migrant workers.⁴⁸

27. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) 1990 (hereafter UN Convention on Migrant Workers)⁴⁹ entered into force in July 2003. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), established pursuant to the international Convention, includes an official consultative capacity for the ILO.⁵⁰ The CMW has adopted two general comments on the rights of migrant

⁴¹ *ibid.*

⁴² ILO: *ILO global estimate of forced labour: Results and methodology*, SAP–FL, Geneva, 2012, p. 17.

⁴³ S. Rizvi: *Safety and health of migrant workers: Understanding global issues and designing a framework towards a solution*, ILO, Geneva, forthcoming.

⁴⁴ ILO, International Programme on the Elimination of Child Labour (IPEC), see http://www.ilo.org/ipecc/areas/Migration_and_CL/lang--en/index.htm [consulted 5 December 2015].

⁴⁵ UN Human Rights Commission Res. 1999/44 (26 Apr. 1999). For the latest revision, see UN Human Rights Council Res. 26/19 (26 June 2014).

⁴⁶ UN General Assembly Res. 55/25 of 15 Nov. 2000, A/RES/55/25.

⁴⁷ Office of the UN High Commissioner for Human Rights (OHCHR), *Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Durban, A/CONF. 189/12 (25 Jan. 2002).

⁴⁸ *ibid.*, Declaration, para. 51.

⁴⁹ UN General Assembly Res. 45/158 of 18 Dec. 1990, A/RES/45/158.

⁵⁰ ICRMW, Art. 74(2) and (5).

domestic workers and migrant workers in an irregular situation and their families.⁵¹ The “Berne Initiative”, launched in 2001 with the International Organization for Migration (IOM) as secretariat, was “a States’-owned consultative process of national migration authorities”;⁵² the resulting International Agenda for Migration Management (IAMM)⁵³ included chapters on the human rights of migrants and labour migration.⁵⁴

28. In 2002, the UN Secretary-General stated that it was “time to take a more comprehensive look at the various dimensions of the migration issue”.⁵⁵ The “Doyle Report” recommended the closing of legal and normative gaps in regimes for migrants; enhanced coordination; and the creation of a global commission.⁵⁶ The Global Commission on International Migration (GCIM), which was accordingly set up in 2003, identified six principles for action, accompanied by 33 recommendations.⁵⁷ In response, the Global Migration Group (GMG) was established, bringing together the heads of 17 UN entities, including the ILO, and the IOM, to promote the wider application of international and regional instruments relating to migration, and to encourage more coherent, comprehensive and coordinated approaches to international migration. In July 2013, the GMG established a new Working Group on Migration, Human Rights and Gender and a new Task Force on Migration and Decent Work.⁵⁸ The ILO chaired the GMG for the first time in 2014.

Migration and development

29. Since Conventions Nos 97 and 143 were adopted, there has been an increased emphasis on the linkages between migration and development, focusing on the positive aspects of international migration for both origin and destination countries,⁵⁹ at the same time as trying to reduce negative effects.

30. In this regard, in his 2003 report on *International migration and development*, the UN Secretary-General summarized the activities relating to international migration and development that had been carried out within and outside the UN system.⁶⁰ A 2003

⁵¹ See, respectively, CMW/C/GC/1 (23 Feb. 2011) and CMW/C/GC/2 (28 Aug. 2013). In addition, in its concluding observations on the reports of States parties, the CMW often requests them, where they have not done so, to consider ratification of the ILO labour migration Conventions, as well as other instruments such as the Domestic Workers Convention, 2011 (No. 189).

⁵² The Berne Initiative: Managing International Migration Through International Cooperation: The International Agenda for Migration Management, Chairman’s Summary, Berne II Conference, 16–17 Dec. 2004, para. 5.

⁵³ *International Agenda for Migration Management*, Berne, 16–17 Dec. 2004, IOM, Swiss Federal Office for Migration, 2005.

⁵⁴ *ibid.*, Chapter III, pp. 40–49.

⁵⁵ UN General Assembly, 57th Session, *Strengthening of the United Nations: An agenda for further change*, Report of the Secretary-General, A/57/387 (9 Sep. 2002), para. 39.

⁵⁶ See also United Nations General Assembly, 68th Session, Report of the Special Rapporteur on the human rights of migrants (including a thematic section on a human rights framework for global migration governance), A/68/283 (7 Aug. 2013), para. 16.

⁵⁷ GCIM: *Migration in an interconnected world: New directions for action*, Report of the GCIM, Oct. 2005, Annex, pp. 79–82.

⁵⁸ There are two other Working Groups, on Data and Research and Mainstreaming Migration into National Development Strategies, as well as a Task Force on Capacity Development.

⁵⁹ GCIM: Report, *op. cit.*, pp. 72–82, and ILO: *International labour migration: A rights-based approach* (Geneva, International Labour Office, 2010), pp. 4–5.

⁶⁰ UN General Assembly, 58th session, *International migration and development*, Report of the Secretary-General, A/58/98 (1 July 2003).

General Assembly resolution on international migration and development decided to devote a high-level dialogue to international migration and development in 2006, so as to identify appropriate means to maximize the development benefits of migration and minimize its negative impacts.⁶¹

31. The first UN General Assembly High-level Dialogue on International Migration and Development (HLD) was held in 2006.⁶² The HLD's principal outcome was the Global Forum on Migration and Development (GFMD), established in 2007 as a voluntary, informal, non-binding and government-led process. The GFMD process includes government-only meetings; separate meetings for civil society, including workers' and employers' organizations; and "common space" sessions for governments and civil society; and a newly developing separate dialogue track between governments and the private sector.⁶³ The protection of the human rights of migrants (including migrant workers) and the linkages between labour migration and development have featured prominently in recent GFMD discussions.

32. The second High-level Dialogue on International Migration and Development, convened by the General Assembly in 2013, considered the effects of international migration on sustainable development; measures to ensure respect for the human rights of all migrants; cooperation on international migration; and labour mobility and its impact on development.⁶⁴ The Secretary-General's report for the Dialogue contained an eight-point agenda for action on making migration work for development, including action points on protection of the human rights of all migrants, including those with irregular status, and reducing labour migration costs.⁶⁵ The resulting HLD Declaration emphasized the need to respect and promote international labour standards and the rights of migrants in their workplaces, as well as the need for measures to protect women migrant workers in all sectors, including domestic work.⁶⁶

33. While not included in the Millennium Development Goals (MDGs), migration features in the Sustainable Development Goals (SDGs) of the United Nations 2030 Agenda for Sustainable Development.⁶⁷ Specifically, target 8.8 in SDG 8 on sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all is concerned with the need to "protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment".⁶⁸ The role of migrant

⁶¹ General Assembly Res. 58/208 of 23 Dec. 2003, A/RES/58/208, paras 9 and 10(a), respectively.

⁶² UN General Assembly, 61st session, *Summary of the High-level Dialogue on International Migration and Development*, Note by the President of the General Assembly, A/61/515 (13 Oct. 2006), p. 4, para. 15.

⁶³ For example, see the GFMD Business Meeting organized under the Turkey GFMD Chair 2014–15, "Are businesses fit to compete in the global competition for skills?", Istanbul, 15–16 May 2015.

⁶⁴ For a summary of the discussions, see UN General Assembly, 69th session, *International migration and development*, Report of the Secretary-General, A/69/207 (30 July 2014), paras 18–38.

⁶⁵ UN General Assembly, 68th session, *International migration and development*, Report of the Secretary-General, A/68/190 (25 July 2013), paras 111–113. Labour migration costs were understood to cover a broad range of issues including the transfer costs of remittances, fees paid to recruiters, and costs associated with the lack of portability of social security and absence of recognition of qualifications and skills.

⁶⁶ Declaration of the High-level Dialogue on International Migration and Development, UN General Assembly Res. 68/4 of 3 Oct. 2013, A/RES/68/4, paras 12 and 14.

⁶⁷ "Transforming Our World: The 2030 Agenda for Sustainable Development", Outcome document of the United Nations summit for the adoption of the post-2015 development agenda, A/70/L.1 (18 Sep. 2015).

⁶⁸ *ibid.*, p. 20. Other explicitly migration-related targets are in SDG 10 on reducing inequality within and among countries (Target 10.7 – facilitation of orderly, safe, regular and responsible migration and mobility of people; Target 10.c – reducing to less than 3 per cent the transaction costs of migrant remittances and eliminating

remittances and more generally international migration, including labour migration, is also recognized as an important component of the financing for development agenda.⁶⁹

Regional and related developments

34. Since 1999, there have also been important developments at the regional level regarding the governance of labour migration and protection of migrant workers.

35. In relation to the Europe region, since the entry into force of the Amsterdam Treaty in May 1999, which granted the EU competence in the field of asylum and immigration, the development of a common legal and policy framework on migration from non-EU (third) countries has been under way (see box on EU law on labour migration).

European Union Law on Labour Migration from Third Countries and on Freedom of Movement for EU citizens

The EU has established law and policy concerning both labour migration from third countries and freedom of movement for its own citizens.

The European Commission has focused on a “sectoral approach” to regulating labour migration from third countries, adopting directives to regulate the conditions of entry and residence of high and lower-skilled workers,¹ seasonal workers² and intra-corporate transferees.³

Substantive measures have also focused on steps towards the creation of a common European asylum system, border and visa policy, prevention of irregular migration, readmission and return, and trafficking in persons. In relation to addressing irregular labour migration, the directives on return and employer sanctions are particularly important.⁴

In addition, various measures have been adopted implementing the relevant provisions of the Treaty on the Functioning of the European Union (OJ 2012 C 326/47) in relation to free movement for workers who are EU citizens.⁵

¹ See respectively Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ 2009 L 155/17 (EU – Blue Card Directive) and Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ 2011 L 343/1 (Single Permit Directive).

² Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ 2014 L 94/375.

³ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, OJ 2014 L 157/1.

⁴ See respectively Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ 2008 L 348/98, and Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, OJ 2009 L 168/24.

⁵ Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers, OJ 2014 L 128/8; Regulation (EU) No. 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union, OJ 2011 L 141/1; Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ 2004 L 229/35; Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ 2000 L 303/16.

remittance corridors with costs higher than 5 per cent) and SDG 17 on strengthening the means of implementation and revitalizing the Global Partnership for Sustainable Development (Target 17.18 – capacity building support to developing countries to increase availability of data disaggregated by, inter alia, “migratory status”), *ibid.*, pp. 14 and 18, respectively.

⁶⁹ Outcome document of the Third International Conference on Financing for Development, Addis Ababa, 13–16 July 2015, A/CONF.227/L.1, paras 40 and 111.

36. Responding to the large inflow of migrants and refugees across the EU's southern external border, the European Commission published *A European agenda on migration* in May 2015 focusing on immediate EU action and four pillars to address migration better, including reducing the incentives for irregular migration, border management, a strong common asylum policy and a new policy on "legal migration".⁷⁰ With regard to the latter, the Agenda proposes "a platform of dialogue to include input from business, the trade unions, and other social partners, to maximise the benefits of migration for the European economy and the migrants themselves".⁷¹

37. In 2006, the African Union (AU) adopted The Migration Policy Framework for Africa, a comprehensive policy document complementing the regional human rights architecture on the continent and attaching particular importance to labour migration and the protection of the human rights of migrants.⁷² The 2013 Youth and Women Employment Pact for Africa included promotion of regional and subregional labour mobility and called for an AU and Regional Economic Communities Labour Migration Plan.⁷³ In response, the AU Commission, together with the ILO, the IOM and the Economic Commission for Africa (ECA), developed a regional programme on labour migration governance for development and integration in Africa, aiming to "strengthen the effective governance and regulation of labour migration and mobility in Africa, under the rule of law and with the involvement of key stakeholders across government, legislatures, private sector employers, workers (social partners), migrants, international organizations, NGOs and civil society organizations".⁷⁴ The regional programme was adopted by the African Heads of State and Government during the 24th Ordinary Session of the AU Assembly in January 2015. The Economic Community of West African States (ECOWAS) Commission adopted the ECOWAS Common Approach on Migration in 2008, which is based on six principles, notably the free movement of persons within ECOWAS, legal migration towards other regions of the world, protecting the rights of migrants and recognizing the gender dimension of migration policies.

38. The Agreement on residency for citizens of the States parties of MERCOSUR and associated States, adopted in December 2002, entered into effect in 2009. Regardless of temporary or permanent residence status, migrants have the right to the same labour protection as national citizens. The Plan to facilitate the free movement of workers within MERCOSUR,⁷⁵ signed in August 2013, has the general objective of developing progressive actions to facilitate the movement of workers. It aims at improving labour insertion in the employment structures of States parties as a strategy to improve the quality of jobs in MERCOSUR (including in its border areas). The Plan is the result of tripartite discussions at the national and regional levels, and is presented as an instrument to advance the strategic vision agreed in the Social and Labour Declaration. In Central America, the Strategic Regional Agenda for the Promotion of Productive Employment and Decent Work, approved by the Central American Integration System Meeting of the Council of Ministers, held in 2013, affirms that: "States should strengthen capacity-

⁷⁰ European Commission: *A European agenda on migration*, COM(2015) 240 final of 13 May 2015.

⁷¹ *ibid.*, p. 15.

⁷² African Union: *The migration policy framework for Africa*, Executive Council, Ninth Ordinary Session, 2006, EC.CL/276(IX), pp. 7–12 and 24–28, respectively.

⁷³ African Union: *Draft AU youth and women employment pact for Africa*, Labour and Social Affairs Commission, Ninth Ordinary Session, Addis Ababa, 8–12 April 2013, LSC/EXP/6(IX), pp. 14–15.

⁷⁴ See ILO: Programme Brief: Labour Migration Governance for Development and Integration in Africa – A Bold New Initiative, p. 2 (undated).

⁷⁵ MERCOSUR, GMC: Res. No. 11/13.

building of institutions in charge of labour migration governance and ensure implementation of human rights of migrant workers.”

39. Within the Caribbean Community (CARICOM) Single Market and Economy, also known as the Caribbean Single Market and Economy (CSME), ten categories of workers benefit from free movement. The 2009 agreement of CARICOM Heads of Government added the category of household/domestic workers to the list of persons eligible to move freely for employment in the region. A Caribbean vocational qualification or equivalent is required and ongoing work is taking place in this regard.

40. In 1997, ASEAN adopted a non-binding Declaration on the Protection and Promotion of the Rights of Migrant Workers. In 2007, a committee to oversee implementation of the Declaration was established. The ASEAN Forum on Migrant Labour, a tripartite body in which international and civil society organizations also participate, gathers annually to discuss, share experiences, build consensus on the protection of migrant workers’ issues.⁷⁶

41. In 2014, the South Asian Association for Regional Cooperation (SAARC) adopted the Kathmandu Declaration, which includes the commitment to “cooperate on safe, orderly and responsible management of labour migration from South Asia to ensure safety, security and well-being of their migrant workers in the destination countries outside the region”.⁷⁷

42. With regard to the important labour migration corridor between Asia and the Gulf States, two intergovernmental regional consultative processes are in operation, namely the Colombo Process and the related Abu Dhabi Dialogue.⁷⁸ Both exclusively address labour migration between Asia and the Gulf States, devoting specific attention to the protection, welfare and well-being of migrant workers. In addition, the ILO has set in motion a tripartite process on labour migration between the Arab States (the Gulf States, *Jordan* and *Lebanon*) and Asian countries, which started with a tripartite interregional experts’ meeting in Nepal in 2014.⁷⁹

43. In addition to regional developments, there have been numerous agreements at the bilateral level regarding various subject matters, such as the protection of migrant workers, general cooperation, regulation of migration flows or recruitment and placement of migrant workers.⁸⁰

Reports by member States: The situation on the ground

44. In their reports concerning national law and practice regarding labour migration, a number of member States provided statistical information to the Committee about various aspects of labour migration in their countries. Other governments reported that statistical information on labour migration flows and on the employment of migrant

⁷⁶ The ASEAN Forum on Migrant Labour, Background information booklet, ILO Regional Office for Asia and the Pacific, Bangkok, 2014, pp. 1–2.

⁷⁷ The Kathmandu Declaration, Eighteenth Summit of the South Asian Association for Regional Cooperation (SAARC), 26–27 November 2014.

⁷⁸ See the website of the Colombo Process, which also contains information about the Abu Dhabi Dialogue: <http://www.colomboprocess.org/>.

⁷⁹ See ILO: *Realizing a fair migration agenda: Labour flows between Asia and the Arab States*, op. cit., 2014.

⁸⁰ See paras 151–163 *infra*.

workers was not available.⁸¹ The Government of *Cuba*, for example, stated that its statistical information on labour rights and social security did not differentiate between nationalities.

Labour migration flows

45. Many governments provided data concerning the numbers of migrant workers entering and leaving their countries, illustrating a considerable variation between countries. A number of governments, including *Morocco*,⁸² *Peru*⁸³ and the *Russian Federation*⁸⁴ indicated that they were both countries of origin and countries of destination of migrant workers. The Government of *Pakistan*, for example, referred to large numbers of citizens leaving to work abroad,⁸⁵ as well as indicating that it was a country of transit and destination for refugees and displaced persons from *Afghanistan*.⁸⁶ Some governments, including *Myanmar*,⁸⁷ *Nepal*⁸⁸ and *Ukraine*,⁸⁹ indicated significant numbers of migrant workers leaving their country; while other member States, including *Bahrain*⁹⁰ and *Singapore*⁹¹ referred to significant numbers of migrant workers entering their country. The Government of *Gambia* indicated that in 2012 there were 103,600 immigrants in the country, of which 66,291 were employed; and the Government of *Lebanon* referred to “a crisis”, indicating that the numbers of Palestinian and Syrian refugees and migrant workers meant that more than half the population of *Lebanon* were foreigners. Yet other countries, such as *Madagascar*⁹² and *Slovakia*,⁹³ reported small numbers of migrant workers leaving or entering their countries.

46. Many countries provided data disaggregated by sex, showing larger numbers of male migrant workers than female migrant workers.⁹⁴ A significant number of countries reported that 60–90 per cent of migrant workers were men. The Government of *Jamaica*, for example, reported that out of the 4,628 Jamaican workers employed on farms in the *United States* in 2013, only one was a woman; and out of the 7,213 workers employed

⁸¹ For example, *Antigua and Barbuda*, *Gabon*, *Georgia*, *Kenya*, *Mali*, *Senegal* and *Uganda*.

⁸² In 2012, 3,372,015 Moroccans were registered at foreign consulates, and 79,241 foreigners were reported to live in *Morocco*.

⁸³ In 2013, 49,886 citizens had left *Peru* to work abroad, and 613,767 migrants had entered the country.

⁸⁴ In 2013, 482,241 citizens had left the *Russian Federation*, while 186,382 migrants had entered the country.

⁸⁵ The Government indicated that, in 2014, 750,000 Pakistani workers emigrated for better work opportunities and that more than 7.8 million Pakistani migrant workers worked in more than 50 countries around the world.

⁸⁶ The Government of *Pakistan* stated that these figures included more than 1.6 million registered Afghan refugees and an additional estimated 1 million undocumented Afghans.

⁸⁷ Approximately 1.9 million *Myanmar* workers had been “legally dispatched” to 16 foreign countries.

⁸⁸ In 2013–14, 521,878 labour permits were issued to Nepalese migrant workers leaving the country to work abroad.

⁸⁹ In the first half of 2014, there were 38,800 Ukrainian citizens working abroad temporarily.

⁹⁰ There were 521,656 foreign workers in *Bahrain* at the end of the third quarter of 2014.

⁹¹ The Government of *Singapore* reported a foreign workforce of 1.3 million in 2015.

⁹² In 2014, 322 immigrants entered *Madagascar*, and 754 emigrants left the country.

⁹³ In 2014, 1,571 immigrants had permission for employment in *Slovakia*, and 2,223 citizens had permission for employment abroad.

⁹⁴ For example, *Algeria*, *Azerbaijan*, *Benin*, *Plurinational State of Bolivia*, *Bosnia and Herzegovina*, *Brazil*, *Bulgaria*, *Costa Rica*, *Ecuador*, *El Salvador*, *France*, *Jamaica*, *Lithuania*, *Mauritius*, *Mexico*, *Republic of Moldova*, *Nepal*, *Peru*, *Romania*, *Seychelles*, *Slovakia*, *Suriname*, *Togo*, *Turkmenistan*, *Ukraine* and *United States*.

on farms and in factories in *Canada*, there were 269 women. Other member States reported higher numbers of women migrant workers.⁹⁵ For example, the Government of *Ethiopia* reported that in 2012–13, out of the 161,787 migrant workers going to *Saudi Arabia*, 154,660 were women. The Government of *Indonesia* indicated that in 2014, women migrant workers in the Asia Pacific region outnumbered men migrant workers, and that 70.4 per cent of migrant women worked in the informal economy, compared to 0.76 per cent of men migrant workers. Further, the Committee has noted that in 2010, almost one third of the overseas *Filipinos* were domestic workers, 98 per cent of them being women.⁹⁶ In *China (Hong Kong Special Administrative Region)*, as of 31 May 2014, 99.87 per cent of the migrant domestic workers from *Indonesia* and 97.57 per cent of the migrant workers from the *Philippines* were women.⁹⁷ Yet other countries indicated more or less equal numbers of male and female migrants.⁹⁸

47. Countries from all regions provided information on the predominance of migration within their regions.⁹⁹ In the Americas, for example, the Government of *Ecuador* indicated that 28.6 per cent of its emigrants were living in the *United States*; the Government of *Argentina* indicated that most immigrants originated from *Paraguay*; the Government of *Chile* indicated a large number of immigrants from *Peru*.

48. The Committee also received information from a number of member States demonstrating that migration also took place between regions and, in particular, that high numbers of migrants moved from Asian countries to other regions. For example, the Governments of *Algeria*, *Bulgaria*, *Ethiopia* and the *Republic of Korea* indicated that the majority of migrant workers or migrants in their countries were from *China*; the Governments of *Australia*, *Seychelles* and *Sweden* reported that the majority of migrant workers in their countries came from *India*; and the Governments of *Jordan* and *Mauritius* reported significant numbers of migrant workers from *Bangladesh*. The Governments of *Nepal* and *Pakistan* indicated that more than 50 per cent of their emigrant workers moved to the Gulf or Middle East countries. In this regard, the Committee notes that the Government of *Nepal* reported an increasing number of deaths of migrant workers in South-East Asia and the Arab States, which had increased from 90 in 2008–09 to 842 in 2013–14.

49. The Committee notes that certain countries provided information on returning migrants. For example, the Government of *Uruguay* stated that recently returned Uruguayans enjoyed the highest employment rate in the country, at 75.5 per cent, while the national average was 63.3 per cent; and the Government of *Bulgaria* indicated that 2,710 nationals returned to the country in 2013.

Remittances

50. Certain countries provided information showing migrants' contribution to the national economy, which can be significant. For example, the Government of *Pakistan*

⁹⁵ For example, *Gambia* and *Turkey*.

⁹⁶ *Philippines* – CEACR, Convention No. 97, direct request, 2013.

⁹⁷ As indicated by the Government in its 2014 report on Convention No. 97 submitted under article 22 of the Constitution.

⁹⁸ For example, *Chile* (foreign residents), *Estonia* (immigrant population), *Madagascar* (emigrants) and *Lao People's Democratic Republic* (migrants going to work in Thailand).

⁹⁹ For example, *Azerbaijan*, *China*, *Colombia*, *Costa Rica*, *Czech Republic*, *Germany*, *Jordan*, *Lao People's Democratic Republic*, *Lebanon*, *Republic of Moldova*, *Namibia*, *Niger*, *South Africa* and *Turkey*.

indicated that the inflow of remittances in 2013–14 was US\$15.83 billion.¹⁰⁰ The Government of *Bosnia and Herzegovina* indicated that remittances amounted to 7 per cent of the overall gross domestic product in 2011 and the Government of *Ecuador* stated that \$3.14 billion was received in remittances in 2007.¹⁰¹

Family reunification

51. The Government of *Denmark* indicated that 8 per cent of migrants came to the country under family reunification programmes, while the Government of *Morocco* reported that family-based migration was as important as other forms of migration. The Government of *Switzerland* indicated that, in 2013–14, 31 per cent of migrants came in under family-based migration and the Government of *Italy* reported that, in 2014, family-based migration was the prevalent mode of immigration making up 42 per cent. The Government of *Senegal* reported that migrant workers have the right to family reunification, the cost of which is borne by the employer.

Migrant workers in the national workforce

52. The Committee notes that member States indicate great variation in the share of the workforce of migrant workers. For example, the Government of *Algeria* indicated that migrant workers represented 0.86 per cent of the national workforce; and the Government of the *United States* indicated that, by 2013, 16.3 per cent of the *United States* civilian labour force had been born abroad. The Government of *Italy* reported that in the second quarter of 2014, out of the slightly more than 5 million foreigners in the country, just under half (or 2,441,251) were employed.

53. Many countries reported data on the sectors in which migrant workers were employed. For example, the Governments of the *Plurinational State of Bolivia*, *Jordan*, *Luxembourg*, *Seychelles*, *Turkey* and *United Kingdom* indicated that large numbers of migrant workers were domestic workers; the Governments of *Algeria* and *Suriname* indicated that most migrant workers were employed in construction; and the Governments of *Nicaragua* and *Mexico* reported large numbers of migrant workers in the agricultural sector. The Governments of *Greece*, *Italy*, *the Republic of Korea* and *Pakistan* stated that migrant workers were predominantly employed in all three of the sectors mentioned or were generally low-skilled.

54. The Governments of *Australia*, *Estonia*, *Ethiopia*, *Jamaica*, *Morocco*, *New Zealand*, *Peru*, *Romania* and *United States* reported that large numbers, or the majority, of migrant workers were professionals, managers or generally skilled migrants. The Governments of *Bosnia and Herzegovina*, *Estonia*, *Turkey* and *Uruguay* indicated large percentages of migrant workers holding university degrees.

55. A number of governments provided information concerning the existence of migrant workers in an irregular situation which, by its nature, is difficult to quantify with any certainty. The Government of *Niger* reported that the majority of migrant workers worked in the informal economy, and the Government of *Ecuador* pointed to a high percentage of migrants in an irregular situation from *Haiti* and *Cuba* in the capital city. The Government of *Pakistan* referred to anecdotal evidence that there were more than

¹⁰⁰ This represented 6.66 per cent of *Pakistan's* GDP in 2013–14 (US\$237.73 billion) (National Summary Data Page of State Bank of Pakistan).

¹⁰¹ This represented 6.16 per cent of *Ecuador's* GDP for 2007 (US\$51 billion) (National Annual Accounts, Database 2007).

3 million migrants in an irregular situation in Pakistan coming from *Afghanistan, Bangladesh, Myanmar* and some African and central Asian countries.

56. The Government of the *Republic of Korea* reported 69,925 migrant workers with an irregular status;¹⁰² the Government of *Greece* stated that labour inspections suggested that 9.8 per cent of all migrant workers were undeclared workers; and the Government of *Israel* reported approximately 15,000 migrant workers in an irregular situation.¹⁰³ The Government of *China* stated that, in 2014, public security authorities investigated 1,720 foreigners in an irregular situation, with the five top countries of origin being *Japan, India, Republic of Korea, United States* and *Viet Nam*.

Historical and institutional background

57. The protection of migrant workers has been an issue of importance for the ILO since its foundation in 1919. The Preamble to the ILO Constitution, for example, referred to the necessity for “protection of the interests of workers when employed in countries other than their own”.¹⁰⁴

58. The ILO’s concern with the situation of migrant workers was reflected in the fact that its first two Recommendations, adopted at the First Session of the International Labour Conference in 1919, contained provisions concerning migrant workers. Article II of the Unemployment Recommendation, 1919 (No. 1), recommended that “the recruiting of bodies of workers in one country with a view to their employment in another country should be permitted only by mutual agreement between the countries concerned and after consultation with employers and workers in each country”. The Reciprocity of Treatment Recommendation, 1919 (No. 2), stated that member States should ensure that foreign workers and their families benefit from worker protection legislation, “as well as to the right of lawful organisation as enjoyed by its own workers”. These two instruments reflect the same twin aims of international cooperation to regulate migration and the equal treatment of migrant workers, that continue to characterize ILO standard setting in relation to migrant workers.

59. In the following 20 years, the International Labour Conference adopted certain instruments specifically related to migrant workers or with certain provisions concerning migrant workers,¹⁰⁵ and was particularly involved in international consideration of the collective recruitment of migrant workers.¹⁰⁶ As was stated at the time, the ILO “never

¹⁰² Compared to 547,220 migrant workers in a regular situation in the country.

¹⁰³ Compared to approximately 74,000 migrant workers in a regular situation in the country.

¹⁰⁴ See also Art. 427 of the Treaty of Versailles: “The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.”

¹⁰⁵ The Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19) (121 ratifications as of 30 November 2015), the Inspection of Emigrants Convention, 1926 (No. 21), the Equality of Treatment (Accident Compensation) Recommendation, 1925 (No. 25), the Migration (Protection of Females at Sea) Recommendation (No. 26), and the Maintenance of Migrants’ Pension Rights Convention, 1935 (No. 48).

¹⁰⁶ The issue was raised, to various extents, in the context of: the ILO’s International Emigration Commission, established in 1921, at the suggestion of the ILC; the 1926, 1929 and 1933 sessions of the ILC; and the ILO Advisory Committees on Salaried Employees and on Professional Workers (which drew up a “quite concrete programme”: ILO: *Recruiting, placing and conditions of labour (Equality of treatment) of migrant workers*, Report III, ILC, 24th Session, Geneva, 1938, p. vi). See ILO: *the migration of workers: recruitment, placing and conditions of labour* (Geneva, 1936), pp. 7–10.

ceased to take an active interest in the dual problem of the migration of workers and the treatment of foreign workers”.¹⁰⁷

60. In 1939, the delegates to the Conference adopted the Migration for Employment Convention 1939 (No. 66), the precursor to Convention No. 97. As the Office report of the time stated, this did not involve submitting new questions to the Conference; “on the contrary it is merely one stage in the prolonged study and patient effort of many years”.¹⁰⁸ Convention No. 66 was, however, never ratified and accordingly never entered into force.

61. In 1949, an agreement between the ILO and the United Nations delineated the general fields of interest of the ILO and UN bodies in relation to migration.¹⁰⁹ In 1948, the Second Session of the Permanent Migration Committee made recommendations in relation to the revision of Convention No. 66. In 1949, Convention No. 97 and Recommendation No. 86 were adopted, revising the earlier instrument with the aim of ensuring “that it may be ratified by the largest possible number of Governments”.¹¹⁰

62. A number of instruments referring to the rights of migrant workers were adopted in the 1950s–1960s, including the Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Plantations Convention, 1958 (No. 110), and Recommendation, and the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117). Notably, the Equality of Treatment (Social Security) Convention, 1962 (No. 118),¹¹¹ requires member States to grant, under their legislation and within their territory, to nationals of other member States in which the Convention is in force equality of treatment with nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention.¹¹² Further, the Employment Policy Recommendation, 1964 (No. 122), embodies the principle that international labour migration which is consistent with the economic needs of the countries of emigration and immigration, including migration from developing countries to industrialized countries, should be facilitated, taking into account the provisions of Conventions Nos 97 and 118.¹¹³

63. Between 1967 and 1974, the Conference adopted a number of resolutions concerning the need for ILO action on migrant workers.¹¹⁴ In 1974, the International

¹⁰⁷ ILO: *Recruiting, placing and conditions of labour (Equality of treatment) of migrant workers*, Report III, ILC, 24th Session, Geneva, 1938, p. vii. Note that the Permanent Migration Committee was reconstituted in 1929: *ibid.*, p. viii.

¹⁰⁸ ILO: *Recruiting, placing and conditions of labour (Equality of treatment) of migrant workers*, Report III, ILC, 24th Session, Geneva, 1938, p. v.

¹⁰⁹ ILO: *Migration for Employment*, Report XI(I), ILC, 32nd Session, Geneva, 1949, p. 6. Note that the 1944 Declaration of Philadelphia singles out the problems of migrant workers for special attention.

¹¹⁰ ILO: *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949, p. 285.

¹¹¹ With, as of 30 November 2015, 52 ratifications of Convention No. 102; 32 ratifications of Convention No. 117; and 38 ratifications of Convention No. 118.

¹¹² Article 3(1).

¹¹³ Paragraph 33.

¹¹⁴ Resolution concerning action by the International Labour Organization for migrant workers, ILC, 51st Session, 1967 (adopted on 29 June 1967); Resolution concerning ILO Action for Promoting the Equality of Migrant Workers in All Social and Labour Matters, ILC, 56th Session, 1971 (adopted on 22 June 1971); Resolution concerning Conditions and Equality of Treatment of Migrant Workers, ILC, 57th Session, 1972 (adopted on 27 June 1972); and Resolution concerning Future ILO Action in the Field of Migrant Workers, ILC, 59th Session, 1974 (adopted on 24 June 1974).

Labour Conference considered an item concerning migrant workers, with the aim of adopting an instrument or instruments dealing with various problems that were not covered or were covered “inadequately” in Convention No. 97.¹¹⁵ As a result, Convention No. 143 and Recommendation No. 151 were adopted by the Conference in 1975.

64. The Maintenance of Social Security Rights Convention, 1982 (No. 157),¹¹⁶ and Recommendation (No. 167), were adopted in 1982. In 1984, Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169) was adopted Part X of which establishes the link between international migration and development. In 1997, the Conference adopted the Private Employment Agencies Convention, 1997 (No. 81),¹¹⁷ and Recommendation (No. 188). Convention No. 181 contains the principle that “[p]rivate employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers”, whether they are national or migrant workers.¹¹⁸

65. In 2002, the World Commission on the Social Dimension of Globalization was established by the ILO. The Commission’s report paid particular attention to international migration and observed that the absence of a multilateral framework for governing the cross-border movement of people had allowed a number of serious problems to emerge.¹¹⁹

66. In 2004, the International Labour Conference held a general discussion on migrant workers and adopted a resolution and conclusions concerning a fair deal for migrant workers in a global economy. The conclusions contained an ILO plan of action for migrant workers, observing that a “fair deal for all migrant workers requires a rights-based approach, in accordance with existing international labour standards and ILO principles, which recognizes labour market needs and the sovereign right of all nations to determine their own migration policies”.¹²⁰ The plan of action included “identification of relevant action to be taken for a wider application of international labour standards and other relevant instruments”.¹²¹

67. The centrepiece of the plan of action was the “development of a non-binding multilateral framework for a rights-based approach to labour migration, which takes account of labour market needs”.¹²² In 2005, a Tripartite Meeting of Experts developed and adopted the framework, the publication and dissemination of which was

¹¹⁵ ILO: *Migrant workers*, Report VII(1), ILC, 59th Session, 1974, seventh item on the agenda, Geneva, p. 1.

¹¹⁶ Four ratifications, as of 30 November 2015.

¹¹⁷ Thirty-one ratifications, as of 30 November 2015.

¹¹⁸ Article 7(1). Article 7(2) permits exceptions in this regard. Furthermore, according to Article 8(1), States should adopt measures, both within its jurisdiction and in collaboration with other member States, to provide “protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies”.

¹¹⁹ ILO: *A fair globalization: Creating opportunities for all*, World Commission on the Social Dimension for Globalization, Feb. 2004, para. 433. The Commission recommended action concerning international conventions and binding obligations, inter-State dialogue on key policy issues of common interest, and work towards a more general institutional framework for the cross-border movement of people in the form of a global forum that would engage governments and social partners, see paras 441–442, 444.

¹²⁰ Resolution and conclusions on a fair deal for migrant workers in a global economy, ILC, 92nd Session, 2004 (adopted on 16 June 2004), para. 20.

¹²¹ *ibid.*, para. 21.

¹²² *ibid.*

subsequently authorized by the Governing Body at its 295th Session in March 2006. The Multilateral Framework on Labour Migration contains 15 principles, organized under nine subject headings, including protection of migrant workers,¹²³ which are given practical effect in guidelines supported by good practice.

68. Between 2006 and 2012, the Conference adopted additional labour standards containing specific provisions on migrant workers, such as the HIV and AIDS Recommendation, 2010 (No. 200), and the Domestic Workers Convention, 2011 (No. 189),¹²⁴ and Recommendation (No. 201). The Maritime Labour Convention, 2006 (MLC, 2006),¹²⁵ concerns the rights of sea-based migrant workers, setting out the rights of seafarers to decent conditions of work, including non-discrimination in respect of employment and occupation.¹²⁶

69. In 2013, a Tripartite Technical Meeting on Labour Migration,¹²⁷ adopted conclusions covering four thematic areas: labour migration and development; effective protection of migrant workers; sound labour market needs assessment and skills recognition; and cooperation and social dialogue for well-governed labour migration and mobility.¹²⁸

70. In May 2014, the Director-General presented a Report on *Fair migration: Setting an ILO agenda* to the 103rd Session of the Conference.¹²⁹ The Report outlined the components of this agenda: promoting decent work in countries of origin, including the contribution of migrants; formulating orderly and fair migration schemes in regional integration processes; promoting bilateral agreements for well-regulated and fair migration between member States; instituting fair recruitment processes; countering unacceptable situations; realizing the rights-based approach (to labour migration); and contributing to a strengthened multilateral rights-based agenda on migration. Tripartism, knowledge and capacity building were identified as cross-cutting issues.¹³⁰

71. At the same session, the Conference adopted the Protocol of 2014 to the Forced Labour Convention, 1930,¹³¹ and the Forced Labour (Supplementary Measures) Recommendation 2014 (No. 203). The Protocol recognizes that “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process” constitute important measures for the prevention of

¹²³ ILO: *Multilateral framework on labour migration*, Geneva, 2006.

¹²⁴ Twenty-two ratifications, as of 30 November 2015.

¹²⁵ Seventy ratifications, as of 30 November 2015.

¹²⁶ Article III.

¹²⁷ Convened “to assess the outcome of the United Nations General Assembly High-level Dialogue on International Migration and Development ... and consider possible areas for ILO follow-up”. See ILO: *Reports of the Officers of the Governing Body, Second report: Arrangements for a tripartite meeting on labour migration*, Governing Body, 317th Session, Geneva, March 2013, GB.317/INS/13/2, para. 1.

¹²⁸ TTMLM/2013/14. See also ILO: *Labour migration and development: ILO moving forward*, Background paper for discussion at the ILO Tripartite Technical Meeting on Labour Migration, Geneva, 4–8 November 2013, TTMLM/2013.

¹²⁹ ILO: *Fair migration: Setting an ILO agenda*, Report of the Director-General, Report I(B), ILC, 103rd Session, Geneva, 2014.

¹³⁰ ILO: *Fair migration: Setting an ILO agenda*, op. cit., pp. 21–24.

¹³¹ Which has not yet entered into force and which has received two ratifications as of 30 November 2015; Convention No. 29 has received 178 ratifications.

forced or compulsory labour.¹³² Some of these measures are provided for in detail in Recommendation No. 203.¹³³

72. The broad range of ILO instruments helps to ensure that there are no protection gaps in relation to labour rights pertaining to migrant workers, whether or not they are in a regular situation.

73. In November 2015, the Governing Body discussed *The global refugee crisis and its labour market implications*.¹³⁴ Tripartite constituents noted the different legal consequences flowing from the distinction between refugees and migrant workers in international law, which also impacted on the policy responses to labour migration and the refugee crisis. The importance of increasing regular channels of fair, safe and orderly migration was acknowledged, as was the important role the ILO could play. The Governing Body also decided to complete the agenda of the 106th Session (June 2017) of the International Labour Conference by placing on it an item on labour migration with a view to a general discussion.¹³⁵

Ratifications

74. Of the 186 member States of the ILO, 49 have ratified Convention No. 97 and 23 have ratified Convention No. 143. Seventeen States have ratified both Conventions. With respect to Convention No. 97, 18 member States have excluded the provisions of all three Annexes; five member States have specifically excluded the provisions of Annex III and two member States specifically excluded the provisions of Annex II; one member State excluded the provisions of both Annexes II and III, whereas one member State has specifically excluded the provisions of Annex I. One member State has excluded Part II of Convention No. 143.¹³⁶

¹³² Article 2(d).

¹³³ Paragraph 4(g)–(i).

¹³⁴ ILO: *The global refugee crisis and its labour market implications*, note for discussion, GB.325/INS/17. See also paras 113–115 and paras 371–374 *infra*.

¹³⁵ GB.325/INS/2(Add.1).

¹³⁶ See Appendix V.

Countries that have ratified Convention No. 97

Albania, Algeria, Armenia, Bahamas, Barbados, Belgium, Belize, Bosnia and Herzegovina, Brazil, Burkina Faso, Cameroon, Cuba, Cyprus, Dominica, France, Germany, Grenada, Guyana, Israel, Italy, Jamaica, Kenya, Kyrgyzstan, Madagascar, Malawi, Malaysia (Sabah), Mauritius, Montenegro, Netherlands, New Zealand, Nigeria, Norway, Philippines, Portugal, Saint Lucia, Serbia, Slovenia, Tajikistan, United Republic of Tanzania (Zanzibar), the former Yugoslav Republic of Macedonia, Trinidad and Tobago, United Kingdom, Uruguay, Bolivarian Republic of Venezuela and Zambia.

In addition, there is one notification of applicability by *China* with respect to the *Hong Kong Special Administrative Region (SAR)*. There are six declarations of applicability for the *United Kingdom (Anguilla, British Virgin Islands, Guernsey, Isle of Man, Jersey and Montserrat)*.

Countries that have ratified Convention No. 143

Albania, Armenia, Benin, Bosnia and Herzegovina, Burkina Faso, Cameroon, Cyprus, Guinea, Italy, Kenya, Montenegro, Norway, Philippines, Portugal, Serbia, Slovenia, Sweden, Tajikistan, the former Yugoslav Republic of Macedonia, Togo, Uganda and Bolivarian Republic of Venezuela.

Countries that have ratified both Conventions Nos 97 and 143

Albania, Armenia, Bosnia and Herzegovina, Burkina Faso, Cameroon, Cyprus, Italy, Kenya, Montenegro, Norway, Philippines, Portugal, Serbia, Slovenia, Tajikistan, the former Yugoslav Republic of Macedonia and Bolivarian Republic of Venezuela.

75. The Committee recalls that in its previous General Survey, it noted the low rate of ratification of these Conventions,¹³⁷ and is obliged to observe that the rate of ratification remains low.

¹³⁷ See ILO: *General Survey on migrant workers*, 1999, paras 621–622.

Part I. The impact of the instruments

Chapter 1

Potential of the instruments

Rationale

76. In the discussions prior to the adoption of the Migration for Employment Convention, 1939 (No. 66), ILO constituents, wishing to protect workers “obliged to leave their own countries in order to get a livelihood”, classed “migration problems” as one of the most important questions which had ever come before the Conference.¹

77. Convention No. 66 – the precursor to Convention No. 97 – failed, however, to attract ratifications. In 1949, when it was revised, a key objective was to ensure that the provisions did not radically depart from the practices and policies of member States, as instruments that were unacceptable to countries – and so not widely ratified – would effectively deprive migrants of the very protection that they aimed to achieve.² The Conference Committee wished to achieve the “twin aims” of, first, encouraging migration and, second, giving the utmost possible protection to migrant workers.³ Convention No. 97 and Recommendation No. 86, adopted in the context of movement of surplus labour from Europe to other parts of the world in the years following the Second World War, aimed to assist persons who are regularly admitted as migrants for employment (hereinafter, migrant workers in a regular situation) to enjoy equal treatment with nationals.

78. Twenty-five years later, delegates to the International Labour Conference again considered the problems of migration to be “very important and serious”.⁴ At that time it was no longer a question of facilitating the movement of surplus labour, but of managing migration flows, in particular eliminating irregular migration and suppressing the activities of organizers of clandestine movements of migrants and their accomplices.⁵ Migration was described as being “fundamental to the aims of the ILO, because it concerned workers exposed to serious difficulties, and that, by its very nature, it called for international action and cooperation”.⁶

¹ ILO: *Record of Proceedings*, ILC, 24th Session, Geneva, 1938, p. 318.

² ILO: *Migration for employment*, Report XI(2), ILC, 32nd Session, Geneva, 1949, p. 222.

³ ILO: *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949, p. 286.

⁴ ILO: *Record of Proceedings*, ILC, 59th Session, Geneva, 1974, p. 716.

⁵ ILO: *General Survey on migrant workers*, 1999, para. 94.

⁶ ILO: *Record of Proceedings*, ILC, 59th Session, Geneva, 1974, p. 569.

79. During the discussions, the Worker spokesperson considered recent migratory movements to justify a “massive action on the part of the ILO”.⁷ The Employers’ spokesperson noted a common agreement as to the scope and aims of the instruments: to ensure non-discrimination by public authorities and to respond to the need for effective and concerted action against illicit and clandestine migration.⁸

80. Convention No. 143 and Recommendation No. 151 were accordingly adopted by the delegates to the 1975 International Labour Conference. The instruments were understood to be “supplementary” to Convention No. 97 and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);⁹ their aim was to deal with “various problems that are not covered, or are covered inadequately”, in the existing instruments.¹⁰ Convention No. 97 and Recommendation No. 86 would “remain basic instruments specially designed to ensure that migrants are not discriminated against as far as concerns laws, regulations and other conditions under the control of the authorities”.¹¹

Observations from the IOE and the ITUC

The International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC) provided comprehensive information for the purposes of this General Survey, reflecting on the key importance of effective global governance of migration, and the potential role of the ILO in this regard.

The ITUC observed that the lack of effective global governance on migration was increasingly being recognized as a key human rights and development issue and was the antithesis of decent work and social justice. It referred to serious “protection gaps” for migrant workers including recruitment, equal treatment, violation of fundamental rights of migrant workers (especially those in an irregular status), lack of access to social protection and portability of social security, and lack of access to remedies for violations. ITUC considered that many of these “protection gaps” could be addressed by the ratification and implementation of international labour standards, including Conventions Nos 97 and 143 and Recommendations Nos 86 and 151, the core ILO Conventions, and supplemented by the 2005 ILO Multilateral Framework on Labour Migration (MFLM).

The IOE observed that globally migrant workers, across all skills levels, were important drivers for economic growth and development. Noting that labour migration was sometimes described as the “unfinished business of globalisation”, the IOE considered that labour migration issues raised political, human rights, economic and definitional challenges that shaped current migration debates, including the difficulty of distinguishing migrants from refugees. In the light of the contemporary realities of international labour migration, including its importance on policy agendas and in public debate and the impact of the evolution of labour migration on the relevance of the instruments, the IOE reiterated the Employers’ group’s critical perception of Convention No. 97 (relating to the declining role of the State in recruitment, the increase in temporary and irregular migration, means of transport, and the increased use of bilateral agreements) and concerns with Convention No. 143. It considered that the more relevant guidance on labour migration was the MFLM and stressed the need for flexible, long-lasting and tripartite-owned instruments containing basic principles regarding international labour migration.

⁷ ILO: *Record of Proceedings*, ILC, 59th Session, Geneva, 1974, p. 718.

⁸ *ibid.*, p. 716.

⁹ ILO: *Migrant workers*, Report VII(1), ILC, 59th Session, Geneva, 1974, p. 1. Also see ILO: *Migrant workers*, Report VII(2), ILC, 59th Session, Geneva, 1974, p. 1. See also the Preamble of Convention No. 143.

¹⁰ ILO: *Migrant workers*, Report VII(1), ILC, 59th Session, Geneva, 1974, pp. 1–2. These included: migration in abusive conditions; genuine equality of opportunity and treatment; social policy; and employment and residence.

¹¹ ILO: *Record of Proceedings*, ILC, 59th Session, Geneva, 1974, p. 716.

Complementary and interdependent objectives

81. The objectives of the two Conventions and two Recommendations are highly interlinked and complementary. That is, Convention No. 143 builds on the equal treatment provisions of Convention No. 97, focusing on international cooperation to affirm the basic human rights of migrant workers, to address irregular migration (Part I), and to ensure equal opportunity and treatment of migrant workers in a regular situation through national policies (Part II).

82. Convention No. 97 aims to regulate the conditions for regular migration, provides for general protection measures, and prohibits inequality of treatment between migrant workers in a regular situation with nationals in four areas: living and working conditions, social security, employment taxes, and access to justice (Article 6(1)). Part II of Convention No. 143 substantially widens the scope of equality between migrant workers in a regular situation and nationals, in particular by extending it to equality of opportunity (Articles 10–14). Part I of Convention No. 143 is the first attempt of the international community to address the problems arising out of irregular migration and illegal employment of migrants, while laying down the general obligation to respect basic human rights of all migrant workers. Part I also provides for certain protective measures for migrant workers who have lost their employment and for those in an irregular situation (Articles 1–9).

83. The instruments cover the entire labour migration process and, as such, they impose obligations on all countries involved in the labour migration process, including countries of origin, destination and transit.

84. The Preamble of Convention No. 143 recalls that the definition of discrimination in Convention No. 111 does not mandatorily include distinctions on the basis of nationality. Part II of Convention No. 143 therefore reaffirms and supplements the principles of equality and non-discrimination already recognized by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Convention No. 111 requires ratifying States to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination based on race, colour, sex, religion, national extraction, political opinion and social origin, and any other ground they have determined in accordance with Article 1(1)(b) of that Convention. Conventions Nos 97 and 143 can be understood as a specific application of those principles in the context of the particular challenges imposed by labour migration, including distinctions based on nationality.

Linkages with other instruments

International labour standards apply to all workers, including migrant workers.

The Committee recalls its earlier comments relating to migrant workers in the context of its supervision by member States of the fundamental Conventions. In relation to the Forced Labour Convention, 1930 (No. 29), for example, the Committee has commented on the vulnerability of temporary migrant workers in *Australia*¹ and the need for legislation in *Qatar* that protects migrant workers from exploitation tantamount to forced labour.²

In relation to the Worst Forms of Child Labour Convention, 1999 (No. 182), the Committee welcomed the adoption of legislation in *Argentina* guaranteeing equal access to education for all migrants, irrespective of whether they have a national identity document; and the introduction of an amendment to the Immigration Act of *New Zealand*, under which migrant children in an irregular situation could apply for a Limited Purpose Permit which would allow them to enrol at primary and secondary schools.³

The Committee has considered the right of migrant workers to exercise trade union rights without risk of deportation in *Kuwait*,⁴ and to elect union representatives in *Côte d'Ivoire*,⁵ in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In relation to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Committee has commented on the right of foreign workers to be founding members and leaders of trade unions and employers' associations in *Jordan*⁶ and on anti-union discrimination against migrant workers in *Mauritius*.⁷ Further, the Committee is aware that the Committee on Freedom of Association has considered the trade union rights of migrant workers in an irregular situation in cases concerning the *Republic of Korea*⁸ and *Spain*.⁹

In relation to Convention No. 111, the Committee has addressed the need to ensure adequate protection against racial and ethnic discrimination for *Haitians* and migrant workers in an irregular situation in the *Dominican Republic*.¹⁰ Further, the Committee has stated that the principle of equal pay applies to national and foreign female caregivers, including with respect to overtime in respect of *Israel's* observance of the Equal Remuneration Convention, 1951 (No. 100).¹¹

While they may not contain provisions dealing specifically with migrant workers, the Committee has also referred to the particular situation of migrant workers in supervising the application of the governance Conventions (see box on Labour migration and ILO governance Conventions in Chapter 3) and other instruments such as the Employment Service Convention, 1948 (No. 88),¹² the Protection of Wages Convention, 1949 (No. 95),¹³ and the Maternity Protection Convention (Revised), 1952 (No. 103).¹⁴ The Committee has also addressed the situation of migrant workers in the context of instruments which contain specific provisions on migrant workers, such as the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19),¹⁵ the Equal Treatment (Social Security) Convention, 1962 (No. 118),¹⁶ and the Private Employment Agency Convention, 1997 (No. 181).¹⁷

¹ *Australia* – CEACR, Convention No. 29, observation, 2012.

² *Qatar* – CEACR, Convention No. 29, observation, 2015.

³ For example, *Argentina* – CEACR, Convention No. 182, direct request, 2015.

⁴ *Kuwait* – CEACR, Convention No. 87, observation, 2011.

⁵ *Côte d'Ivoire* – CEACR, Convention No. 87, observation, 2012.

⁶ *Jordan* – CEACR, Convention No. 98, observation, 2012.

⁷ *Mauritius* – CEACR, Convention No. 98, observation, 2011.

⁸ Committee on Freedom of Association, Case No. 2620 (*Republic of Korea*), Report No. 374.

⁹ Committee on Freedom of Association, Case No. 2121 (*Spain*), Report No. 327.

¹⁰ *Dominican Republic* – CEACR, Convention No. 111, observation, 2015.

¹¹ *Israel* – CEACR, Convention No. 100, observation, 2013.

¹² For example, *Thailand* – CEACR, Convention No. 88, observation, 2011 (facilitation of movement of migrant workers across borders and strengthening of public employment services to protect migrant workers).

¹³ For example, *Syrian Arab Republic* – CEACR, Convention No. 95, direct request, 2014 (payment of wages owed to migrant workers returning to country of origin must be ensured).

¹⁴ For example, *Equatorial Guinea* – CEACR, Convention No. 103, direct request, 2014 (social security schemes must grant same rights to foreign women workers).

¹⁵ For example, *Guatemala* – CEACR, Convention No. 19, direct request, 2013 (application of minimum period of contribution for social care in general, and accident compensation in particular, to temporary migrant workers).

¹⁶ For example, *Barbados* – CEACR, Convention No. 118, observation, 2015 (regulations permitting payment of benefits abroad to persons residing in another country).

¹⁷ For example, *Ethiopia* – CEACR, Convention No. 181, direct request, 2014 (measures to prevent abuse and fraudulent practices in the recruitment, placement and employment of migrant workers).

85. The status of the four fundamental principles and rights at work as both rights and enabling conditions for the enjoyment of other rights, means that they are of particular relevance to fulfilling the objectives of Conventions Nos 97 and 143.¹² The objectives of

¹² Pursuant to the ILO Declaration on Fundamental Principles and Rights at Work, 1998, the four fundamental principles and rights at work are freedom of association and the effective recognition of the right to collective

the two migrant worker specific Conventions link also with the objectives of other instruments which contain specific measures to ensure their provisions apply to migrant workers in particular.¹³ In addition, except for those instruments relating to particular areas, most international labour standards are of general application, covering all workers irrespective of nationality, citizenship or immigration status.

Flexible structure and provisions

86. To encourage ratification by member States, Convention No. 97 contains unique, flexibly worded provisions specifying the rights of migrants for employment in a regular situation, while the Annexes, which can be excluded from ratification, provide details of the means to achieve these ends.¹⁴ Likewise, Convention No. 143 is divided into three Parts,¹⁵ with a selective ratification clause in Article 16(1). Of the 49¹⁶ countries which have ratified Convention No. 97, only 22 have ratified all the annexes; in relation to Convention No. 143, all but one of the 23 ratifying countries has ratified both Parts.

87. The requirements of the two Conventions are equally as flexible. Article 3 of Convention No. 97, for example, requires member States, “so far as national laws and regulations permit”, to take steps against misleading propaganda relating to emigration and immigration. Article 10 of Convention No. 143 refers to “methods appropriate to national conditions and practice” in relation to the development and implementation of a national equality policy. This flexibility ensures that member States may sculpt the measures taken pursuant to the instruments to fully take into account national circumstances.

* * *

88. *Convention No. 97 aims to secure no less favourable treatment to migrant workers in a regular situation as compared to nationals, to enhance cooperation between member States and to provide guidance on general protection measures and on the conditions in which labour migration should take place. Convention No. 143 supplements these provisions, aiming: (i) to prevent irregular migration including the*

bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation. Further, the Declaration provides that “ILO should give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers” (Preamble, recital 4). See also ILO Declaration on Social Justice for a Fair Globalization, 2008; and ILO: *Giving globalization a human face, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 101st Session, Geneva, 2012 (hereinafter *General Survey on the fundamental Conventions, 2012*), para. 3.

¹³ For example, see Conventions Nos 110, 118, 157, 181 and 189, and the Protocol of 2014 to the Forced Labour Convention, as discussed in the introduction to this General Survey (see paras 62–71).

¹⁴ The first of the Annexes relates to individually recruited migrants; the second to migrants recruited under group arrangements; and the third to the personal effects and tools of all migrant workers. In 1949, it was stated that the results of this experiment would be seen in the “number of ratifications as a Convention, not only of the Convention itself but of one or other of the annexes”, ILO: *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949, pp. 285–287.

¹⁵ Part I (Articles 1–9) deals with the governance of migration in abusive conditions and Part II (Articles 10–14) deals with equality of opportunity and treatment between regular entry migrants and nationals. Part III (Articles 15–24) contains the usual final provisions, including Article 16.

¹⁶ In addition, there are six declarations of applicability for the *United Kingdom (Anguilla, British Virgin Islands Guernsey, Isle of Man, Jersey, Montserrat)*, and one notification by *China* with respect to the *Hong Kong Special Administrative Region*.

unlawful employment of migrant workers; (ii) to ensure respect for the basic human rights of all migrant workers, including migrant workers in an irregular situation (Part I); and (iii) to guarantee equality of opportunity and treatment to migrant workers in a regular situation (Part II). In this regard, the Committee emphasizes that the instruments envisage member States introducing measures, sculpted to the national circumstances, so as to better achieve these aims for the benefit of migrant workers as well as the wider society.

Chapter 2

Scope and coverage of the instruments

Parallel definitions in instruments

89. The definitions of “migrant for employment” and “migrant worker”¹ determine the scope and coverage of the instruments and accordingly to whom they apply in practice. While the original Migration for Employment Convention, 1939 (No. 66) did not define the term “migrant for employment”,² both its subsequent revision, Convention No. 97 and Convention No. 143 contain definitions establishing to whom the instruments apply. The instruments define “migrant for employment” and “migrant worker” in largely similar terms, with Convention No. 143 enlarging the list of exclusions set out in Convention No. 97. In the remainder of the General Survey, therefore, the two terms will be used interchangeably.

90. In accordance with Article 11(1) of Convention No. 97, the term “migrant for employment” means “a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment”.³ Article 11(2) of the Convention provides that the instruments do not apply to “frontier workers”; “short-term entry of members of the liberal professions and artistes”; and “seafarers”.⁴

91. Article 1 of Convention No. 143 provides that ratifying member States undertake to respect, as set out in Part I of the Convention, the basic human rights of “all migrant workers”, including those in an irregular situation, as discussed in further detail in Chapter 5. In relation to Part II of the Convention concerning equality of opportunity and treatment, Article 11 of the Convention, which only refers to migrants in a regular situation, provides that:⁵

1. For the purpose of this Part of this Convention, the term “migrant worker” means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.

¹ The English version of the text of Convention No. 97 and Recommendation No. 86, refer to the term “migrant for employment” while the French and Spanish texts of these instruments use the expression “migrant worker”.

² ILO: *Migration for employment*, Report VI(1), ILC, 32nd Session, Geneva, 1949, pp. 20–21.

³ See also definition in Paragraph 1 of Recommendation No. 86.

⁴ See also definition in Paragraph 3 of Recommendation No. 86.

⁵ Article 2(1) of the 1990 UN Convention on Migrant Worker provides that: “The term ‘migrant worker’ refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.” Article 2(1)(a) to (h) of this Convention defines the terms “frontier worker”, “seasonal worker”, “seafarer” and “worker in offshore installation”, “itinerant worker”, “project-tied worker” and “specified-employment worker” and “self-employed worker”.

2. This Part of this Convention does not apply to:
 - (a) frontier workers;
 - (b) artistes and members of the liberal professions who have entered the country on a short-term basis;
 - (c) seamen;
 - (d) persons coming specifically for purposes of training or education;
 - (e) employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.

Defining labour migration

Migration for employment

92. The scope of the instruments is delineated by the Organization's mandate to protect the rights and freedoms of workers: the instruments are primarily concerned with migrants for employment, as opposed to migrants in general.⁶ During the discussion leading to the adoption of the 1949 instruments, it was stressed that the ILO was not the appropriate forum to discuss the many and varied problems which face migrants in general.⁷ The Committee notes, however, that most member States indicated in their reports submitted for the purposes of this General Survey that the legislative frameworks existing in their countries related to migration in general, rather than migration for employment.

International labour migration

93. The scope of the instruments is further delineated by the decision of the Conference delegates in 1949 and 1975 that the instruments cover only labour migration across international boundaries, and not migration within a member State's own borders. ***While recognizing that internal migration for the purposes of employment is an important element in many countries,⁸ the Committee recalls that the purpose of the instruments is to ensure cooperation between member States to regulate international labour migration and to ensure equality of opportunity and treatment for workers working in countries other than their own.***

Countries of origin, transit and destination

94. To fulfil the objective of encompassing all international migration for employment, the instruments apply to countries of origin, countries of destination and, in some cases,

⁶ Following a discussion as to whether the Convention should cover "migration in general", the 1949 International Labour Conference agreed that the scope of the Convention "should be limited to migration for employment": ILO: *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949, pp. 578–579.

⁷ ILO: *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949, p. 285.

⁸ The Government of India reported that the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, states that the same conditions of work apply to an "inter-state migrant workman" as those that are applicable to "other workman"; and the Confederation of Turkish Trade Unions (TÜRK-İŞ) noted the importance of internal migration to Turkey. See further OECD: *Growth, Employment and Inequality in Brazil, China, India and South Africa: An Overview*, Paris, 2010, pp. 27–28, stating that in the last thirty years, the labour markets of China, Brazil, India and South Africa have been shaped by important internal migration, which is often the result of significant rural to urban migration flows.

countries of transit. While certain provisions specifically relate to the duties of countries of destination to protect workers from abroad,⁹ other provisions can be applied equally by countries of origin.¹⁰ Article 4 of Convention No. 97, for example, requires member States to take measures to facilitate the departure, journey and reception of migrants for employment. The Committee notes that the current global reality is that most member States are contemporaneously countries of origin, transit and destination. The Committee therefore considers that in practice member States may have to ensure, taking into account national conditions, the application of the provisions of the Conventions to both labour migration into their territories, labour migration passing through their territories,¹¹ and labour migration out of their territories.

95. There are areas of law that impact on migrant workers, including migration law, labour law, equality law, human rights law, civil law and penal law. The Committee notes that the breadth of scope of the Conventions is reflected in the wide variety of national arrangements in this regard. In the first place, some member States reported that their national legislation and policies concerned both emigration and immigration, often in separate legal instruments.¹² For example, the Government of *Côte d'Ivoire* stated that the Labour Code of 1995 and the General Collective Agreement of 1977 related to immigration, while its 2013 Protocol agreement with *Lebanon* concerned both immigration and emigration. The Government of *Cambodia* likewise reported labour, immigration, trafficking in persons and sexual exploitation legislation concerning immigration into the country, and a number of sub-decrees and *prakas* concerning the process of labour migration for Cambodians going abroad. The Government of the *Republic of Moldova* reported that Law No. 180 of 2008 on labour migration regulated both immigration and emigration.

⁹ For example, provisions relating to the reception of migrant workers in the country of destination, and provisions relating to equality of opportunity and treatment with nationals in relation to working conditions and social security benefits.

¹⁰ For example, provisions relating to enjoyment of basic human rights, remittances, information provision prior to migration, measures to ensure equality of treatment as regards the content of the employment contract and measures related to the suppression of clandestine migration.

¹¹ For example, *Burkina Faso* – CEACR, Convention No. 143, direct request, 2009 (where the Committee noted that *Burkina Faso* has become, in recent years, a country of transit); *Guatemala* – CEACR, Convention No. 97, direct request, 2013 (where the Government indicated it would reinforce channels of communication and cooperation with countries of transit for the protection of Guatemalan workers).

¹² For example, *Azerbaijan* (Migration Code of 2013 regulates immigration; and the law on state policy with regards to Azerbaijanis residing abroad of 2002 regulates emigration); *Bulgaria* (Law for Foreigners in the Republic of Bulgaria of 1998 (as amended) regulates immigration; and the Employment Encouragement Act of 2002 regulates emigration); *Indonesia* (Act No. 6 Concerning Immigration of 2011 regulates immigration; and Act No. 39 concerning Placement and Protection of Indonesian Workers Who Work Abroad of 2004 regulates emigration); *Republic of Korea* (Immigration Control Act of 1963, as amended, and the Act on Foreign Workers Employment, etc. of 2003, as amended, regulate immigration; and the Emigration Act of 1962, as amended, and the Act on the Immigration and Legal Status of Overseas Koreans of 1999, as amended, regulate emigration); *Lao People's Democratic Republic* (among others, the Labour Law No. 43/NA of 2013 regulates immigration; and the Decree on sending Lao workers to work abroad No. 68/PM of 2002 regulates emigration); *Philippines* (Labour Code of 1974 (as amended) regulates immigration; and the Migrant Workers and Overseas Filipinos Act of 1995 regulates emigration); *Romania* (Labour Code, Law No. 53 of 2003 (as amended) regulates immigration; and Law No. 156 of 2000, republished, regarding the protection of the Romanian citizens that work abroad regulates emigration); *Seychelles* (the Employment Act of 1995 regulates both immigration and emigration); and *Sri Lanka* (the Immigrants and Emigrants (Amendment) Act No. 31 of 2006 regulates immigration; and the Sri Lanka Bureau of Foreign Employment (Amendment) Act No. 56 of 2009 regulates emigration).

96. Other member States indicated legislation relating primarily to emigration.¹³ The Government of *Bangladesh*, for example, referred to the Overseas Employment and Migrants Act 2013 covering the labour migration cycle in relation to emigration of citizens, their stay overseas and their return; “migration” in the national law meant the departure of a citizen from Bangladesh for the purpose of employment in a trade or profession in any foreign country. The Government of *Sudan* reported that, while it did not have a national policy on immigration, it had a national policy for emigration to ensure the protection of Sudanese citizens abroad. Yet other countries, including *Australia, Bosnia and Herzegovina, Cabo Verde, Cyprus, Estonia, Finland, Gambia, Georgia, Greece, Jordan, Namibia, Netherlands, Poland, Qatar, Sweden, United Republic of Tanzania, Ukraine, United Kingdom* and *Zimbabwe*, stated that their legislation solely concerned immigration.

Spontaneous and organized migration

97. While Annexes I and II of Convention No. 97 relate only to recruited workers – those who have a concrete offer of employment prior to entry into the destination country – the other provisions of the instruments apply equally to organized and spontaneous migration. That is, they cover both government sponsored and privately arranged recruitment, as well as workers who migrate outside such programmes in the search for employment. While most mechanisms referred to by member States in their reports related to the regulation of spontaneous migration, some member States referred to mechanisms supporting organized migration, such as bilateral agreements concerning the migration process.¹⁴

No requirement of reciprocity

98. There is no requirement of reciprocity for the application of the protections set out in the instruments. That is, a migrant worker does not have to be the national of a member State which has ratified the instruments, or which guarantees equal treatment to the subjects of the ratifying State, for the provisions to apply. In recent years, the Committee has continued to remind governments that these instruments are not dependent upon reciprocity.¹⁵ At the same time, the Committee noted with interest or satisfaction legislative amendments that no longer require reciprocity for rights to apply to migrant workers, such as to become trade union officials¹⁶ or to access compensation for industrial accidents and occupational diseases.¹⁷

¹³ For example, the Government of *Myanmar* reported that Law No. 3/99 Relating to Overseas Employment of 1999 concerned citizens who travelled abroad; and the Government of *India* referred to its Emigration Act and Rules, 1983.

¹⁴ For example, the Government of the *Republic of Korea* reported that it had concluded bilateral agreements with 15 countries pursuant to which the governments of the relevant origin and destination countries recruit, transport and train migrants. The Government of the *Philippines* reported that it allowed the deployment of overseas Filipino workers to countries where the rights of those migrant workers were protected, notably through bilateral agreements: section 1(c) of Rule III, Omnibus Rules and Regulations implementing the Migrant Workers and Overseas Filipinos Act of 1995 (RA 8042), as amended by Republic Act No. 10022.

¹⁵ See for example, *Belize* – CEACR, Convention No. 97, direct request, 2014; *Bosnia and Herzegovina* – CEACR, Convention No. 143, direct request, 2013; *Guinea* – CEACR, Convention No. 143, direct request, 2015; *Philippines* – CEACR, Convention No. 143, direct request, 2013; *Tajikistan* – CEACR, Convention No. 143, direct request, 2015.

¹⁶ *Burkina Faso* – CEACR, Convention No. 143, observation, 2009 (foreigners with five years of residence may become trade union officials, regardless of reciprocity).

¹⁷ *Portugal* – CEACR, Convention No. 97, observation, 1993 (access to compensation for industrial accidents and occupational diseases no longer relies on reciprocity).

Broad and inclusive categories of migrant workers

Diverse ways to categorize migrant workers

99. Member States reported differences in the extent to which categories of migrant workers are established in law. While section 2 of the *Uganda* Employment Act 2006, largely replicates the definition of “migrant worker” in the Conventions,¹⁸ legislation in most member States does not utilize the concepts of “migrant for employment” or “migrant worker”. The Government of *New Zealand*, for example, indicated that New Zealand immigration policy did not have a specific migrant entry category called “migration for employment”; and the Government of *Mali* reported that “migration for employment” was not the subject of specific legislation or regulation, but that migrant workers were covered by immigration and labour law. The Government of *Georgia* noted the absence of a specific legal basis to regulate migration and employment of migrant workers in Georgia, and for labour migration of Georgian citizens abroad.

100. Other terminology used by member States when referring to migrant workers included overseas workers,¹⁹ immigrant workers,²⁰ foreign workers,²¹ employment of aliens,²² foreigners²³ and foreign nationals,²⁴ non-national workers.²⁵ The Government of the *United States* referred to immigrant and non-immigrant workers, and the legislation of *Zambia* uses the term “expatriate employee”.²⁶ Some European governments, including *Greece*, *Sweden* and *United Kingdom*, highlighted the distinction made between “non-nationals” from other EU countries and “third-country nationals” from outside the EU.

101. While the categories used in national legislation and practice often do not replicate the wording of the instruments, the concept of “migrant worker” as it is understood in national law and practice in most member States appears to conform with the definitions contained in the instruments, with many of the categories described by member States and established in national law and practice conforming to the categories set out in the instruments.

102. ***The Committee notes that member States use varying terms to describe migrant workers. Member States may determine the extent to which categories or definitions of migrant workers are established by law or practice, as long as the establishment of those categories or definitions ensures that all those workers covered by the Conventions enjoy the protections guaranteed to them by the instruments.***

¹⁸ Namely, “a person who migrates or has migrated from one country to another with a view to being employed by another person and includes any person regularly admitted as a migrant worker”.

¹⁹ For example, *Australia*.

²⁰ For example, *Belarus*.

²¹ For example, *Belgium*, *Benin*, *Cyprus*, *Egypt*, *Gabon*, *Iraq*, *Israel*, *Republic of Korea*, *Lebanon* and *Viet Nam*.

²² For example, *Bosnia and Herzegovina*, *Cambodia*, *Denmark* and *Estonia*.

²³ For example, *Bulgaria*, *China*, *Latvia* and *Turkey*.

²⁴ For example, *Finland*, *Iran*, *Jamaica* and *Turkmenistan*.

²⁵ For example, *Burkina Faso* and *Jordan*.

²⁶ *Zambia* – CEACR, Convention No. 97, direct request, 2014.

Application to the entire active population

103. As the definitions contained in the instruments make clear, Convention No. 97 and Part II of Convention No. 143 apply to the entire active population, with the exception of self-employed workers.²⁷ Other exceptions include frontier workers, seafarers, short-term entry of liberal professions and artists (Conventions Nos 97 and 143), students and trainees, and workers temporarily sent or posted by their employer to undertake specific assignments abroad (Convention No. 143). No limitations are permitted by reason of the type of occupation, the nature of the duties, or the level of the salary of a migrant worker.

The self-employed

104. While Convention No. 97 and Part II of Convention No. 143 exclude the self-employed from their coverage, the Committee notes that some member States considered self-employed workers to be a category of migrant worker.²⁸ The Government of *Turkey*, for example, stated that Law No. 4817 on Work Permits of Foreign Nationals of 2003 covered independent employees, defined for the purposes of the Act as foreigners who worked for and on their own account, whether they employed other persons or not.²⁹ The Government of *the former Yugoslav Republic of Macedonia* noted that labour legislation referred to categories of migrants who are employed, those who are self-employed or those who may work;³⁰ and the *Antigua and Barbuda* Labour Code refers to non-citizens engaged in employment and self-employment.³¹ The Government of *Denmark* indicated that a distinction existed between salaried and self-employed migrants, and that legislation applied also to unpaid work.

Level of skill

105. Recalling that the instruments apply to all sectors of employment, regardless of skill or salary level, the Committee notes that many member States, including *Algeria*, *Ethiopia*, *Indonesia*, *Mauritius*, *New Zealand*, *United Kingdom* and *United States*, indicated a differentiation in immigration law and practice between migrant workers who fell within a highly skilled category, and those who undertook low-skilled work.³²

106. For example, the Governments of *Antigua and Barbuda* and *Suriname* referred to the Caribbean Community (CARICOM) treaty concerning the free movement of skilled nationals.³³ A number of European Member States referred to an approach that distinguished between: (i) migrant workers who were nationals of a European Economic Area Member State and Switzerland, who enjoyed freedom of movement in the European Union (EU) and did not require authorization to take up employment;

²⁷ In this regard, see Paragraph 1 of the Employment Relationship Recommendation, 2006 (No. 198), requiring member States to guarantee effective protection for workers who perform work in the context of an employment relationship. Paragraph 5 calls upon Members to take particular account in national policy to ensure effective protection to workers especially affected by the uncertainty as to the existence of an employment relationship, including migrant workers.

²⁸ For example, *Bolivia* (own account) and *Mauritius* (investor, self-employed).

²⁹ See section 3 of Law No. 4817; see also *Plurinational State of Bolivia* (article 48(I) of the Migration Law No. 370 of 2013).

³⁰ Article 4(3) of the Law on Employment and Work of Foreigners of 2007.

³¹ See paragraph F4 of the Labour Code (Cap. 27).

³² See *infra*. Chapter 6. The differences in immigration law with respect to skill has a particular impact on the protection of equal treatment.

³³ Nationals from CARICOM member States are not required to obtain work permits in ten categories of “skilled nationals” including graduates, academics, media workers, sportspersons, musicians, artists, teachers, nurses, artisans and domestic workers with a Caribbean vocational qualification and Holders of Associate Degrees.

(ii) migrant workers falling within the European Blue Card Directive, allowing high-skilled non-EU citizens to work and live within the EU; and (iii) an often limited quota of seasonal workers granted temporary authorization to work in particular sectors in European countries.³⁴

Particular sectors

107. Recalling that the instruments apply to all sectors of employment, the Committee notes that many member States, including *Austria, Honduras, Kenya, Mali, Mauritius, Morocco* and *Zimbabwe*, reported that in general no categories of migrant workers were excluded from the rights afforded by the instruments. The Committee regrets, however, that other member States indicated that particular sectors of employment were excluded from national legislation.³⁵ The Government of *Myanmar*, for example, reported that workers from the fisheries, plantation and domestic work sectors, in addition to undocumented workers, were excluded from the protection offered by the national labour law of some destination countries. The American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) indicated that labour legislation in the *United States* excludes certain categories of workers³⁶ and labour legislation specifically applying to migrant workers excludes certain categories.³⁷

108. Yet other member States indicated that, while not necessarily excluded from the rights guaranteed by the instruments, migrant workers in construction,³⁸ agriculture,³⁹ horticulture and viticulture,⁴⁰ seasonal workers⁴¹ and domestic workers⁴² constituted particular categories of migrant workers existing in their countries. Other countries noted particular immigration categories for religious figures,⁴³ diplomats,⁴⁴ the spouses of nationals,⁴⁵ or scientists, sportspersons and cultural figures.⁴⁶ The Governments of

³⁴ *Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden* and *United Kingdom*.

³⁵ See paras 328–329 *infra*.

³⁶ For example, section 152(3) of the National Labor Relations Act (NLRA) of 1935, as amended, which, among others, excludes domestic and agricultural workers. Section 1975(6) of the Occupational Safety and Health Act (OSHA) of 1970, as amended, excludes domestic work and most protections do not apply to agricultural workplaces, as workplaces employing less than ten employees are not covered. Moreover, the minimum wage provisions of the Fair Labor Standards Act (FLSA) of 1938, as amended are not applicable to certain categories of farmworkers (section 213(6)(A)) and domestic workers and farmworkers are also excluded from overtime pay provisions.

³⁷ Section 3(8)(B)(ii) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (AWPA or MSPA) excludes H-2A agricultural guest workers from its coverage.

³⁸ For example, *Nicaragua*.

³⁹ For example, *Austria* (under the Austrian Employment of Foreigners Act of 1975, nationals from non-EEA States engaged in agriculture or forestry are required to obtain work permits. The Government reported that in principle the rights of all workers were protected under its labour and immigration laws); *Israel* (agricultural workers are recruited pursuant to bilateral agreements); *Nicaragua* (the bilateral agreement on “Governance of temporary migration between Costa Rica and Nicaragua” covers three categories: migrant workers in agriculture, in agro-industry and in construction).

⁴⁰ For example, *New Zealand* (Recognized Seasonal Employer Temporary Work Policy 2006).

⁴¹ For example, *Ecuador, France, Greece* and *Lithuania*.

⁴² For example, *Jordan* and *Myanmar*.

⁴³ For example, *Australia, Azerbaijan, Bangladesh, New Zealand* and *United Kingdom*.

⁴⁴ For example, *Niger* and *Slovakia*.

⁴⁵ For example, *Azerbaijan, Poland* and *Romania*.

Indonesia, Nicaragua and Suriname indicated that particular categories existed in their legislation and in practice for migrant workers entering their countries, for nationals migrating to work or looking for work abroad, and for returning migrant workers.⁴⁷

Permanent, temporary and seasonal migration

109. It accordingly follows, from this broad approach to their coverage, that the instruments do not distinguish between workers who migrate for permanent settlement, and those who migrate for short-term or seasonal work and who do not expect to stay for any significant length of time in the host country. Other than certain provisions explicitly applying only to permanent migrant workers,⁴⁸ no exemptions within the provisions in the instruments are envisaged in relation to any category of regular-entry migrant worker.⁴⁹

110. Most member States reported that national legislation differentiated between temporary and permanent migrants in relation to the issuance of visas and permits to stay and work.⁵⁰ The Government of *Morocco*, for example, indicated that the three categories of workers in the country were permanent migrant workers, temporary migrant workers, and migrants in an irregular situation. The Government of *Ecuador* reported the existence of temporary migrant workers and migrant workers in the country for an undefined time, noting that the term “permanent migrant worker” was synonymous with “resident” in Ecuador. The Governments of *Indonesia, Israel, Namibia* and *Republic of Moldova* indicated that legislation did not envisage permanent residency for migrant workers who were employed for specific time periods in their countries.

111. As regards the specific case of seasonal migrant workers, the preparatory work to the adoption of Convention No. 143 shows that the definition of “migrant worker” makes “no distinction between seasonal workers and other categories of migrant workers (although the former could not always benefit in fact from all the provisions under consideration)”.⁵¹ At that time, the Office noted that “seasonal migrant workers are obviously not excluded (as they are likewise not excluded under Convention No. 97) and they should therefore benefit from equality of opportunity and treatment. It seems likely, however, that the extent to which they will really be able to benefit from the ‘national equality policy’ enjoined by the Convention will depend on the time they stay in the country of employment.”⁵²

⁴⁶ For example, *Poland* and *Uzbekistan*.

⁴⁷ See *Indonesia* (Act No. 39 Concerning Placement and Protection of Indonesian Workers Who Work Abroad of 2004); *Nicaragua* (Law No. 535 of 2005, Special Law concerning migratory incentives for Nicaraguans residing abroad who return to the country and *Suriname* (Ministerial Decree of the Minister of Labour and Public Health of 13 October 1981, and the CARICOM community (skilled nationals) Act 2006).

⁴⁸ For example, Article 8 of Convention No. 97 protecting permanent migrant workers and their families from expulsion from the host country on the grounds of incapacity to work, Paragraph 10(d) of Recommendation No. 86 concerning the transfer of the capital of permanent migrants, and Paragraph 15(1) of this Recommendation concerning authorization for permanent migrants to be joined by their family.

⁴⁹ ILO: *General Survey on migrant workers*, 1999, para. 107.

⁵⁰ For example, *Argentina* (permanent residents, temporary residents, transitory residents (including seasonal migrants)); *Australia* (permanent, provisional and temporary visa holders); *Azerbaijan* (temporarily staying, temporarily residing, permanently residing); and *Estonia* (migrants with temporary and permanent residence permits).

⁵¹ ILO: *General Survey on migrant workers*, 1999, para. 115.

⁵² ILO: Report V(2), ILC, 60th Session, Geneva, June 1975, p. 19.

112. Considering that the instruments apply to seasonal and temporary work, the Committee has noted on a number of occasions government policies and practices concerning seasonal workers, reported under Conventions Nos 97⁵³ and 143.⁵⁴ Many member States indicated that seasonal workers, often working in agriculture and sometimes also frontier workers, were a significant feature of labour migration in their countries.⁵⁵ The Government of *Austria*, for example, referred to a quota system allowing for seasonal workers of all skill levels to work for six months in tourism, agriculture and forestry sectors; and a six-week harvest worker permit. The Government of *the former Yugoslav Republic of Macedonia* referred to “seasonal border workers”, who worked within the former Yugoslav Republic of Macedonia but returned at least once a week to a permanent residence outside the country. The Government of *New Zealand* reported that its Recognized Seasonal Employer Temporary Work Policy, introduced in 2006, supported the labour needs of the horticulture and viticulture industries by facilitating the temporary entry of migrant workers from 12 Pacific States, who planted, maintained, harvested and packed crops for government-recognized seasonal employers.

Persons in need of international protection

113. Refugees⁵⁶ and displaced persons,⁵⁷ where they are employed as workers outside their own countries, are covered by the instruments.⁵⁸ According to the United Nations

⁵³ For example, *Albania* – CEACR, Convention No. 97, direct request, 2010 (concerning bilateral agreements concluded by the Government concerning seasonal employment and labour); *Barbados* – CEACR, Convention No. 97, observation, 2013; *Grenada* – CEACR, Convention No. 97, direct request, 2013; *Trinidad and Tobago* – CEACR, Convention No. 97, direct request, 2014 (concerning the Canada–Caribbean Seasonal Agricultural Workers Programme); *New Zealand* – CEACR, Convention No. 97, observation and direct request, 2014 (concerning the Recognized Seasonal Employer Scheme for horticulture and viticulture); *Slovenia* – CEACR, Convention No. 97, observation, 2009 (concerning housing conditions of migrant workers undertaking seasonal and time-bound work, and a bilateral agreement with *the former Yugoslav Republic of Macedonia* on the employment of seasonal workers); *the former Yugoslav Republic of Macedonia* – CEACR, Convention No. 97, direct request, 2013 (concerning bilateral agreements with *Slovenia* and *Qatar* on seasonal workers); *United Kingdom* – CEACR, Convention No. 97, direct request, 2009 (concerning migrant worker schemes such as the Seasonal Agricultural Workers Scheme).

⁵⁴ For example, *Albania* – CEACR, Convention No. 143, direct request, 2014 (concerning coverage of seasonal workers by employment and social protection); *Italy* – CEACR, Convention No. 143, observation, 2012 (concerning monitoring conditions of migrant seasonal workers in an irregular situation); *San Marino* – CEACR, Convention No. 143, direct request, 2015 (concerning legal status of seasonal workers in the case of loss of employment); *Serbia* – CEACR, Convention No. 143, direct request, 2014 (concerning work permits for seasonal workers); *Slovenia* – CEACR, Convention No. 143, direct request, 2013 (concerning trafficking of persons into seasonal work in agriculture); *Tajikistan* – CEACR, Convention No. 143, direct request, 2015 (concerning emigration of temporary and seasonal workers); *the former Yugoslav Republic of Macedonia* – CEACR, Convention No. 143, direct request, 2013 (concerning seasonal farm workers).

⁵⁵ See for example, *Austria*, *Greece*, *Hungary*, *Lithuania*, *Republic of Moldova*, *Romania* and *the former Yugoslav Republic of Macedonia*.

⁵⁶ According to Article 1(A)(2) of the 1951 Convention Relating to the Status of Refugees (1951), “the term ‘refugee’ shall apply to any person who ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

⁵⁷ The United Nations Guiding Principles on Internal Displacement define internally displaced persons in recital two of the Introduction as “persons or groups of persons who 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”, *Guiding Principles on Internal Displacement*, 22 July 1998 (E/CN.4/1998/53/Add.2).

⁵⁸ See also ILO: *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949, p. 285. See also paras 357–360 *infra*.

High Commissioner for Refugees, at the end of 2014 the number of forcibly displaced persons worldwide was 59.5 million, the highest level ever recorded, with 38.2 million internally displaced persons, 19.5 million refugees and 1.8 million asylum seekers.⁵⁹ The current “migration crisis” includes increased mixed migration flows of refugees, asylum seekers, internally displaced populations and migrant workers.⁶⁰

114. A number of member States reported on measures to ensure the rights set out in the instruments were extended to refugees and displaced persons.⁶¹ The Government of *Portugal*, for example, recalled that the Constitution guarantees to foreigners and stateless persons the same rights and obligations as enjoyed by Portuguese citizens.⁶²

115. The Committee recalls that, in relation to its consideration of the observance of Convention No. 97 by *Madagascar*, it requested the Government to take the necessary steps to amend section 41 of the Labour Code, which defined displaced workers as those who, in order to accomplish the work agreed upon, were obliged to settle “for a long-term period” in a workplace other than their usual residence or outside their country of origin, to ensure that all migrant workers, including displaced workers, were covered by the Convention.⁶³

Family members

116. Certain provisions in the instruments protecting rights outside the employment relationship apply equally to the families of migrant workers, in recognition of the impact of migration for employment on family members.⁶⁴ The term “family” is defined in Article 13(2) of Convention No. 143 as “spouse and dependent children, father and mother”.⁶⁵ It should be noted that in Convention No. 97 and in Part II of Convention No. 143 the provisions apply only to family members who are entitled by law to accompany the migrant.⁶⁶

117. A number of EU Member States, including *Netherlands*, *Poland*, *Slovenia* and *Sweden*, provided information on the right to residence of family members of migrants admitted on a permanent basis. The Government of *Finland*, for example,

⁵⁹ UNHCR: *Global Trends Report 2014: World at War* (Geneva, UNHCR, June 2015), p. 2. This included 5.1 million Palestinian refugees.

⁶⁰ See also ILO: *Conflicts, disasters, economic crises and lack of decent work are resulting in the growth of complex mixed movements of refugees, migrants and displaced persons and other vulnerable groups*, statement of the ILO Deputy Director-General, Gilbert Houngbo at the High-level Meeting to Address Unsafe Mixed Migration by Sea, International Maritime Organization (IMO) headquarters, London, 4–5 March 2015.

⁶¹ For example, Federation of *Bosnia and Herzegovina* (The Law on Alien Employment of 2002 governs the conditions, method and procedure for employment of aliens and stateless persons in the Federation of Bosnia and Herzegovina); *New Zealand* (pursuant to the Immigration Act 2009, migrants may be admitted as quota refugees, asylum seekers or international/family reunification migrants); and *Slovakia* (pursuant to the Employment of Aliens Act of 2001, non-nationals granted asylum or temporary shelter are permitted access to the labour market without a work permit).

⁶² Article 15(1) of the Constitution of *Portugal* as revised.

⁶³ *Madagascar* – CEACR, Convention No. 97, direct request, 2013.

⁶⁴ ILO: *General Survey on migrant workers*, 1999, para. 102.

⁶⁵ Article 4 of the UN Convention on Migrant Workers defines “members of the family” as “persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned”.

⁶⁶ Article 5(a) and (b) (medical services) and Article 8 (permanently admitted migrants) of Convention No. 97, and Articles 10 and 12 (national equality policy) and Article 13 of Convention No. 143.

indicated that a foreigner's inability to work is not a valid ground for cancelling his or her permanent residence permit or that of his or her family members. Further, the Government of *Trinidad and Tobago* stated that the immediate family members of persons who had been granted permission to work under the Immigration Act, could remain for the duration of their approved stay. The Government of *Uganda* reported that family of the employee who has been brought to the place of employment by the employer, shall be repatriated at the expense of the employer, in the event of the employee's repatriation or death.⁶⁷ The Government of *Suriname* indicated, however, that the residence status of the migrant worker influenced the right of family members to maintain their right of residence. The Government of *Mauritius* indicated that apart from those employed in technical, supervisory and managerial grades, migrant workers were generally not allowed to be accompanied by their family members.

Exceptions

118. The instruments explicitly establish a number of exceptions to the definition of migrant worker. The Committee recalls, however, that the exclusion of migrants provided for in Article 11(2) of Convention No. 143 applies only to the provisions of Part II of the instrument. Part I does not permit the exclusion of any category of migrant worker. The Committee has recalled, in relation to the observance by *Madagascar* of Convention No. 97, that "Article 11(2) only excludes frontier workers, seafarers and short-term liberal professions and artists from its application".⁶⁸ Convention No. 143 contains two additional exclusions relating to persons entering for the purposes of training or education, and employees of organizations and undertakings admitted temporarily to a country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave the country on their completion.

Workers in an irregular situation

119. The provisions of Convention No. 97, Recommendation No. 86 and Part II of Convention No. 143 deal only with the protection of migrant workers who have been "regularly admitted" for the purposes of employment: in other words, individuals who have entered a country irregularly are not covered by these provisions. As set out in Article 5 of the 1990 UN Convention on Migrant Workers, migrant workers are considered to be non-documented or in an irregular situation if they are not "authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party".⁶⁹

120. *Noting that the question of migrant workers who are in an irregular situation, non-authorized or undocumented was mentioned by a number of governments in their reports submitted for the purposes of this General Survey, the Committee recalls that*

⁶⁷ Section 39(2) of the Employment Act 2006.

⁶⁸ *Madagascar* – CEACR, Convention No. 97, direct request, 2009.

⁶⁹ See also UN Committee on Migrant Workers, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families* (CMW/C/GC/2), 28 August 2013, para. 4: "The Committee is of the view that the term 'in an irregular situation' or 'non-documented' is the proper terminology when referring to their status. The use of the term 'illegal' to describe migrant workers in an irregular situation is inappropriate and should be avoided as it tends to stigmatize them by associating them with criminality."

migrant workers in an irregular situation are covered by Part I of Convention No. 143, as is addressed in further detail in Chapter 5 of this Survey.

Frontier workers

121. Frontier workers are understood to be workers who reside in one country but cross the border to work in another country for short periods of time, usually close to the border territories.⁷⁰ A number of member States reported the existence of frontier workers in their countries, within the generally understood scope of “migrant workers”. The Government of *Honduras*, for example, referred to the two categories of migrant workers in the country as migrant workers in general and frontier workers. The Governments of *Indonesia* and *Romania* likewise considered frontier or cross-border workers as a relevant category of migrant worker in their countries. The Government of *the former Yugoslav Republic of Macedonia* indicated the existence of seasonal border workers, understood to mean foreigners employed or performing work in the country, who returned to their permanent place of residence at least once per week.

Seafarers

122. Seafarers were excluded from the ambit of the instruments in recognition of the number of existing instruments specifically protecting this group of workers.⁷¹ A number of member States, including *Greece*, *Lithuania*, *New Zealand*, and the *United Kingdom*, noted that seafarers were a distinct category of migrant workers in national law and practice. The Government of *Myanmar* reported particular efforts to protect nationals working abroad in the fisheries sector.

Short-term liberal professions and artists

123. Articles 11(2)(b) of Convention No. 97 and Convention No. 143 exclude from the coverage of the instruments “artistes and members of the liberal professions who have entered the country on a short-term basis”.⁷² In this regard, the Committee recalls that, in the course of its supervision of the application of the instruments by member States, it has recently requested governments to indicate the maximum periods that would be regarded as constituting a “short-term” entry for artistes and members of the liberal professions.⁷³

124. In their reports submitted for the purposes of this General Survey, certain member States referred to the existence of short-term or temporary work visas for migrant workers engaged in entertainment,⁷⁴ or as singing guides,⁷⁵ creative or performing artists,⁷⁶ workers in fairs and circuses,⁷⁷ or creative workers.⁷⁸ The Government of

⁷⁰ The UN Migrant Workers Convention covers frontier workers, stating in Article 2(2)(a) that: “The term ‘frontier worker’ refers to a migrant worker who retains his or her habitual residence in a neighbouring State to which he or she normally returns every day or at least once a week.”

⁷¹ Currently, these are largely consolidated in the Maritime Labour Convention, 2006 (MLC, 2006), and Work in Fishing Convention, 2007 (No. 188).

⁷² The wording in Convention No. 97 differs slightly in form from Convention No. 143 but not in intent: the exclusion relates to “short-term entry of members of the liberal professions and artistes”.

⁷³ See *Philippines* – CEACR, Conventions Nos 97 and 143, direct requests, 2013; and *the former Yugoslav Republic of Macedonia* – CEACR, Convention Nos 97 and 143, direct requests, 2013.

⁷⁴ For example, *Australia*.

⁷⁵ For example, *Indonesia*.

⁷⁶ For example, *Latvia* (length of stay may not exceed 14 days).

⁷⁷ For example, *Turkey* (length of stay may not exceed the sponsored activity plus 20 hours).

Lebanon indicated that artists wishing to enter Lebanon must receive the approval of the General Directorate of General Security, rather than the Ministry of Labour.

125. The Committee notes that the International Organisation of Employers (IOE) raises concerns in relation to the impact of Article 11(2)(b) of Conventions Nos 97 and 143 on women migrant workers, stating that migrant women formally working as dancers or hostesses may in practice be forced into sex work.⁷⁹ The Committee recalls that Part I of Convention No. 143, in particular Article 1 relating to basic human rights, covers all migrant workers, irrespective of the length of their stay.⁸⁰

Training and education

126. The Committee notes that the exclusion of students and trainees from the provisions of Part II of Convention No. 143 appears to be reflected in the legislation of a number of countries, which referred to visas for foreign students, allowing part-time or limited work, and to trainees, as separate categories in immigration legislation.⁸¹ The *United States*, for example, has two categories of exchange visitor visas, which both give limited right to work off campus either before or after completion of studies.⁸² However, the Committee recalls that students and trainees are not excluded from the protection afforded by Convention No. 97, nor are they excluded from Part I of Convention No. 143, in particular Article 1 relating to basic human rights.

Employees temporarily admitted at the request of their employer for specific duties or assignments

Article 11(2)(e) of Convention No. 143 excludes following workers from coverage of Part II of the Convention:

- (e) employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.

127. The preparatory work to Convention No. 143 stressed that the exclusion applied essentially to those workers who had special skills, going to a country to undertake specific short-term technical assignments.⁸³ This exception refers to the situation of workers already employed in organizations or enterprises which carry out activities in a third country to which these workers are detached to undertake specific tasks.⁸⁴

⁷⁸ For example, *United Kingdom*.

⁷⁹ The IOE refers in this regard also to the Committee's observations in its previous General Survey that this phenomenon has taken on greater significance and has become of increasing concern; ILO: *General Survey on migrant workers*, 1999, para. 113. The IOE states that employers' organizations should encourage the government to ensure adequate protections for female migrants.

⁸⁰ See, for further details, Chapter 5.

⁸¹ For example, *Australia, Bulgaria, Hungary, Netherlands and United Kingdom*. Note that Article 3(e) of the UN Migrant Workers Convention excludes students and trainees from its scope of application.

⁸² See paragraphs 1101(a)(15)(F) and (J) of the Immigration and Nationality Act (INA) of 1952.

⁸³ See particularly ILC: Report V(2), 60th Session, Geneva, 1975, p. 19. It should be noted that during the second discussion, the proposal to add a more general provision "excluding all types of short-term workers who are admitted to perform specific functions or tasks for a limited or fixed period of time and have to leave the country when their employment ends" was not adopted (ILO: *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949, Annex 34, para. 68).

⁸⁴ ILO: *General Survey on migrant workers*, 1999, para. 115.

A number of European countries pointed to the EU Posting of Workers Directive in this regard.⁸⁵ The Committee notes that the International Trade Union Confederation (ITUC) raises concerns about the impact of European mechanisms such as the Intra-Corporate Transfer Directive and the Posting of Workers Directive on the equality of treatment of migrant workers (both EU nationals and third-country nationals). The Committee recalls that this provision does not imply that all fixed-term workers can be excluded from the provisions of Part II of Convention No. 143. Moreover, this category of fixed-term workers is not excluded from the protection afforded by Convention No. 97 nor are they excluded from the protection applied in Part I of Convention No. 143.

* * *

128. Recalling the broad definitions of “migrant for employment” and “migrant worker” that are contained in Conventions Nos 97 and 143, the Committee notes that member States utilize divergent categories of migrant workers and that national law, policy and practice often does not replicate the terminology, definitions, and exclusions contained in the instruments. The Committee emphasises that the use of different terminology, or the absence of established categories, should not be an obstacle to the application of the instruments if governments have taken active steps to ensure that the rights and protections set out in the instruments are extended to all migrant workers.

⁸⁵ The EU Posted Workers Directive defines posted workers in Article 2(1) as “a worker who, for a limited period, carries out his work in the territory of a Member State other than the State in which he normally works”; Paragraph 1 of the Annex on the Movement of Natural Persons to the General Agreement on Trade in Services (GATS), applies to “persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service”. According to Paragraph 2 of the Annex, “the Agreement shall not apply to measures affecting national persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis”.

Chapter 3

Governance of international labour migration

129. Mindful of the importance of governance arrangements in relation to the highly charged and complex topic of international migration for employment, the Committee considers that an effective interplay of international, regional, bilateral and national level governance arrangements is essential. In this regard, the Committee notes ILO and other international initiatives aiming to improve global migration governance,¹ as well as the varied national, bilateral and regional arrangements reported by member States. Successful implementation of the rights and protections contained in the instruments requires good governance, including social dialogue and engagement of all ILO tripartite constituents.

130. The Committee emphasizes the particular significance of the Employment Policy Convention, 1964 (No. 122), to governance of international labour migration. Further, the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), both recognize the value of integrating policies on labour migration in overall employment policies of both countries of origin and destination.²

Labour migration and the ILO governance Conventions

The ILO Declaration on Social Justice for a Fair Globalization, 2008, identified four Conventions as the standards that are the most significant from the viewpoint of governance:

- Labour Inspection Convention, 1947 (No. 81)
- Employment Policy Convention, 1964 (No. 122)
- Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

In view of the information provided by the governments' report on employment instruments, the Committee has encouraged the member States to ensure that the relevant legislation on employment policy also prevents abuses in the recruitment of migrant workers at home and abroad.¹

¹ See Chapter 4.

¹ See paras 25–43 supra.

² Part X (Paragraphs 29 to 44) of Recommendation No. 169 and Paragraph 15(e) of Recommendation No. 204.

Pivotal role of social dialogue

131. The instruments recognize the pivotal role that the social partners play in the effective governance of labour migration issues, requiring them to be consulted and involved in initiatives pursuant to the Conventions. Institutionalized social dialogue is “essential to the development of sound labour migration policy and should be promoted and implemented”.³ In this regard, the Committee is mindful of the information provided by ITUC stating that through social dialogue the ILO should play a lead role in ensuring policy coherence on labour migration issues at national, regional and global levels. The IOE emphasized that comprehensive and effective dialogue between governments and business were a prerequisite to managing an effective migration policy.

Role of representative organizations of employers and workers

Article 7 of Convention No. 143 provides that, in general, organizations should be consulted:

The representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses referred to above, and the possibility of their taking initiatives for this purpose shall be recognised.

The provisions of Convention No. 143 and Recommendation No. 151 also require member States to take specific steps in relation to ensuring the pivotal role of the social partners:

- Fully consult and enable representative organizations of employers and workers to furnish any information in their possession in relation to irregularly employed migrant workers in the territory (Art. 2).
- Consult with representative organizations of employers and workers in relation to contact and exchange of information with other States (Art. 4), formulation and application of a social policy (Art. 12(e) and Para. 9), recognition of occupational qualifications (Art. 14(b) and Para. 6), informing migrant workers of their rights, advancing language knowledge, promoting adaptation, and encouraging the preservation of national and ethnic identity (Para. 7(1)), and reunification of families (Para. 14).
- Seek the cooperation of employers’ and workers’ organizations in promoting the acceptance and observance of national policy (Art. 12(a)).
- Collaborate with employers’ and workers’ organizations to foster public understanding and acceptance of equality of opportunity and treatment of migrant workers, and examine and resolve complaints (Para. 4).
- Provision of social services for migrant workers (Para. 25(2) and 29).

While Convention No. 97 does not refer to the social partners, Recommendation No. 86 requires consultation with the appropriate organizations of employers and workers on “all general questions concerning migration for employment” (Para. 4(2)) and on “the operations of recruitment, introduction and placing of migrants for employment” (Para. 19).

132. The Committee notes that some Governments referred to their cooperation with civil society organizations to defend migrant workers’ rights.⁴ Further, some social partners indicated that they were working with civil society actors to inform about migration policies or to defend migrants’ rights and advocate for immigration reform.⁵

³ ILO: *Multilateral Framework on Labour Migration*, op. cit., principle 6.

⁴ For example, the Governments of *Belgium, Morocco, Mexico, Singapore* and *Sri Lanka*.

⁵ For example, the *Malaysian Trade Unions Congress (MTUC)* and the *American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)*.

Centrality of social partners to implementation of the instruments

133. Many member States recognized the value of social dialogue, with most governments reporting some form of involvement by the social partners in the matters raised by the instruments.⁶ Governments pointed to the important role played by employers' and workers' organizations in tripartite forums⁷ and in law reform,⁸ including in identifying existing problems in relation to migration.⁹ The Government of *Senegal* stated that professional organizations, and particularly trade unions, occupied a central place in relation to the Labour Code, given their role in defending the rights and interests of their members, including migrant workers; and the Government of *Panama* considered the social partners' participation in its Commission on Labour Migration to be central. The Government of *Sweden* indicated that workers' organizations had an important role in promoting equal rights and opportunities and combating discrimination.

134. The Governments of *Côte d'Ivoire*, *Denmark*, *Indonesia*, *Senegal* and *Togo* stated that their ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), meant that all measures of a legal or regulatory nature were adopted after consultation with the most representative employers' and workers' organizations. The Governments of *Madagascar* and *Morocco*, referring to Convention No. 144, indicated that consultation with the most representative employers' and workers' organizations on migration issues was indispensable.

Consultation with organizations of employers and workers

135. Many member States reported that the social partners had been consulted on, or involved in, law reform and policy development in relation to labour migration.¹⁰ A number of governments referred to established national practices to ensure consultation with the most representative workers' and employers' organizations or formalized social dialogue institutions in which such organizations were included, indicating that through these mechanisms the social partners were involved, or could be involved, in the development and implementation of law and policy concerning the matters raised by the instruments.¹¹ Other member States and employers' and workers' organizations referred to consultation procedures specifically developed to address questions concerning labour

⁶ For example, *Australia*, *Austria*, *Azerbaijan*, *Bangladesh*, *Belarus*, *Bosnia and Herzegovina*, *Plurinational State of Bolivia*, *Brazil*, *Cambodia*, *Chile*, *Costa Rica*, *Colombia*, *Cuba*, *Czech Republic*, *Denmark*, *Ecuador*, *Eritrea*, *Estonia*, *Finland*, *Germany*, *Indonesia*, *Israel*, *Jamaica*, *Jordan*, *Kenya*, *Republic of Korea*, *Lao People's Democratic Republic*, *Latvia*, *Luxembourg*, *the former Yugoslav Republic of Macedonia*, *Madagascar*, *Mali*, *Republic of Moldova*, *Morocco*, *Mexico*, *Myanmar*, *Namibia*, *Nepal*, *Netherlands*, *New Zealand*, *Niger*, *Panama*, *Peru*, *Poland*, *Portugal*, *Romania*, *Russian Federation*, *Serbia*, *Senegal*, *Singapore*, *Slovakia*, *Slovenia*, *Suriname*, *Sweden*, *Switzerland*, *Togo*, *Turkey*, *Uganda*, *United Kingdom*, *Uruguay*, *Uzbekistan*, *Bolivarian Republic of Venezuela*, *Viet Nam* and *Zimbabwe*.

⁷ For example, *Cambodia* and *Latvia*.

⁸ For example, *Republic of Moldova*.

⁹ For example, *Slovenia*.

¹⁰ For example, *Australia*, *Bangladesh*, *Estonia*, *Latvia*, *Republic of Moldova*, *Serbia*, *Singapore*, *Slovenia* and *Uganda*.

¹¹ For example, *Cambodia*, *Czech Republic*, *Denmark*, *Eritrea*, *Jamaica*, *Jordan*, *Kenya*, *Lao People's Democratic Republic*, *Latvia*, *Lebanon*, *the former Yugoslav Republic of Macedonia*, *Madagascar*, *Namibia*, *Netherlands*, *New Zealand*, *Poland*, *Romania*, *Russian Federation*, *Slovakia*, *Suriname*, *Tanzania (Zanzibar)*, *Uzbekistan* and *Zimbabwe*.

migration or eradicating racism and xenophobia, such as mechanisms to consult social partners on legislative reform concerning migration or integration of migrant workers, or their involvement in advisory committees on labour migration.¹²

136. The Government of *Mali*, for example, reported that representative employers' and workers' organizations were regularly consulted concerning the adaptation of the national migration policy; and the Government of the *Czech Republic* reported that the Confederation of Industry of the Czech Republic closely cooperated with relevant central authorities in combating unauthorized employment of foreign nationals. The Government of the *United Kingdom* indicated that there was consultation with organizations, including the social partners, to discuss operational issues and policy developments in relation to labour migration. The Confederation of Independent Trade Unions in *Bulgaria* (KNSB/CITUB) stated to be part of the "Free movement of workers" Advisory Committee to the European Commission. At the same time, the Committee notes that some workers' and employers' organizations indicated that they were barely or not at all consulted on the topic of labour migration or were not part of national commissions dealing with migration.¹³

Promotion of equality of opportunity and provision of services

137. Some member States indicated that organizations of employers and workers had a particular role in relation to the promotion of equality of treatment and opportunity for migrant workers. Other governments referred to regular tripartite consultations,¹⁴ meetings, workshops and seminars with the social partners¹⁵ or to their involvement in projects concerning equality for migrant workers and their families.¹⁶

138. The Government of *Australia*, for example, stated that it worked in partnership with "peak bodies"¹⁷ to promote the business case to employers and the benefits in employing and working well with migrants to the community. The Government of *Slovenia* reported that trade unions in the country had been involved in counselling, provision of information, creation of materials, advocacy, and legal aid, while employers had developed a manual for employers of migrant workers and were obliged to ensure equality of treatment for migrant workers.

139. The Government of *Singapore* indicated that the Migrant Workers' Centre was a bipartite initiative between the social partners, providing outreach and engagement activities, and advice and assistance to migrant workers. The Government of *Viet Nam* indicated that it had undertaken initiatives to build the capacity of trade unions to advocate for migrant workers, and that trade unions disseminated information on the

¹² For example, *Austria*, *Cyprus*, *Finland*, *Israel*, *Republic of Korea*, *Myanmar*, *Nepal*, *Portugal*, *Sri Lanka* and the *Austrian* Federal Chamber of Labour (BAK), the *Japanese* Trade Union Confederation (JTUC-RENGO), the *Latvian* Free Trade Union Confederation (LBAS), the *Portuguese* General Workers' Union (UGT), *Travail.Suisse* of *Switzerland* and the Union of Swiss Employers (UPS), and the *Viet Nam* General Confederation of Labour (VGCL); ITUC referred to plans of action addressing racism and xenophobia in *Finland* and *Ireland*.

¹³ For example, the KNSB/CITUB of *Bulgaria*, the General Confederation of Labour (CGT) of *Colombia*, the Confederation of Workers of *Colombia* (CTC), and the Single Confederation of Workers of *Colombia* (CUT), the General Confederation of Labour-Force Ouvrière of *France* (CGT-FO), the Confederation of *Turkish* Real Trade Unions (HAK-İŞ) and the *Turkish* Confederation of Employers' Associations (TİSK).

¹⁴ For example, *Bosnia and Herzegovina* (*Republika Srpska*).

¹⁵ For example, *Azerbaijan*, *Kenya* and *Viet Nam*.

¹⁶ For example, *Bulgaria*.

¹⁷ This term is understood to include social partners working through their peak organizations.

rights of migrant workers. The Government of the *Republic of Moldova* referred to a cooperation agreement signed with an Italian workers' organization, pursuant to which Moldovan citizens living in Italy would be able to benefit from social and legal support upon joining the organization, irrespective of their migration status; and the Government of *Sri Lanka* reported that some workers' organizations had collaborated with foreign counterparts to implement programmes for migrant workers in destination countries.

140. The ITUC highlighted that programmes and assistance centres had been established by trade unions, such as the *Malaysian Trade Unions Congress (MTUC)* targeting workers from *Bangladesh, India* and *Indonesia*, or that trade unions had been organizing domestic workers engaged by diplomatic households in *Belgium*. Certain workers' and employers' organizations reported that they had undertaken campaigns or organized training to improve equality of opportunities and the integration of migrant workers, to overcome discrimination against migrant workers and to sensitize about labour migration.¹⁸ The National Society of Industry (SNI) of *Peru* indicated that it had actively participated in the dissemination of information on legislation regulating the recruitment of Andean migrants.

International cooperation

141. Both Conventions Nos 97 and 143 are premised upon an expectation of cooperation between member States. In the 1930s, during the discussions of the instruments that were subsequently revised to become Convention No. 97 and Recommendation No. 86, constituents placed a high priority on developing "international regulations" concerning migration.¹⁹ One Government member stated that the draft instrument marked an epoch in the work of the Organization: "[i]t is the first time that the problem of migration has been transferred from the national to an international sphere".²⁰ In the 1970s, when discussing Convention No. 143, migration was considered, "by its very nature", to call for international action and cooperation.²¹

142. Provisions in both instruments, therefore, require the exchange of information²² and international cooperation²³ between member States. The instruments provide a framework for cooperation between countries and social partners. The Committee notes that almost all member States reported some form of international cooperation for the purposes of regulating labour migration.

Multilateral cooperation

143. Multilateral cooperation between member States has been a consistent feature of ILO initiatives in relation to governance of labour migration. While member States have the "sovereign right to develop their own policies to manage labour migration", the effective governance of labour migration requires international labour standards and

¹⁸ For example, the KNSB/CITUB of *Bulgaria* and Travail.Suisse of *Switzerland*; the CGT of *Colombia* and the *Colombian National Employers' Association (ANDI)* indicated that training activities on labour migration were carried out through a tripartite commission on labour migration. The Swiss Federation of Trade Unions (USS/SGB) set up a migration commission to combat discrimination, defend rights of migrant workers and influence the integration dialogue.

¹⁹ ILO: *Record of Proceedings*, ILC, 24th Session, Geneva, 1938, p. 318.

²⁰ ILO: *Record of Proceedings*, ILC, 25th Session, Geneva, 1939, p. 326.

²¹ ILO: *Record of Proceedings*, ILC, 59th Session, Geneva, 1974, p. 569.

²² See Article 1 of Convention No. 97 and Articles 4 and 13(1) of Convention No. 143.

²³ See Articles 3, 7 and 10 of Convention No. 97 and Articles 3 and 15 of Convention No. 143.

other international instruments, as well as guidelines, to play an important role to make these policies coherent, effective and fair.²⁴ Member States reported varied and different arrangements to ensure multilateral cooperation, often with a focus on protecting migrants' rights or, alternatively, with respect to free trade and the provision of services.

144. The key role of ILO Conventions and technical assistance was mentioned by a number of member States in their reports.²⁵ Other member States noted multilateral cooperation through other United Nations entities,²⁶ the International Organization for Migration (IOM),²⁷ and other international organizations.²⁸ Some governments referred to multilateral agreements²⁹ and multilateral cooperation such as the World Association of Public Employment Services³⁰ and the Intergovernmental Consultations on Migration, Asylum and Refugees.³¹ Other member States referred to various multilateral dialogues such as the Global Forum on Migration and Development³² and the UN General Assembly High-Level Dialogue on International Migration and Development.³³

Regional cooperation

145. Many member States referred to international cooperation on labour migration through influential regional governance arrangements. Topics addressed by regional governance structures focused on movement of persons, right of residence and establishment; social security agreements; protection of migrant workers' rights; and governance of migration flows.

146. Member States from the African region referred to a large number of regional initiatives impacting on the regulation of labour migration, including those established within the Economic Community of West African States (ECOWAS),³⁴ the West African Economic and Monetary Union (UEMOA),³⁵ the Central African Economic and Monetary Community (CEMAC),³⁶ the African and Malagasy Union,³⁷ the East

²⁴ ILO: *Multilateral Framework on Labour Migration*, op. cit., principle 4.

²⁵ For example, the Governments of *Brazil* and *Viet Nam* referred to ILO projects on migration; the Governments of *Indonesia*, *Kenya*, *Singapore* and *Sri Lanka* referred to ILO meetings, activities or technical assistance.

²⁶ For example, UNWOMEN (*Viet Nam*), UNHCR and the International Centre for Migration Policy Development (*Azerbaijan*).

²⁷ For example, an International Organization for Migration (IOM) project supporting the establishment of the migration resources centres and for returned victims of trafficking in persons (*Viet Nam*); a Memorandum of Understanding concerning the management of Mozambicans going abroad (*Mozambique*); and generally (*Azerbaijan*, *Bulgaria*, *Indonesia*, *Kenya*, *Mauritius*, *Seychelles* and *Sweden*).

²⁸ For example, the OECD (*Chile*, *Mexico*, *New Zealand* and *Poland*) and the World Bank (*Georgia* and *Mexico*).

²⁹ For example, General Agreement on Trade in Services (GATS) (*Australia*), Vienna Convention on Consular Relations (*Algeria* and *Colombia*), and the Trans-Pacific Strategic Economic Partnership (*New Zealand*).

³⁰ *Guatemala*.

³¹ *Denmark*, *New Zealand* and *Sweden*.

³² For example, *Indonesia*, *Sri Lanka*, *Sweden* and *Zimbabwe*.

³³ For example, *Sri Lanka* and *Sweden*.

³⁴ *Burkina Faso*, *Mali*, *Niger*, *Senegal* and *Togo*. In particular, see Protocol A/P1/5/79 on Free Movement of Persons, Right of Residence and Establishment; the Social Security Convention; and the 2008 Protocol on citizenship and common approach on migration and development.

³⁵ *Mali*, *Senegal* and *Togo*.

³⁶ *Cameroon*.

³⁷ *Benin* and *Togo*.

African Community (EAC),³⁸ and the Multilateral Convention on Social Security signed by the Inter-African Conference on Social Welfare (CIPRES) 2006.³⁹ The Government of *Morocco* referred to the African Alliance for Migration and Development; the Government of *Kenya* referred to the African Union; and the Government of the *Seychelles* referred to the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA).

147. Countries from the Americas likewise referred to a large number of regional arrangements within the Organization of the Eastern Caribbean States,⁴⁰ the Andean Community,⁴¹ the Southern Common Market (MERCOSUR),⁴² and independent regional agreements including the Multilateral Ibero-American Social Security Agreement.⁴³ The Government of *Suriname* pointed to the Caribbean Community and Common Market (CARICOM); the Government of *Colombia* referred to the Organization of American States Special Committee on Migration Issues and the Continuous Reporting System on International Migration in the Americas; the Government of *Honduras* noted a project focusing on the administration of labour migration in the region; and the Government of *Nicaragua* pointed to a Central American integration initiative.

148. The Government of *Egypt* referred to the Arab Labour Organization and, in particular, its Convention No. 4 of 1975 on the mobility of the labour force. The Government of *Indonesia* referred to the Association of Southeast Asian Nations (ASEAN) Declaration on the Protection and Promotion of the Rights of Migrant Workers, the Government of *New Zealand* referred to the ASEAN–Australia–New Zealand Free Trade Agreement,⁴⁴ and the Governments of *Brunei*, *Singapore* and *Viet Nam* referred to ASEAN initiatives impacting on labour migration. The Government of *Viet Nam* also noted the Asia–Pacific Economic Cooperation forum.

149. European countries referred to a plethora of European Union directives⁴⁵ and regulations⁴⁶ impacting on labour migration, including the European Blue Card

³⁸ *Kenya* and *Uganda*.

³⁹ *Benin*, *Senegal* and *Togo*.

⁴⁰ *Antigua* and *Barbuda*.

⁴¹ *Plurinational State of Bolivia*, *Colombia*, *Ecuador* and *Peru*. In particular, see the Andean Labour Migration Instrument and the Andean Certification of Labour Competencies.

⁴² *Argentina*, *Brazil*, *Plurinational State of Bolivia*, *Ecuador*, *Peru* and *Uruguay*. In particular, see the Agreement on the Residence of Nationals of the Member Countries of MERCOSUR, Plurinational State of Bolivia and Chile; Multilateral Social Security Agreement; the Plan to Facilitate the Free Movement of Workers within MERCOSUR; and the Agreement on Verification of Documents of Minors. Furthermore, the General Confederation of Labour of the Republic of *Argentina* (CGT RA) mentioned the Economic and Social Consultative Forum (FCES) of MERCOSUR.

⁴³ *Colombia*, *Ecuador*, *El Salvador*, *Portugal* and *Uruguay*. Member States also referred to, for example, the South American Human Development Migration Agenda; the Convention on a Central American visa for free movement between *El Salvador*, *Guatemala*, *Honduras* and *Nicaragua*, 2005; and the Memorandum of Understanding between *Mexico*, *El Salvador*, *Guatemala*, *Honduras* and *Nicaragua* for the repatriation of Central American migrants by land.

⁴⁴ Chapter 9 of the Agreement concerns the movement of persons for business purposes.

⁴⁵ For example, the Seasonal workers directive (2014/36/EU); Intra-corporate transfer directive (2014/66/EU); Directive on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers (2014/54/EU); Directive for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (2011/98/EU); Directive on equal treatment in employment and occupation (2000/78/EC); Directive on returning illegally staying third-country nationals (2008/115/EU).

Directive.⁴⁷ The Governments of *Turkey* and *Ukraine* referred to the European Convention on the Legal Status of Migrant Workers; the Government of *Finland* referred to the Nordic Convention on Social Security; and the Government of *Turkey* referred to the European Social Security Agreement. A number of European member States indicated other regional cooperation initiatives, including the European Employment Services for increasing labour mobility⁴⁸ and the EU's Global Approach to Migration and Mobility for cooperation with third countries.⁴⁹ Member States from the Commonwealth of Independent States referred to its Convention on the Legal Status of Migrant Workers and Members of their Families,⁵⁰ the agreement on cooperation on labour migration and social protection of migrant workers,⁵¹ and the agreement on pension security rights.⁵²

150. Some member States referred to regional consultative processes such as the Colombo Process,⁵³ the Abu Dhabi Dialogue,⁵⁴ the Migration Dialogue for Southern Africa,⁵⁵ and the Söderköping Process.⁵⁶

Bilateral arrangements

151. The importance of bilateral agreements is made clear in the instruments, which provide a framework for their conclusion. In particular, a model bilateral agreement is annexed to Recommendation No. 86,⁵⁷ Paragraph 21 of which provides that member States should “supplement” Convention No. 97 and Recommendation No. 86 by bilateral agreements specifying methods of applying the principles.

⁴⁶ For example, EU regulations on the coordination of social security systems (883/2004/EC) and on free movement of workers and non-discrimination (492/2011/EU).

⁴⁷ Directive regulating the entry and residence of third-country nationals for the purposes of highly qualified employment (2009/50/EC).

⁴⁸ *Czech Republic, Denmark and Finland.*

⁴⁹ *Bulgaria, Greece, Italy and Sweden.*

⁵⁰ *Azerbaijan, Belarus and Ukraine.*

⁵¹ *Belarus and Ukraine.*

⁵² *Ukraine.*

⁵³ *Bangladesh, Indonesia, Viet Nam and Sri Lanka.* See para. 42 supra.

⁵⁴ *Bangladesh, Indonesia and Viet Nam.* See para. 42 supra.

⁵⁵ *Zimbabwe.* The Migration Dialogue for Southern Africa (MIDSA) aims to facilitate regional dialogue and cooperation on migration policy issues among the governments of the Southern African Development Community.

⁵⁶ *Georgia.* The Söderköping Process was launched in May 2001 during the first Swedish Presidency of the European Union, as a cross-border cooperation process on asylum and migration in response to challenges arising from the EU's eastward enlargement. Thirteen countries were involved, including *Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine.*

⁵⁷ See Appendix I.

Bilateral agreements

Paragraph 21 of Recommendation No. 86 provides that:

(1) Members should in appropriate cases supplement the Migration for Employment Convention (Revised), 1949, and the preceding Paragraphs of the present Recommendation by bilateral agreements, which should specify the methods of applying the principles set forth in the Convention and in the Recommendation.

(2) In concluding such agreements, Members should take into account the provisions of the Model Agreement annexed to the present Recommendation in framing appropriate clauses for the organization of migration for employment and the regulation of the conditions of transfer and employment of migrants, including refugees and displaced persons.

152. In addition, Article 10 of Convention No. 97 envisages bilateral agreements “regulating matters of common concern arising in connection with the application” of the Convention in cases where a large number of migrants from one member State moves to another member State. Pursuant to Article 15 of Convention No. 143, the Convention “does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application”.

153. In this regard, the IOE presented bilateral agreements as advantageous as they could be adapted to specific national concerns and migrant groups, while the ITUC indicated that bilateral agreements often failed to fully protect migrant workers. For example, the ITUC mentioned that the proliferation of bilateral agreements obscured the more pressing need of ensuring that migrant workers are covered by effective national labour legislation in the country of destination, such as the right to freedom of association, which is, for example, not guaranteed in the Gulf Cooperation Council countries. The employers’ organization *Business New Zealand* (BusinessNZ) indicated that labour-related issues in free trade agreements should not be used as quasi-tariff barriers limiting developing country exports.

A web of diverse bilateral agreements

154. Most member States referred in their reports to the existence of a web of bilateral agreements that they had concluded with other member States, on a broad range of topics and with a variety of formats and levels of formality. A number of countries were signatories to many agreements, with certain governments indicating that they had conducted numerous bilateral agreements with one particular country.

155. Member States indicated varying levels of formality in bilateral agreements. While many bilateral agreements described by member States were formal agreements or memoranda of understanding, concluded between governments⁵⁸ or at the ministerial or regional authority level. For example, the Government of *Iraq* reported that it had signed bilateral agreements with *Egypt*, *Morocco* and *the Philippines* in addition to several memoranda of understanding which include *Bangladesh* and *Sri Lanka*. The Government of *Gabon* reported that it had concluded bilateral agreements with *Equatorial Guinea*, *France*, *Senegal* and *Togo*.⁵⁹ Other bilateral arrangements were less formalized. The Government of *Madagascar*, for example, indicated bilateral

⁵⁸ For example, *Belarus*, *Cambodia*, *Ethiopia*, *Indonesia*, *Kenya*, *Lao People’s Democratic Republic*, *Montenegro* and *Uzbekistan* reported having concluded intergovernmental agreements.

⁵⁹ For example, *Indonesia* indicated that its National Board for the Placement and Protection of Indonesia Overseas Workers concluded a memorandum of understanding with *Japan* International Corporation of Welfare Services; the *Republic of Korea* indicated that memoranda of understanding were officially concluded between its Ministry of Employment and Labour and the department in charge of labour administration in the country of origin of migrant workers; and the Government of *Portugal* referred to an agreement between the *Spanish* and *Portuguese* labour inspectorates.

agreements in cooperation with placement and recruitment agencies, as well as with embassies. The Government of *Latvia* indicated that the Ministry of Interior regularly undertook bilateral cooperation at several levels, including consultations between experts and ministerial-level meetings. The Government of the *Seychelles* referred to a bilateral study tour to *Mauritius* to exchange good practices in labour migration and the Government of *Uganda* noted visits to countries of destination such as the *United Arab Emirates*, *Oman* and *Qatar*. The Government of *Singapore* stated that working-level exchanges with embassies organized by the Ministry of Manpower provided platforms for engagement with multilateral and bilateral partners without the need for additional labour agreements. The Government of *Cyprus* indicated that it undertook bilateral ad hoc meetings with governmental services from countries of origin and embassies when needed, but had not signed multilateral or bilateral agreements. The Government of *Saudi Arabia* indicated that significant contacts and official encounters had been carried out with the major countries of origin, and several agreements and memoranda of understanding regulating recruitment, welfare and the rights of migrant workers in the Kingdom had been concluded.

156. A number of agreements were reported to have been concluded within regions. The Government of *Brazil*, for example, indicated agreements within its region on matters such as regularization, the crossing of borders and residence; the Government of *South Africa* concluded agreements with four neighbouring countries concerning employment in South African mines; and the Government of *Belarus* concluded agreements with countries in the region on temporary work and social protection.

157. Other bilateral agreements were reported to have been concluded between countries from different regions, governing labour migration flows between those countries. The Governments of *Indonesia* and *Nepal*, for example, indicated that they concluded agreements with Gulf countries and the Government of *Ethiopia* concluded agreements with countries of destination in the Middle East. The Government of *France* concluded agreements with the principal countries of origin of immigrants. The Government of *Mauritius* only concluded agreements with countries outside the region, including with *China*, *Qatar*, *France* and *Italy*. The Government of *Jordan* concluded agreements with Asian countries and the Governments of *Algeria* and *Uruguay* concluded agreements with European countries. The Government of *Peru* concluded an agreement with *Morocco* and the Government of *Uzbekistan* concluded an agreement with the *Republic of Korea*.

158. Some workers' organizations highlighted the importance of cooperation to adequately represent migrant workers. For example, the ITUC referred to partnerships between organizations in origin and destination countries to protect the rights of migrant workers through organizing and support. Some workers' organizations reported that they had concluded agreements with workers' organizations in other countries to exchange information, defend the interests of migrant workers or to provide information to migrants on regular migration.⁶⁰ Other workers' organizations indicated that they were part of regional networks or working groups.⁶¹

⁶⁰ For example, the KNSB/CITUB of *Bulgaria* and the *Italian Union of Labour (UIL)*. The ITUC referred to cooperation between unions in *Mauritania* and *Senegal* and *South Africa* and *Zimbabwe*.

⁶¹ For example, the General Union of Workers of *Côte d'Ivoire* (UGTICI) and the General Federation of *Tunisian Workers* (UGTT) mention the Trade Union Network on Mediterranean and Sub-Saharan Migration, and the KNSB/CITUB of *Bulgaria* and the LBAS of *Latvia* refer to the "Migration and Integration" Working Group of the European Trade Union Confederation (ETUC).

**Bilateral Agreements and Memoranda of Understanding
on Migration of Low Skilled Workers:
Outcomes of ILO research in 2014–15**

A recent mapping exercise assessed 144 labour migration agreements concluded in Asia, Africa, Europe, Arab States, and the Americas against the model agreement set out in the Annex to Recommendation No. 86 and considered good practices on good governance of labour migration and protection of migrant workers. Notably, this significant piece of research found that:

Concerning good practices by region

- More than 70 per cent of agreements contain concrete implementation, monitoring and evaluation procedures.
- In Africa, Europe and the Americas, all agreements contained transparency and publicity provisions, compared to only 26 per cent of such agreements in Asia.
- Around one third of the agreements concluded in Asia, Europe and the Americas contained evidence of normative foundations and respect for the rights of migrant workers, compared to half of all agreements in Africa.
- 77 per cent of agreements in Europe and the Americas contained specific reference to equal treatment of migrant workers, non-discrimination or protection of migrant workers' rights, compared to 53 per cent of agreements in Africa and 21 per cent of agreements in Asia.
- 94 per cent of the agreements in Africa contained provisions to protect migrant workers from recruitment malpractices at both origin and destination, compared to 67 per cent of the agreements in Asia and 34 per cent of the agreements in Europe and the Americas.

**Concerning coverage of the Recommendation No. 86
model agreement topics by region**

- Over 60 per cent of the agreements contained provisions on recruitment, introduction and placement and over 90 per cent contained provisions on methods of cooperation.
- More than 75 per cent of agreements in Asia and Europe and the Americas contained provisions on either exchange of information, administrative formalities or conditions and criteria of migration.
- More than half of the agreements concluded in Asia and Europe and the Americas contained provisions on settlement of disputes.
- More than half of the agreements concluded in Africa and Europe and the Americas contained provisions on equality of treatment (although almost no agreements address gender issues or migrant workers particularly at risk, or include provisions on social dialogue).

Source: ILO: *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, ILO, Geneva, July 2015.

Varying subject matters of bilateral cooperation

159. The Committee is aware of the great variety in subject matters addressed by bilateral agreements and other arrangements on matters impacting on labour migration, including agreements that covered more than one topic.⁶² The Government of *Bahrain*, for example, indicated that it had signed memoranda of understanding and technical cooperation programmes with *Sri Lanka*, *Nepal*, *India* and *Turkey* focusing on both recruitment and protection of migrant workers. The Government of *Spain* reported that it had concluded bilateral agreements with *Benin*, *Burkina Faso*, *Cameroon*, *Cabo Verde*,

⁶² For example, *Egypt* with *Sudan* (freedom of mobility, residence, employment and ownership); *Algeria* with *France* (movement, employment and stay), *Morocco* with a number of countries (selection and recruitment, employment contracts, transport, working conditions, settlement of disputes, social security and family reunification); and *France* with a number of countries in Africa (governance of migration flows, movement of persons, student work experience, immigration of professionals, readmission and solidary development).

Congo, Gabon, Mauritius, Senegal and Tunisia concerning the governance of migration flows, irregular migration, voluntary return, integration, readmission and development cooperation.

160. Some member States reported bilateral arrangements that sought to regulate labour migration pursuant to the country's national policy. The Government of *Israel*, for example, indicated that it had pursued a policy of recruiting workers through bilateral agreements with preference for agreements facilitated by the IOM; bilateral agreements had been signed in the agricultural and construction sectors and to implement a pilot effort in the care sector; in those sectors, in so far as possible, foreign workers would not be brought in from countries other than those with whom agreements had been concluded. The Government of the *Republic of Korea* indicated that it had concluded memoranda of understanding with 15 countries on the employment of foreign workers under its Employment Permit System which regulated labour flows into the country.

161. Other bilateral agreements were indicated by member States to address topics as varied as general cooperation and the exchange of information;⁶³ the protection of migrant workers;⁶⁴ regularization⁶⁵ and irregular migration;⁶⁶ freedom of movement⁶⁷ and regulation of migration flows;⁶⁸ crossing of borders;⁶⁹ residence;⁷⁰ recruitment and employment placement;⁷¹ seasonal work;⁷² working holiday agreements,⁷³ youth

⁶³ For example, *Azerbaijan* (reporting agreements with *Republic of Moldova, Kazakhstan, Kyrgyzstan, Ukraine, Belarus and Turkey*); *Egypt* (reporting agreements with *Algeria, Greece, Italy, Jordan, Kuwait, Lebanon, Morocco and Yemen*); *Hungary* (reporting agreements with *Slovakia and Germany*); *Peru* (reporting agreements with *Italy, Morocco, Spain and Uruguay*); and *Sri Lanka* (reporting four agreements with countries of destination).

⁶⁴ *Bangladesh* (reporting memoranda of understanding or agreements with *China – Hong Kong Special Administrative Region, Iraq, Jordan, Republic of Korea, Kuwait, Libya, Malaysia, Republic of Maldives, Oman, Qatar, Saudi Arabia and United Arab Emirates* to protect the rights of Bangladeshi migrant workers); *Indonesia* (reporting agreements with *Japan and Saudi Arabia*); and *Togo* (reporting an agreement with *Côte d'Ivoire*).

⁶⁵ *Brazil* (reporting agreements with *Portugal and Suriname*); and *Peru* (reporting an agreement with *Plurinational State of Bolivia*).

⁶⁶ *Senegal* (reporting agreements with *Spain* and a convention with *Italy*).

⁶⁷ *Nepal* (reporting the Indo-Nepal Peace and Friendship Treaty); *Gabon* (reporting agreements with *Equatorial Guinea, Senegal and Togo*).

⁶⁸ *Cameroon* (reporting agreements or conventions with *France, Nigeria and Mali*); *Italy* (reporting a common statement with *Mauritius* on the management of circular migration flows); *Nicaragua* (reporting numerous agreements with *Costa Rica* concerning migration governance of temporary workers, non-residential migrant workers, and labour migration flows); and *Spain* (reporting bilateral agreements to regulate and manage migration flows with *Colombia, Dominican Republic, Ecuador, Mauritius, Morocco and Ukraine*).

⁶⁹ *Brazil* (reporting agreements with *Argentina, Uruguay, Plurinational State of Bolivia and Colombia*); *Uruguay* (reporting bilateral frontier agreements with *Brazil and Argentina*).

⁷⁰ *Plurinational State of Bolivia* and *Brazil* (reporting agreements with *Argentina*), *Gabon* (reporting an agreement with *France*), *Mali* (reporting a convention with *Burkina Faso, Cameroon, France, Guinea, Mauritania and Niger*) and *New Zealand* (reporting bilateral relationships with *Australia, Fiji, Kiribati, Samoa, Tonga and Tuvalu*).

⁷¹ For example, *Cambodia, Indonesia and Jordan* (reporting bilateral agreements specifically concerning the recruitment of domestic workers); *Mexico* (reporting its cooperation agreement with *Guatemala* concerning employment); and *Russian Federation* (reporting agreements on temporary labour with *China, Czech Republic, France, North Korea, Republic of Korea, Lithuania, Mongolia, Poland, Tajikistan, Uzbekistan and Viet Nam*).

⁷² *Greece, Honduras, Hungary and Republic of Moldova* (reporting agreements concerning seasonal workers).

⁷³ *Brazil, Czech Republic, France, Hungary, New Zealand, Spain and Sweden* (reporting working holiday agreements, which were often reciprocal).

mobility and young professionals,⁷⁴ social security;⁷⁵ training for migrant workers;⁷⁶ and labour inspection.⁷⁷

162. The Committee notes that recent ILO research on bilateral agreements and memoranda of understanding (MoU) on migration for low-skilled workers identified the following examples of good practice in bilateral agreements and MoUs:⁷⁸ Transparency and publicity; evidence of respect for migrant rights based on international instruments; special reference to equal treatment, including with respect to social security and health benefits; provisions to promote fair recruitment processes; gender concerns and attention to groups of workers with particular vulnerabilities; social dialogue involving other concerned stakeholders (including civil society organizations); wage protection measures; enforceable provisions relating to employment contracts and workplace protection; implementation, monitoring and evaluation procedures; prohibition of confiscation of travel and identity documents; concrete mechanisms for complaints and dispute resolution procedures, and access to justice; and free transfer of savings and remittances.

163. *The Committee wishes to emphasize the important role that bilateral agreements and other arrangements can play to ensure that migrant workers are able to benefit from the protections contained in the Conventions. In this context, it is important that the content of these agreements and arrangements be made available in understandable terms to those who benefit from them. It should also be ensured that these agreements include adequate monitoring of their implementation and access to enforcement mechanisms and provision of social dialogue.*

National policies

164. Governance at the national level is of crucial importance. National policies allow member States to integrate the protection of migrant workers' rights into the economic and social dimensions of their governance of labour migration flows.

165. Having considered the reports of the member States, the Committee notes that many member States, including those that have not ratified the labour migration Conventions, have developed national policies regulating international labour migration as envisaged by Paragraph 1 of Recommendation No. 151. Fewer countries have articulated national policies expressly addressing equality of opportunity and treatment of migrant workers as required by Article 10 of Convention No. 143.⁷⁹ A number of member States referred to the existence of interlinked migration, employment and equality policies, strategies and plans.

⁷⁴ *Czech Republic, France, Switzerland and United Kingdom* (reporting agreements with a number of countries concerning youth mobility or the exchange of young professionals).

⁷⁵ *Algeria, Benin, Bosnia and Herzegovina, Cameroon, Colombia, Gabon, Lithuania, Latvia, Luxembourg, Mali, Republic of Moldova, Montenegro, Morocco, Peru, Portugal, Russian Federation, Senegal, Slovakia, Switzerland, Togo, Turkey and Ukraine* and reporting agreements on social security of migrant workers.

⁷⁶ *Nepal* (reporting memoranda of understanding with *Japan*, concerning training of Nepalese industrial workers, and with *Bahrain*, on labour and occupational training).

⁷⁷ For example, *Belgium* (reporting bilateral agreements on labour inspection).

⁷⁸ See ILO: *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review*, ILO, Geneva, July 2015, pp. 24–32 (for additional examples and good practice).

⁷⁹ See paras 337–347 *infra*.

National policy promoting equality of opportunity and treatment⁸⁰

166. The development and implementation of a national policy on equality of opportunity and treatment for migrant workers is at the heart of the 1975 instruments.⁸¹ In particular, Article 10 of Convention No. 143 calls upon member States to declare and pursue a national policy to promote and guarantee equality of opportunity and treatment “by methods appropriate to national conditions and practice”.⁸² The overall intention of the instruments is clear: governments should pursue an active national policy to ensure equality of opportunity and treatment for migrant workers. The 1975 instruments are, however, flexible in terms of the method and measures that may be used to reach that objective.

167. As the Committee recalled in relation to the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which lays down a similar obligation on governments to pursue a national equality policy in respect of employment and occupation of all workers, the implementation of the national policy presupposes the adoption of a combination of specific measures.⁸³ Although Convention No. 143 clearly states the scope and content of the policy to be followed, it leaves member States free to determine which methods “appropriate to national conditions and practice” should be applied in declaring and pursuing this policy. Depending on national circumstances, therefore, the policy of equality of opportunity and treatment for migrant workers may be established by constitutional or legal provisions, by a series of administrative measures, collective agreement, or by other means.

168. Convention No. 143 requires member States to pursue a coordinated range of measures, in accordance with Article 12, which may be implemented progressively and continuously adapted to respond to changing national circumstances. As Paragraph 12 of Recommendation No. 151 sets out, the policy should be periodically reviewed and evaluated and, where necessary, revised. In other words, the objective of the national policy promoting equality of opportunity and treatment for regular migrant workers should be unambiguous, but the means to achieve it may vary.

National migration policy

169. The Committee further considers information on national policies provided by member States pursuant to Article 1 of Convention No. 97.⁸⁴ Paragraph 1 of Recommendation No. 151 indicates that member States should apply its provisions within the framework of a coherent policy on international labour migration based upon the economic and social needs of both origin and destination countries, and taking account of short-term workforce needs and long-term social and economic consequences.⁸⁵ In this regard, the Committee recalls the importance of integrating national labour migration policies and the protection of migrant workers’ rights in a

⁸⁰ See paras 335–347 *infra*.

⁸¹ See Part II of Convention No. 143 and Paragraphs 2–8 of Recommendation No. 151.

⁸² The requirement that the methods be appropriate “to national conditions and practice” is also expressly stated in Article 12 of Convention No. 143, which specifies the measures to be taken within the framework of the national policy.

⁸³ ILO: *General Survey on the fundamental Conventions*, 2012, para. 848.

⁸⁴ For example, *Belgium* – CEACR, Convention No. 97, direct request, 2014; and *Malawi* – CEACR, Convention No. 97, direct request, 2014.

⁸⁵ See further Paragraphs 9–12 of Recommendation No. 151.

national employment policy aimed at promoting full, decent, productive and freely chosen employment.⁸⁶

National migration policy

Pursuant to Paragraph 1 of Recommendation No. 151, member States should implement a coherent policy on labour migration:

Members should apply the provision of this Recommendation within the framework of a coherent policy on international migration for employment. That policy should be based upon the economic and social needs of both countries of origin and countries of employment; it should take account not only of short-term manpower needs and resources but also of the long-term social and economic consequences of migration for migrants as well as for the communities concerned.

170. While some member States indicated the existence of national policies explicitly on international labour migration,⁸⁷ other countries referred to national policies on employment⁸⁸ or migration,⁸⁹ which contained provisions or strategies on, or touching upon, international labour migration or relevant elements. Certain countries highlighted action plans for implementation of national policies.⁹⁰

Institutional arrangements for national migration policies

171. Member States reported varied institutional arrangements for the development and implementation of migration policies. A number of countries referred to the existence of institutions with responsibility for the national policy,⁹¹ while other governments indicated that existing governmental entities or agencies determined or managed the policy,⁹² often at a high level. The Government of *Belarus*, for example, reported that the President set the unified state policy on international labour migration and the Governments of *Cyprus*, *Mali* and *Poland* referred to the role played by their councils of ministers. A number of member States reported inter-institutional cooperation, including inter-ministerial committees established to develop, implement or monitor migration policies.⁹³ The Government of *Montenegro*, however, reported that, with view to

⁸⁶ See para. 193 *infra*.

⁸⁷ For example, *Austria*, *Belarus*, *Cambodia*, *Czech Republic*, *Eritrea*, *France*, *Republic of Moldova*, *New Zealand*, *Suriname* and *Bolivarian Republic of Venezuela*.

⁸⁸ For example, *Peru*, *Seychelles*, *Togo* and *Uganda*. The Government of *Cyprus* indicated that it had an employment policy for non-EU or third-country nationals.

⁸⁹ For example, *Argentina*, *Bosnia and Herzegovina*, *Chile*, *Colombia*, *Costa Rica*, *Egypt*, *Finland*, *Hungary*, *Republic of Korea*, *the former Yugoslav Republic of Macedonia*, *Mali*, *Mexico*, *Morocco*, *Poland*, *Russian Federation*, *Serbia*, *Spain*, *Switzerland* and *Ukraine*.

⁹⁰ For example, *Lithuania*, *the former Yugoslav Republic of Macedonia*, *Mali*, *Poland*, *Romania* and *Slovenia*.

⁹¹ For example, *Chile* (Council on Migration Policy, Technical Council of Migration Policy and Consultative Council of Civil Society); *Lebanon* (National Tripartite Steering Committee which particularly focused on women domestic workers); *Republic of Moldova* (Commission for the Coordination of Certain Activities relating to the Migration Process); *Nepal* (tripartite Foreign Employment Promotion Board); *Romania* (Steering Group of the National Strategy on Migration); *Sri Lanka* (Sri Lanka Bureau of Foreign Employment and Sri Lankan National Labour Migration Advisory Council at the Ministry of Foreign Employment Promotion and Welfare); *Panama* (Labour Migration Commission); *Portugal* (High Commission for Migration); and *Seychelles* (Committee on Employment of Non-Seychellois).

⁹² For example, *Kenya* (National Labour Board and work permits' committees); *Latvia* (Office of Citizenship and Migration Affairs); *South Africa* (Department of Labour); and *Sri Lanka* (Ministry of Foreign Employment Promotion and Welfare).

⁹³ For example, *Cyprus*, *Republic of Korea*, *Serbia* and *Uruguay*.

establishing a unified procedures for issuing work and residence permits (One-stop shop), competence regarding the New Law on Employment and Work of Foreigners, moved as of April 2015, from the Ministry of Labour and Social Welfare, to the Ministry of Internal Affairs. The Trade Union Confederation of Workers' Commissions (CCOO) of *Spain* indicated that the Tripartite Labour Commission on Migration determines the labour migration policy.

Measures to establish a national migration policy

172. A number of countries indicated that a combination of elements made up their national migration policy, including bilateral agreements, national legislation and policies or programmes protecting workers.⁹⁴

173. In the first place, the Committee notes that member States referred to numerous, varied, and interlinked legislative, and sub-legislative, arrangements. In this regard, the Committee is mindful of the continuing truth of the observation recorded in 1938, at the time of the first discussions of the instruments, that “[F]ew regulations are so full of detail, so variable and so subject to sudden and repeated amendments as those concerning migration, and, what is more serious, few contain so many unpublished provisions or form the subject of so many confidential circulars”.⁹⁵

174. Most member States referred to national legislation and regulatory frameworks as an important element – or the primary component – of their national policies.⁹⁶ While some member States indicated that, in their countries, general legislation and regulations contained provisions specific to the employment of migrant workers,⁹⁷ a number of member States reported on legislation and regulations specific to labour migration.⁹⁸ Other legislation referred to by member States included legislation on equality and non-discrimination,⁹⁹ legislation regulating employment agencies,¹⁰⁰ legislation concerning trafficking in persons,¹⁰¹ refugees,¹⁰² investment promotion,¹⁰³ criminal and penal laws,¹⁰⁴ collective bargaining and trade union legislation,¹⁰⁵ and social security.¹⁰⁶

⁹⁴ For example, the Government of *Indonesia* referred to international conventions, bilateral agreements protecting migrant workers, and a policy/programme that aimed to protect migrant workers; the Government of *Nicaragua* indicated that its national legislation, the ratification of international conventions and the signing of bilateral agreements to regulate migration represent Nicaragua’s active policy concerning international labour migration.

⁹⁵ ILO: *Recruiting, Placing and Conditions of Labour (Equality of Treatment) of Migrant Workers*, Report III, 24th Session, ILC, 1938, p. xii.

⁹⁶ For example, *Bahrain, Belgium, Plurinational State of Bolivia, Brunei Darussalam, Cuba, Czech Republic, Djibouti, Ethiopia, Greece, India, Italy, Jordan, Latvia, Mozambique and Uzbekistan*.

⁹⁷ For example, *Czech Republic and Lao People’s Democratic Republic*.

⁹⁸ For example, *Austria, Bulgaria, Bosnia and Herzegovina, Cambodia, Costa Rica, France, Honduras, Israel, Jamaica, Republic of Korea, Latvia, Mauritius, Myanmar, Sri Lanka, Slovenia and Uzbekistan*.

⁹⁹ For example, *Argentina, Belgium, Cuba, Mozambique and Netherlands*.

¹⁰⁰ For example, *Bulgaria, Cambodia, Colombia and Lao People’s Democratic Republic*.

¹⁰¹ For example, *Cambodia, Jamaica and Senegal*.

¹⁰² For example, *Cyprus and Romania*.

¹⁰³ For example, *Mauritius and Suriname*.

¹⁰⁴ For example, *Ethiopia, Eritrea and Spain*.

¹⁰⁵ For example, *Cambodia, Lao People’s Democratic Republic and Suriname*.

¹⁰⁶ For example, *Czech Republic, Lao People’s Democratic Republic, Poland, Suriname and Togo*.

175. Recalling that the instruments envisage national policies involving administrative and other measures, including collective agreements and awareness-raising and training initiatives, the Committee notes that a number of member States reported administrative and practical initiatives taken as components of national policies, particularly in relation to the education, training and awareness raising of migrant workers as required pursuant to the instruments.¹⁰⁷

Subject matter of national migration policies

176. There is further variation in the topics prioritized in labour migration policies. Many member States referred to national policies, plans or legislation focusing only on immigrant workers. In comparison, other countries, such as the Governments of *Colombia*, *Madagascar*, *Republic of Moldova* and *Serbia*, stated that their labour migration policies or relevant legislation concerned both immigration and emigration.

177. Other States referred to such considerations as human security,¹⁰⁸ public security,¹⁰⁹ state sovereignty,¹¹⁰ or protecting the needs of the national labour force¹¹¹ or nationals working abroad.¹¹² The Governments of *Bangladesh*, *Mexico*, *Nepal* and *Portugal* reported that their national policies recognized the particular needs of women migrant workers. Some member States, such as *Morocco*, stated that their national policies contained measures related to the situation of refugees and asylum seekers, migrants in an irregular situation, and the fight against trafficking in persons. Yet other member States, including *Seychelles*, indicated that their policies concerned working conditions.

178. Some member States, such as *Mali*, *Nepal* and *Sri Lanka*, noted that labour migration contributed to development, including through remittances. A number of member States indicated that their national policies took into account labour market needs¹¹³ and the need to revitalize the economy.¹¹⁴ The Government of *Colombia* regulated immigration in accordance with social, demographic, economic, scientific, cultural, security, public order, sanitary and other interests, supporting the immigration of investors in companies which were of interest to the country or in activities generating employment, thus contributing to the export of goods or in the national interest. The Committee notes the information provided by the General Confederation of Labour (CGT) of *Colombia*, which highlighted that the Government of *Colombia* was focusing on economic aspects of migration, such as remittances, instead of protection of human rights.

179. Many countries indicated that their national policies and practices differentiated between high-skilled and low-skilled workers.¹¹⁵ The Government of *Singapore*, for

¹⁰⁷ For example, *Brunei Darussalam*, *Indonesia*, *Morocco*, *Myanmar* and *Sri Lanka*. See paras 233–248, 263–265 *infra*.

¹⁰⁸ For example, *Mexico*.

¹⁰⁹ For example, the Government of the *Republic of Moldova* stated that the policy regulated people intending to contribute to socio-economic development, security in the country and European integration.

¹¹⁰ For example, *Colombia*.

¹¹¹ For example, *Bulgaria* and *South Africa*.

¹¹² For example, *Myanmar* and *Nepal*.

¹¹³ For example, *Australia*, *Lithuania*, *Romania* and *Slovenia*.

¹¹⁴ For example, *Algeria*, *Bulgaria*, *Cyprus*, *Hungary*, *Greece*, *Japan*, *Republic of Korea*, *Luxembourg*, *New Zealand* and *Suriname*.

¹¹⁵ For example, *Australia*, *Japan* and *Republic of Korea*.

example, referred to its Work Pass Framework, according to which more privileges and fewer controls were imposed on the highly skilled, while the mid-skilled and semi-skilled tier of worker was more controlled; the aim of the policy was to attract top tier talent, typically at the professional, managerial, executive and specialist level.

180. Certain governments referred to the European or CARICOM binary migration policies where, broadly speaking, priority was given equally to nationals and to foreigners from the economic integration area, while restricting access for third-country nationals to skilled workers. Other countries reported other work or employment permit schemes,¹¹⁶ or points-based systems,¹¹⁷ with similar approaches.

181. Some governments referred to policies addressing circular migration¹¹⁸ or that their national policies included measures focused on the return of nationals working in foreign countries, or of migrants with the same national origin.¹¹⁹ The Government of *Eritrea*, for example, indicated that its national policy prioritized the recruitment of qualified Eritrean expatriates and the Government of *Suriname* indicated that persons of Surinamese origin re-migrating to Suriname enjoyed equal preference to national workers. Other member States, such as the Governments of the *Russian Federation* and *Spain*, referred to the governance of migration flows, regulation of recruitment and integration of migrants.

182. Further, the Committee recalls that the broad formulation of Article 1 of Convention No. 143 implies that both countries of origin and destination should respect the basic human rights of all migrant workers.¹²⁰ In this regard, the Committee welcomes the inclusion, in the national migration policies of certain countries of origin, including *Azerbaijan*, *Bangladesh*, *Plurinational State of Bolivia*, *Mexico*, *Morocco*, *Philippines*,¹²¹ *Serbia* and *Uganda*, of the protection of the basic human rights of their nationals seeking employment abroad. For example, the National Strategy on International Labour Migration of *Tajikistan* Citizens for 2011–15 aims to develop migration based on broadening economic freedom, respect for human rights and developing bilateral and multilateral relations.¹²² However, the Committee notes that certain workers' organizations highlighted the lack of national policies and strategies regarding migration.¹²³ The Committee notes that the legislation in *Argentina* and *Uruguay* refers to the right to migrate as an inalienable right.¹²⁴

183. In this context, while acknowledging the economic importance of migration, the Committee emphasizes that governments should ensure that national policies on

¹¹⁶ For example, *Republic of Korea* and *Suriname*.

¹¹⁷ *Australia*, *Austria*, *New Zealand* and the *United Kingdom*.

¹¹⁸ For example, *Sweden*. For further information on circular migration, see Wickramasekera, P. *Circular Migration. A triple Win or Dead End*, Discussion paper No. 15, Global Union Research Network (GURN), ILO, Geneva, 2011, 1: "Simply defined, circular migration refers to temporary movements of a repetitive character either formally or informally across borders, usually for work, involving the same migrants. ... By definition, all circular migration is temporary migration".

¹¹⁹ For example, *Bulgaria* and *Uruguay*.

¹²⁰ See paras 275–302 *infra*.

¹²¹ See *Philippines* – CEACR, Convention No. 143, direct request, 2010.

¹²² See *Tajikistan* – CEACR, Convention No. 143, direct request, 2015.

¹²³ For example, the *Latvian* Free Trade Union Confederation (LBAS).

¹²⁴ *Argentina* (section 4 of Law No. 25.871 of 2004 on the Argentinian Migration Policy); and *Uruguay* (section 1 of the Migration Law No. 18.250)

emigration and immigration take account of the need to protect the human rights of migrant workers and not subordinate them to economic interests.

National migration policies currently being envisaged or developed

184. The Committee notes with interest that a number of governments indicated that, while there was no national labour migration policy currently in place in their countries, they intended to establish, or were already in the process of developing, such a policy or, in some cases, specialized institutions dealing with labour migration. The Committee further observes that most of these countries have not ratified either of the Conventions.¹²⁵

185. The Government of *Algeria*, for example, reported that it was studying the possibility of instituting a national coordination mechanism to establish a national migration policy, and the Government of *Panama* pointed to the newly created Labour Migration Committee which aimed to establish and implement a coherent public policy concerning migration flows and labour needs. The Government of *Mauritius* referred to action initiated by the Prime Minister's Office in preparation of a migration policy. The Government of *Togo* indicated that it envisaged the establishment of a national strategy on labour migration, coherent with the national employment policy and other national policies.

186. The Governments of *Gambia*, *Namibia*, *Seychelles* and *Zimbabwe* indicated that they were currently working to formulate a national policy on labour migration. The Government of *Georgia* indicated that it was actively working on regulation of migrant workers and a migration policy; and the Government and social partners¹²⁶ of *Turkey* referred to a current process under way to design a labour migration policy. The Government of *Honduras* reported that, while the country lacked a national labour migration policy, legislation was being developed.

187. The Governments of *Brazil*, *Burkina Faso*, *Jamaica* and *Uruguay* referred to draft national policies or strategies, at varying degrees of the formal adoption process. The Government of *Benin* indicated that the National Policy on Employment, currently being elaborated, contained a section on the protection of the rights of migrant workers. The Government of *Uganda* referred to its draft National Diaspora Policy and draft National Immigration Policy.

* * *

188. *The Committee wishes to underline the critical importance of good governance, the rule of law and respect for human rights to the effective regulation of international labour migration, and recalls the potential of the instruments to provide a framework for the fair and effective governance of labour migration and protection of the rights of migrant workers.*

189. *The Committee notes the importance of this topic for member States and the seriousness with which governments have addressed the interlinked and complex issues raised. Good governance in this sphere is reliant on workers' and employers' organizations being enabled to fulfil the role and responsibility ascribed to them by the instruments in relation to the development, implementation and ongoing adaptation of*

¹²⁵ See *Gambia, Georgia, Honduras, Namibia, Panama, Seychelles, Turkey and Zimbabwe*.

¹²⁶ TİSK and HAK-İŞ.

legislation and policy in relation to the regulation of labour migration and promotion of equality of opportunity and treatment for migrant workers.

190. *In addition, the Committee notes that good governance of international labour migration is necessarily multifaceted. The optimal operation of the instruments, and effectiveness of the guarantees contained therein, requires governance arrangements to exist at a variety of levels. The Committee recognises that cooperation between member States, at regional, sub-regional and bilateral levels, as envisaged in the instruments, is essential to ensuring that migrant workers are able to benefit from the guarantees contained in these instruments. Governance arrangements should be firmly based in national circumstances and be designed so as to respond to the complexities of the topic, through varying interlinked and dynamic initiatives able to respond to continuing changing needs. In this context, the Committee emphasizes the importance of ensuring that bilateral agreements and arrangements do not have the effect of weakening protection afforded by international standards and national laws, in particular regarding fundamental rights at work.*

191. *Mindful of the key role national policies on international labour migration play in ensuring equality of opportunity and treatment for migrant workers, the Committee notes the need for coherence between equality policies and other national policies, particularly those relating to employment and migration. The Committee trusts that the Office will provide, in response to requests from governments, as set out in their reports submitted for the purposes of this General Survey, technical assistance and advice in relation to the establishment of national policies. The potential of the instruments to provide a framework in this regard should be fully harnessed.*

192. *In this context, the Committee emphasizes that the existence of compliant and effective legislation has an essential place in ensuring comprehensive and enforceable policies on international labour migration. The provisions of Convention No. 143 accordingly recognize certain legislative steps to be taken so as to ensure the necessary legislative framework exists, against which the Convention may be implemented.*

Chapter 4

Protection of migrant workers: Recruitment and labour mobility

193. 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 migrant workers, as also recognized in other relevant instruments on employment, including the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169).¹ Public employment services and private employment agencies also contribute to the effective recruitment and labour mobility of migrant workers.²

Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169)

Part X (paragraphs 39–44) on International Migration and Employment of Recommendation No. 169 emphasize the importance of:

- adopting policies designed to create more employment opportunities and better conditions of work in countries of emigration so as to reduce the need to migrate for employment, and to ensure that international migration takes place under conditions designed to promote full, productive and freely chosen employment;
- cooperation between countries of destination and countries of origin to establish an effective alternative to migration for employment;
- taking measures to prevent malpractices at the stage of recruitment or departure liable to result in irregular entry, or stay, or employment, in another country;
- providing the necessary incentives to facilitate the voluntary return of nationals of developing emigration countries who possess scarce skills, and also enlisting the cooperation of the countries employing their nationals;
- taking measures by both countries of origin and employment to prevent abuse in the recruitment for employment abroad, prevent the exploitation of migrant workers, and ensure the full exercise of the rights to freedom of association and to organize and bargain collectively;
- concluding bilateral and multilateral agreements taking full account of existing international Conventions and Recommendations on migrant workers.

¹ See the Committee's comments in the context of its examination of the Government's reports on the application of Convention No. 122 with respect to: *Canada* – CEACR, Convention No. 122, observation, 2015; and *Thailand* – CEACR, Convention No. 122, observation, 2016. See also *Thailand*, Conclusions of the Committee on the Application of Labour Standards on the observation by Thailand of Convention No. 122, International Labour Conference, 99th Session; *Thailand* – CEACR, Convention No. 122, observation, 2011; *Islamic Republic of Iran* – CEACR, Convention No. 122, direct request, 2016.

² See Employment Service Convention, 1948 (No. 88) and Private Employment Agencies Convention, 1997 (No. 181).

194. The regulation of recruitment is an important component of fair and effective labour migration governance, benefiting from a multi-stakeholder approach rooted in social dialogue. Recognizing the key importance of fair recruitment practices to the protection of migrant workers' rights, the instruments on migrant workers contain provisions dealing with regulation of recruitment,³ the provision of services to facilitate recruitment, arrival and employment,⁴ and unregulated recruitment and migration in irregular situations.⁵

Regulation of recruitment

195. Article 7 and Annexes I and II of Convention No. 97 and Paragraphs 1(b), 1(c), 1(d), 13, 14 and 15 of Recommendation No. 86 deal with the recruitment, introduction and placing of migrants for employment. The Annexes, which deal with organized migration for employment, contain similar substantive provisions, but differ in terms of coverage. Annex I concerns the recruitment, placing and working conditions of migrant workers recruited otherwise than under government-sponsored arrangements for group transfer; Annex II regulates the same issues for migrant workers recruited under government-sponsored arrangements for group transfer. The main purpose of these provisions is to: protect migrant workers; facilitate the control of recruitment; and suppress clandestine employment.⁶

196. Article 2 of Annexes I and II define in identical terms the notions of recruitment, introduction and the placing of migrant workers, while Article 3(2) and (3) of Annexes I and II which specify individuals and entities can engage in these operations of recruitment, introduction and placement. The two Annexes further provide that the activities of private recruitment agencies should be supervised by the competent authority,⁷ and that contracts of employment should be supervised by member States.⁸ Before departure, migrant workers should receive copies of their contracts and information concerning conditions of work and life in the country of destination.⁹ Further, the Committee notes the importance of regulation of private intermediaries in preventing misleading information to migrant workers.¹⁰

197. The notion of recruitment as defined in Article 2 of both the Annexes is broad, and the terms of the Annexes are sufficiently flexible to allow more than one form of recruitment. "Recruitment" covers not only direct engagement by employers or their representatives, but also operations conducted by intermediaries, including public and private recruitment bodies.¹¹ It covers situations where the prospective migrant is

³ Article 7 of Convention No. 97 and Article 3 of Annex I and Annex II, of Convention No. 97.

⁴ Article 4 of Convention No. 97 and Article 4 of Annex I and Annex II of Convention No. 97.

⁵ Article 8 of Annex I and Article 13 of Annex II of Convention No. 97, and Part I of Convention No. 143.

⁶ ILO: *General Survey on migrant workers*, 1999, para. 132.

⁷ Article 3(4) of Annex I and Article 3(5) of Annex II.

⁸ Article 5 of Annex I and Article 6 of Annex II.

⁹ Articles 2 and 4 of Convention No. 97, and Article 5(1) of Annex I and Article 6(1) of Annex II to Convention No. 97.

¹⁰ For example, *Cameroon* – CEACR, Convention No. 97, direct request, 2013; *Cyprus* – CEACR, Convention No. 97, direct request, 2014; *Mauritius* – CEACR, Convention No. 97, direct request, 2014; *Netherlands* – CEACR, Convention No. 97, direct request, 2015; and *Portugal* – CEACR, Convention No. 97, direct request, 2014. See also paras 202–205 *infra*.

¹¹ Article 3 of Annex I and Article 3 of Annex II.

engaged in one country on behalf of an employer in another country, or situations where a recruiter in one country undertakes to provide employment for the migrant in another country. It also covers operations accompanying the recruitment procedure, in particular, selection.¹² The terms “introduction”¹³ and “placement”¹⁴ cover operations to ensure or facilitate the arrival or admission of a person who has been recruited, and operations to ensure or facilitate the employment of the migrant worker who has been introduced.

198. In recent years, it has become increasingly clear that governance of recruitment practices has an essential role to play in preventing migrant workers from experiencing abusive and fraudulent conditions, including trafficking in persons and forced labour.¹⁵ Having reviewed the reports submitted by member States, the Committee notes the significance of effective regulation of recruiters, including public and private mechanisms.

National mechanisms: The role of public and private intermediaries

199. The Committee recalls that Annexes I and II of Convention No. 97 cover both situations where prospective migrant workers are directly recruited by the employer or his or her representative and situations where public or private mechanisms recruit migrant workers, either as an intermediary or as an employer.

Regulating recruitment, introduction and placing of migrants for employment

Article 3(1) and (2) of Annex I and II provide that:

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.

2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to:

- (a) public employment offices or other public bodies of the territory in which the operations take place;
- (b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by agreement between the Governments concerned;
- (c) any body established in accordance with the terms of an international instrument.

Article 3(3) of Annex I provides that:

3. In so far as national laws and regulations or a bilateral arrangement permit, the operations of recruitment, introduction and placing may be undertaken by:

- (a) the prospective employer or a person in his service acting on his behalf, subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority;

¹² Article 2(a) of Annex I and Annex II of Convention No. 97: define recruitment as “(i) the engagement of a person in one territory on behalf of an employer in another territory, or (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with making of any arrangements in connection with the operations mentioned in (i) and (ii) including seeking for and selection of emigrants and the preparing emigrants for departure”.

¹³ Article 2(b) of Annex I and Annex II of Convention No. 97.

¹⁴ Article 2(c) of Annex I and Annex II of Convention No. 97.

¹⁵ See Article 2(d) of the Protocol of 2014 to the Forced Labour Convention and Paragraphs 4(b), (g), (h), (i) and 8 of the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), and Article 15 of the Domestic Workers Convention, 2011 (No. 189) and Paragraphs 21, 23 and 26(2) of the Domestic Workers Recommendation, 2011 (No. 201).

- (b) a private agency, if given prior authorisation so to do by the competent authority of the territory where the said operations are to take place, in such cases and under such conditions as may be prescribed by:
- (i) the laws and regulations of that territory, or
 - (ii) agreement between the competent authority of the territory of emigration, or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

Article 3(3)–(4) of Annex II, although worded differently, have a similar aim with respect to recruitment, introduction and placement of migrant workers.

200. Certain member States explained that, under the governance of legislation and governmental authorities, migrant workers might be recruited under both mechanisms covered by Annexes I and II.¹⁶ The Government of *Belarus*, for example, indicated that foreign nationals may be employed with the assistance of legal entities, sole proprietors or foreign organizations providing personnel selection services; or independently, without the involvement of such entities.

201. In this regard, a number of governments pointed to governmental authorities governing recruitment,¹⁷ and regulatory arrangements including national legislation¹⁸ and bilateral agreements.¹⁹ The Government of *Viet Nam*, for example, indicated that the “Law on sending Vietnamese workers to work overseas under contract” specified the rights and responsibilities of private intermediaries as well as the rights and duties of state agencies in monitoring the activities of private intermediaries.

202. The Committee has previously noted the growing importance of private recruiters in the context of international labour migration²⁰ and notes further that, in response to significant challenges with governance of labour migration, there is an increasingly important role played by public employment agencies in some countries. The Committee also notes the observations made by the IOE that much migration today occurs through employers recruiting workers from abroad.

203. In their reports for this General Survey, member States referred to public²¹ and private recruitment entities;²² a number of countries reported that both public and private employment mechanisms existed in their countries.²³ For example, the Government of *Jamaica* indicated that the Ministry of Labour and Social Security handled the largest amount of recruitment for employment, both locally and overseas, compared to private recruitment agencies. While some member States indicated that

¹⁶ For example, *Eritrea* and *Viet Nam*.

¹⁷ For example, *Niger* (National Agency for Employment Promotion); *Sri Lanka* (Bureau of Foreign Labour Employment).

¹⁸ For example, *China* (Regulations on Management of Foreign Labour Service Cooperation); *Uganda* (Recruitment of Ugandan Migrant Workers Abroad Regulations); *Singapore* (Employment Agency Act, Employment Agency Rules and Employment Agency Licence Conditions).

¹⁹ For example, the treaty between *Bulgaria* and *Israel* on mediation and temporary employment of citizens of both countries. See further, *Cambodia*, which reported bilateral agreements concerning recruitment with *Republic of Korea*, *Kuwait*, *Malaysia*, *Qatar* and *Thailand*.

²⁰ *Cuba* – CEACR, Convention No. 97, direct request, 2008; *Guatemala* – CEACR, Convention No. 97, direct request, 2008; *Kenya* – CEACR, Convention No. 97, direct request, 2008. See also ILO: *General Survey on migrant workers*, 1999, paras 164, 648 and 657.

²¹ For example, *Lao People’s Democratic Republic* and *Niger*.

²² For example, *Belarus*, *Belgium* and *China*.

²³ For example, *Austria*, *Cyprus*, *Ecuador*, *Germany*, *Italy*, *Jamaica*, *Japan*, *Lao People’s Democratic Republic*, *Lithuania*, *Lebanon*, *Pakistan* and *Poland*.

recruitment or employment services covered both nationals and migrant workers,²⁴ other countries referred to services targeted to emigrant workers,²⁵ and immigrant workers.²⁶

204. Some member States indicated that employment and recruitment agencies primarily played an intermediary role providing services for job matching and placement.²⁷ A number of European countries indicated that private recruiters specializing in temporary work, who are particularly relevant for lower-skilled migrant workers, may act as both recruiter and employer. The Committee notes the information provided by the *Netherlands* Trade Union Confederation (FNV) drawing attention to “letterbox companies and fake recruiting agencies”, which make it difficult to determine whether labour relationships are genuine.

Public employment mechanisms and migrant workers

205. Both Annexes I and II to Convention No. 97 provide that, subject to laws or regulations or bilateral arrangements permitting operations of recruitment, introduction and placement by the employer or private entities, the right to engage in such operations shall be restricted to public employment offices or bodies, or any body established in accordance with the terms of an international agreement. It is worth recalling that when adopting the 1975 instruments, delegates to the International Labour Conference considered the particular importance of official agencies and bilateral and multilateral agreements for managing the emigration of workers.²⁸

206. In this regard, the Committee recalls that under Employment Service Convention, 1948 (No. 88) the public employment service shall take appropriate measures to facilitate any movement of workers from one country to another, to collect information relating to the applications for work and the vacancies which cannot be filled nationally and to prepare and apply intergovernmental bilateral, regional or multilateral agreements relating to migration.²⁹ In some countries, public employment services play an important role in the recruitment and placement of migrant workers and in some cases, countries prohibit private intermediaries from placing national jobseekers abroad or placing foreign workers in the national territory.³⁰

207. The Committee notes further the information provided by the National Employers Association of *Colombia* (ANDI) that the Andean Community is in the process of establishing the Andean Network of Public Employment Services, which will give citizens of the Andean Community access to job offers in the four countries of the Community. The *Japanese* Trade Union Confederation (JTUC-RENGO) indicated that

²⁴ For example, *Cyprus, Germany, Luxembourg, Morocco, Niger and Ukraine*.

²⁵ For example, *Bangladesh, Belarus, Cambodia, Colombia, India, Indonesia, Lao People’s Democratic Republic, Madagascar, Mexico, Nepal, Pakistan, Philippines, Sri Lanka, Trinidad and Tobago and Viet Nam*.

²⁶ For example, *Japan, New Zealand, Qatar, Republic of Korea, Suriname and Zimbabwe*.

²⁷ For example, *Bulgaria, Denmark, Israel, Morocco, Qatar and Switzerland*.

²⁸ See Preamble of Convention No. 143 considering that “the emigration of workers due to conditions in labour markets should take place under the responsibility of official agencies for employment or in accordance with the relevant bilateral or multilateral agreements”.

²⁹ Article 6(b)(iv) of Convention No. 88 and Paragraph 27(2)(a) and (b) of Recommendation No. 83; see also *Thailand* – CEACR, Convention No. 88, observation, 2016; and *New Zealand* – CEACR, Convention No. 88, observations, 2010 and 2016.

³⁰ For example, *Algeria*; see also ILO: *Employment instruments, General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 99th Session, Geneva, 2010 (hereinafter *General Survey on employment instruments*, 2010) para. 376.

the Technical Intern Training Program, managed by the Government providing training to youth and adult workers from all countries, should be supplemented by legally binding bilateral agreements to ensure cooperation and avoid abuse.

208. The Government of the *Republic of Korea* referred to the Employment Permit System, which it explained was managed by the public authority to prevent corruption and intervention by intermediaries during the recruitment of the foreign workforce. Memoranda of understanding signed with 15 countries of origin named public institutions in those countries responsible for the selection and recruitment of migrant workers.³¹ The Government of *New Zealand* referred to its Recognized Seasonal Employer scheme, a national programme managed by governmental authorities and assisting in the “circular recruitment and placement” of migrant workers in the horticulture and viticulture sectors. The Government of *Trinidad and Tobago* referred to the Commonwealth/Caribbean Seasonal Agricultural Workers’ Programme (SAWP) that aimed to meet the temporary seasonal needs of *Canadian* agricultural producers during peak harvesting and planting periods. Under this programme, the Government stated, it had established public authorities in *Trinidad and Tobago* and in Toronto, *Canada* to oversee recruitment and placement.

Private employment mechanisms and migrant workers

209. Direct recruitment both by employers and their representatives, and operations conducted by an intermediary, including private agencies, is authorized under Article 3 of Annexes I and II to Convention No. 97, in so far as national laws and regulations or bilateral arrangements permit. In its 1999 General Survey, the Committee already noted the pertinence of Private Employment Agencies Convention, 1997 (No. 181), in the changing context in which labour migration occurred. Convention No. 181 requires governments to determine the conditions governing the operation of private intermediaries in accordance with a system of licensing or certification, except where they are otherwise regulated or determined by appropriate national law and practice.³²

210. In a number of countries, private intermediaries intervene in the recruitment process of migrant workers.³³ The Governments of *Bulgaria, Estonia, India, Jamaica, Kenya, Republic of Korea, Peru* and *Poland* indicated that private intermediaries should be registered with the public authorities. The Governments of the *Philippines* and *Uganda* referred to legislation aiming to secure the best possible employment terms and conditions for their nationals working abroad, and to provide a mechanism to regulate the involvement of private intermediaries in the recruitment of migrant workers.³⁴ In this regard, the Committee has previously noted the important role and functions of the *Philippines Overseas Employment Administration (POEA)* which include selection,

³¹ The ILO study on bilateral agreements and memoranda of understanding (see Chapter 3, box, p. 53) also found that government-to-government agreements involving public recruitment services to bypass private recruitment agencies had dramatically reduced migration costs. This was especially the case with the Employment Permit System of the *Republic of Korea* and the government-to-government agreement between *Malaysia* and *Bangladesh* (ILO study, p. 38).

³² Article 3(2) of Convention No. 181.

³³ For example, *Austria, Bangladesh, Belgium, Benin, Brunei Darussalam, China, Colombia, Cyprus, Honduras, India, Jamaica, Japan, Jordan, Lao People’s Democratic Republic, Lebanon, Latvia, Mauritius, Morocco, Namibia, Nepal, Pakistan, Philippines, Qatar, Singapore, Sri Lanka, Uganda, Uruguay* and *Viet Nam*.

³⁴ See the *Uganda Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2005* operationalized by regulation 64 of the *Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations, 2006*; the *Philippines Migrant Workers Act, Section 23*, amended by section 14 of the Amendment Act, establishing the *Philippine Overseas Employment Administration* which also engages in the recruitment and placement of migrant workers through government-to-government arrangements.

referral to medical examination, processing of contracts, assistance and securing of passports and visas, pre-employment orientation seminars and anti-illegal recruitment seminars, pre-departure orientation and travel arrangements.³⁵ Any entity recruiting workers for jobs outside the Philippines has to obtain prior authorization from the POEA.³⁶ The Government of *China* indicated that private intermediaries had to meet strict requirements to obtain a licence; in some countries, certification to operate as a private intermediary was based on conditions such as non-discriminatory treatment of workers.³⁷

Supervision of private recruitment

211. Given the wide scope for and the risk of abuse of prospective migrants by intermediaries during recruitment procedures, the provisions of Article 3 of Annexes I and II to Convention No. 97 require that engagement in recruitment, introduction and placement operations be subject to the approval and supervision of the competent authority. In this connection, Annex I distinguishes between recruitment by employers or their representatives, which may be authorized “subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority” (Article 3(3)(a)), and the activities of private agencies, which must obtain prior authorization from the “competent authority of the territory where the said operations are to take place”. Operations conducted by private agencies must be subject to the supervision of the competent authority of that territory (Article 3(4)).³⁸ The provisions of Annex II, and Paragraph 14(3) of Recommendation No. 86, although worded somewhat differently, have a similar aim.

Supervision of private agencies

Article 3(4) of Annex I to Convention No. 97 provides that:

4. The competent authority of the territory where the operations take place shall supervise the activities of bodies and persons to whom authorisations have been issued in pursuance of paragraph 3(b), other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.

212. Convention No. 181 provides that application shall be ensured by means of laws or regulations or by any other means consistent with national practice, such as court decisions, arbitration awards or collective agreements; supervision shall be ensured by the labour inspection, supplemented by adequate remedies.³⁹

213. Member States reported supervision of private intermediaries involving, variously, the ability to request information and access to documents;⁴⁰ monitoring through regular reports by the agencies on the numbers of placements and returned migrant workers;⁴¹

³⁵ *Philippines* – CEACR, Convention No. 97, observation, 2013.

³⁶ ILO: *General Survey on employment instruments*, 2010, para. 373.

³⁷ For example, *Belgium* and *Mexico*.

³⁸ See in this regard also Article 13(1) and (2) of Convention No. 181 which provides that member States shall promote cooperation between the public employment service and private employment agencies.

³⁹ Article 14 of Convention No. 181. See also, for example, *Portugal* – CEACR, Convention No. 181, direct request, 2016 and *Slovakia* – CEACR, Convention No. 181, direct request, 2016.

⁴⁰ For example, *Austria*.

⁴¹ For example, *Belarus*, *Lithuania*, *Mauritius* and *Republic of Moldova*.

and inspections by competent authorities to verify compliance with the law.⁴² The Government of *Mexico*, for example, indicated that the labour inspectorate monitored compliance by private recruitment agencies, regulating the placement of Mexican workers abroad and regulatory requirements including whether or not migrant workers had applied for work permits. The Government of *Pakistan* referred to supervision by the Protector of Emigrants, through processing requests for the deployment of nationals abroad, inspections, and receiving reports. The Government of *Mali* stated that employers must inform the competent authority upon recruitment of a worker.

214. A number of countries referred to the availability of sanctions that might be imposed against private intermediaries in the case of breaches of the requirements for their operation, including the charging of fees.⁴³ The Government of *Bangladesh*, indicated that authorities had the power to suspend, revoke or cancel any license issued for a private intermediary.

215. The Committee notes that the obligation of public authorities and recruitment agencies to ensure that the contract of employment is implemented fairly and with full respect of the rights of migrant workers continues until the end of the employment relationship.

ILO support to build a complaints process

The Government of *Cambodia* referred, in its report submitted for the purposes of this General Survey, to *Prakas* No. 249 on Complaint Receiving Mechanism for Migrant Workers, drafted with ILO technical assistance, and establishing a complaints process for migrant workers linked to the regulation of private recruitment agencies.

In 2012, the Ministry of Labour and Vocational Training of Cambodia requested technical assistance from the ILO GMS TRIANGLE project to draft *prakas* (ministerial orders) to support a clear and accessible framework for workers who had experienced exploitation or abuse to lodge complaints and seek redress from employers and recruitment agencies. An initial evaluation suggests that the complaints process has already shown results, with a strong uptake of the procedures, a high rate of resolution, tangible results and better access to regular migration.

See ILO (2014): *Facilitating access to justice for migrant workers: development of a complaint mechanism in Cambodia*.

Documents issued to migrants

216. Article 5 of Annex I and Article 6 of Annex II of Convention No. 97 list documents which should be issued to migrants prior to their departure from the country of origin. Notably, this includes the employment contract setting out the conditions of work and remuneration,⁴⁴ and information on living and working conditions in the country of destination.⁴⁵ As far as possible, the information provided to migrant workers on the terms and conditions of employment should be in their own language or in a language with which they are familiar.⁴⁶ It should be noted that these provisions are

⁴² For example, *Belgium, Indonesia, Jamaica, Lithuania, Nepal, Poland, Romania* and *Viet Nam*.

⁴³ For example, *Finland, Republic of Korea, Lithuania, Niger* and *Spain*. See also paras 230–231 *infra*.

⁴⁴ Article 5(1)(a) and (b) of Annex I and Article 6(1)(a) and (b) of Annex II.

⁴⁵ Article 5(1)(c) of Annex I and Article 6(1)(c) of Annex II.

⁴⁶ Paragraph 5(2) of Recommendation No. 86; see also Paragraph 8(b) of Recommendation No. 188.

applicable only to member States maintaining a system of supervision of contracts of employment between employers, or their representatives, and migrant workers.⁴⁷

Documents to be provided to migrant workers before departure

Article 5 of Annex I and Article 6 of Annex II of Convention No. 97 provide that:

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require:

- (a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration;
- (b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;
- (c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.

2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

217. In this connection the Committee recalls that, in order to ensure that migrants are protected to the greatest possible extent from abuse and exploitation in relation to conditions and terms of employment, contracts of employment should regulate such essential matters as hours of work, weekly rest periods and annual leave, without which the indication of the wage, as required by the Annexes to Convention No. 97, may become meaningless.⁴⁸ The Committee draws attention to the Domestic Workers Convention, 2011 (No. 189) and its accompanying Recommendation No. 201, which specially require ratifying States to duly inform migrant domestic workers of the terms and conditions of their employment in an easily understandable manner, preferably through a written contract that is enforceable in the country of employment.⁴⁹

218. A number of member States, including *Belarus, Ecuador, Madagascar, Mali, Mauritius, Myanmar, Nepal, Sri Lanka* and *Trinidad and Tobago*, noted that employment contracts for migrant workers were required to be registered, supervised or monitored by public authorities. The Government of *Morocco*, for example, indicated that migrant workers' contracts concluded by private recruitment agencies must be approved by the competent authority and that this approval will be granted only for contracts complying with specified requirements; such monitoring allowed measures to be taken against employment agencies acting in contravention of the law. The Government of the *Czech Republic* indicated that the labour inspectorate monitors employment contract issues. Other member States, such as *Belarus* and *Mauritius*,

⁴⁷ Article 5(1) of Annex I and Article 6(1) of Annex II.

⁴⁸ ILO: *General Survey on migrant workers*, 1999, para. 150.

⁴⁹ Article 7(a)–(k) of Convention No. 189 lists specific terms and conditions on which information should be provided to migrant domestic workers; Paragraphs 6(2) and 8(3) of Recommendation No. 201 provide further guidance on the content of terms and conditions, and encourage member States to establish model contracts of employment for domestic work, in consultation with social partners.

indicated that employment contracts must be registered or vetted by governmental authorities. The Government of *Guatemala* stated that the registration and authorization of employment contracts was intended to ensure that workers did not migrate under irregular conditions.

219. In some countries, model employment contracts or standard terms of employment for migrant workers are used or are being developed.⁵⁰ In this context, the Committee notes that the Government of *Cyprus* reported that it was in the process of translating the model contract for employment used in the sector of agriculture in languages other than English, such as Sri Lankan, Chinese and Arabic.⁵¹ In the context of its supervision of relevant Conventions, the Committee has previously noted initiatives taken in a number of member States to adopt model employment contracts for migrant workers, including migrant domestic workers.⁵² For example, in the context of its supervision of Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee has noted measures taken by the Government of *Lebanon* leading to the adoption in 2009 of a unified contract for migrant domestic workers, which specifically sets out the rights of domestic workers concerning the payment of their monthly salary (in cash) and benefits-in-kind, medical care, working time arrangements, annual leave and sick leave, and which contains provisions on termination in serious cases of abuse, harassment, and maltreatment, and provisions on the submission of complaints with the Ministry of Labour and the courts.⁵³ Furthermore, the Committee recalls the information provided by the Government of *Mauritius* under its supervision of Convention No. 97, according to which employers are required to submit to immigrant workers a model contract of employment duly vetted by the Special Migrant Workers' Unit (SMWU).⁵⁴

The use of model employment contracts

Article 7 of the Domestic Workers Convention, 2011 (No. 189), emphasizes the importance of informing domestic workers of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner, preferably through written contracts. This should include the name and address of the employer and the worker, the duration, the type of work to be performed, remuneration, the normal hours of work, the provision of food and accommodation if applicable, terms of repatriation, and terms and conditions of termination of employment, including a period of notice. The accompanying Recommendation No. 201 lists additional terms and conditions of employment in paragraph 6(2), including a job description, leave entitlements, rate of pay or compensation for overtime, other payments and any payments in kind and their monetary value, details of any accommodation provided and authorized deductions from the workers' remuneration.

⁵⁰ For example, *Jordan, Republic of Korea, Mauritius, Oman, Philippines, Saudi Arabia, Singapore, South Africa* and *United Arab Emirates*.

⁵¹ The Civil Registry and Migration Department of *Cyprus* adopted a separate model employment contract for migrant domestic workers. However, the contract prohibits the employee to change employer and place of employment during the validity of this contract and his or her temporary residence/work permit (Clause 2(a)).

⁵² See for example: *Costa Rica* – CEACR, Convention No. 111, direct request, 2014; *Nicaragua* – CEACR, Plantations Convention, 1958 (No. 110), direct request, 2014 (model contract for agricultural workers); *Oman* – CEACR, Forced Labour Convention, 1930 (No. 29), observation, 2014; *Saudi Arabia* – CEACR, Conventions Nos 29 and 111, observations, 2015, and *Uruguay* – CEACR, Convention No. 189, direct request, 2015.

⁵³ *Lebanon* – CEACR, Convention No. 111, direct request, 2010.

⁵⁴ *Mauritius* – CEACR, Convention No. 97, direct request, 2008.

Article 8 of Convention No. 189 provides that migrant domestic workers should receive a written job offer, or contract of employment addressing the terms and conditions referred to in Article 7, prior to crossing national borders. Further, in paragraphs 6(3) and (4), Recommendation No. 201 states that member States should consider establishing a model contract of employment for domestic work, which should at all times be made available free of charge to domestic workers.

220. *The Committee welcomes the use of model employment contracts in particular in occupations which are deemed to be vulnerable for migrant workers, such as domestic work, manual work and agriculture. The Committee reminds governments of the importance of establishing the provisions of these contracts in consultation with the most representative organizations of workers and employers, with a view to hearing also the voices of migrant workers.*

Regulation across borders

221. The Committee notes the concerns expressed by a number of employers' and workers' organizations about abuse of migrant workers in the recruitment process. The IOE indicated that few governments had well-regulated and effective systems for the movement of lesser skilled workers through regular channels. Further, the IOE indicated that inappropriate systems enabled many such migrants to become the victims of abusive recruitment practices, including forced labour; overseas workers could be facing huge debts after paying exorbitant fees to unscrupulous and often unregulated intermediaries to secure jobs abroad.

222. The Committee recalls that the protection of migrant workers recruited or placed in the territory of a member State is a pivotal point for the instruments under review as well as Convention No. 181.⁵⁵ Article 8(1) of Convention No. 181 provides that a member State shall, after consulting the most representative organizations of employers and workers, adopt all necessary and appropriate measures, both within its jurisdiction and, where appropriate, in collaboration with other member States, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private intermediaries. These measures shall include laws or regulations which provide for penalties, including the prohibition of those private agencies which engage in fraudulent practices and abuses.⁵⁶ Article 8(2) emphasizes the importance of concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment. Additionally, Convention No. 189 recognizes the need for measures aimed at effectively protecting migrant domestic workers against abusive practices by private intermediaries, including through concluding bilateral, regional or multilateral agreements.⁵⁷

223. The Government of *Bulgaria* reported that pursuant to Article 68 of the Promotion of Employment Act, the Ministry of Labour and Social Policy should pursue cooperation with the public authorities of other States to monitor the conditions of job placement. However, the *Malaysian Trade Unions Congress (MTUC)* indicated that the recruitment of migrant workers lacked standardized agreements between countries of origin and

⁵⁵ See also ILO: *Multilateral Framework on Labour Migration*, op. cit., principle 13, which explicitly refers to Convention No. 181. It also includes international guidelines on best practices, including guidelines on the licensing and supervision of recruitment and contracting agencies for migrant workers. See also ILO: *General Survey on employment instruments*, 2010, para. 371.

⁵⁶ See ILO: *General Survey concerning employment instruments*, 2010, para. 364. See also *Israel – CEACR*, Convention No. 181, direct request. 2016; and *Portugal – CEACR*, Convention No. 181, direct request, 2016.

⁵⁷ Article 15 of Convention No. 189.

destination, and criticized the confidentiality and lack of transparency of memoranda of understanding, which did not reflect safe migration.

224. The Government of the *United Kingdom* previously provided information on the Gangmasters (Licensing) Act 2004, which requires gangmasters (private intermediaries) based abroad which supply workers for employment in the United Kingdom, to apply for a licence in the same way as national gangmasters operating in agriculture, processing and packaging of fish, shellfish and agricultural produce and gathering of shellfish.⁵⁸ The Gangmaster Licensing Authority (GLA) developed Licencing Standards (2012) which comprise guidance relating to the prevention of forced labour and mistreatment of workers, accommodation, working conditions, health and safety, recruitment of workers and contractual arrangements, as well as subcontracting. The Committee has previously noted with interest the measures adopted by the GLA to monitor and enforce the Act, including a Code of Practice on Compliance and Enforcement. The GLA website offers information regarding prosecution policy, complaints procedures, a list of licenced labour providers, and advice for workers, including a Guide on “Workers’ Rights. Protecting Workers through Licensing” (available in 18 languages).⁵⁹

225. Further, the Government of *Mexico* reported that it had requested the ILO’s technical assistance to launch a binational pilot system to register and approve licenses for the operation of private intermediaries in order to implement the Cooperation Agreement on Labour Migration between *Guatemala* and *Mexico*; and the Government of *Israel* indicated that a 2012 government resolution stipulated that bilateral agreements would require migrant workers to be recruited by authorized institutions in their country of origin, with the goal of reducing illegal rent-taking from migrant workers by intermediary agencies.

226. *The Committee recalls that, as with many other aspects of the 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.*⁶⁰ *In this regard, the Committee welcomes initiatives reported by certain member States suggesting that efforts are made to ensure that regulation of recruitment practices crosses borders, for instance, through bilateral agreements as envisaged by Conventions Nos 181 and 189.*

ILO technical cooperation to promote the regulation of recruitment

A number of recent ILO technical cooperation projects recognize the key importance of the regulation of recruitment practices to preventing abuses of migrant workers’ rights.

The *fair recruitment of Guatemalan migrant workers in Mexico project* (2015), for example, aims to protect the working and living conditions of Guatemalan migrant workers in *Mexico* through the promotion of fair and safe recruitment. Its specific objectives are to:

⁵⁸ Section 5(3) of the Act sets out its territorial scope, indicating that the provisions of the Act apply where a person acts as a gangmaster, whether in the United Kingdom or elsewhere, in relation to work to which the Act applies.

⁵⁹ *United Kingdom* – CEACR, Convention No. 97, direct request, 2013.

⁶⁰ ILO: *General Survey on migrant workers*, 1999, para. 160.

1. Expand knowledge regarding existing legislation and practices on the recruitment and registry of Guatemalan migrant workers and the regulation of private intermediaries in Mexico.
2. Strengthen institutional capacities of the public employment service on recruitment of migrant workers and on how to keep a registry of private intermediaries of Guatemalan migrant workers in Mexico.
3. Disseminate general information about the registry of private intermediaries and reliable available recruitment processes of Guatemalan migrant workers in Mexico.

The *South Asia Labour Migration Governance project* (2013–16) aims to promote well-governed labour migration from *India, Nepal and Pakistan* to selected States in the Gulf Cooperation Council (GCC), to ensure effective protection of the rights of vulnerable migrant workers, to enhance the development impact of labour migration, and reduce irregular flows. This includes improvement of recruitment services, such as access to reliable information on job opportunities and requirements in the GCC and job-matching; pre-departure information and training; better recruitment services including lower recruitment costs; and support for reintegration upon return to the country of origin.

Source: Fair recruitment of Guatemalan migrant workers in Mexico project: http://www.ilo.org/global/topics/labour-migration/projects/WCMS_355061/lang--en/index.htm and South Asia Labour Migration Governance project: http://www.ilo.org/global/topics/labour-migration/projects/WCMS_227315/lang--en/index.htm (consulted in November 2015).

Services provided before departure, on arrival, and on return to the country of origin

227. A number of member States reported services provided to migrant workers to assist in their mobility and recruitment. Such services may be provided before departure in the country of origin of the migrant worker; on arrival in the country of destination for the migrant worker; or on the migrant worker's return to the country of origin.

Services to assist migrant workers in mobility and recruitment

Convention No. 97, in particular, requires member States to provide services to migrant workers in relation to their mobility and recruitment:

Article 2

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

Article 4

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

Article 7

1. Each Member for which this Convention is in force undertakes that its employment service and other services connected with migration will co-operate in appropriate cases with the corresponding services of other Members.

2. Each Member for which this Convention is in force undertakes to ensure that the services rendered by its public employment service to migrants for employment are rendered free.

Further detail is provided in the Annexes to Convention No. 97:

Article 4 of Annex I and Article 4(1) of Annex II

Each Member for which this Annex is in force undertakes to ensure that the services rendered by its public employment service in connection with the recruitment, introduction or placing of migrants for employment are rendered free.

Article 4(2) of Annex II

...

2. The administrative costs of recruitment, introduction and placing shall not be borne by the migrants.

228. Member States reported services provided in both countries of origin, in relation to nationals going abroad to work in other countries,⁶¹ and in countries of destination, to assist foreign nationals working in their countries.⁶² In some cases, countries of origin and destination collaborated to provide services for migrant workers.⁶³ The Government of *Belarus* reported services provided to both immigrants and emigrants. In most countries, these services were provided by governmental entities or institutions,⁶⁴ and in some countries services were provided in collaboration with non-state actors, including workers' organizations,⁶⁵ private intermediaries,⁶⁶ and non-governmental organizations.⁶⁷ In this connection, the Committee recalls that member States are under an obligation either to provide or fund the provision of free information or other assistance to migrant workers or to ensure the existence of such services, and to monitor them and, where necessary, intervene to supplement them.⁶⁸

Charging of fees

229. Article 7(2) of Convention No. 97, and Article 4 of Annex I and Article 4(1) of Annex II of this Convention state that services provided by public employment services for migrant workers should be rendered free.⁶⁹ In this connection, the Committee has previously requested that governments clarify what kind of services were provided by

⁶¹ For example, *Bangladesh, Belarus, Bulgaria, Ecuador, Guatemala, Indonesia, Myanmar, Nepal, Pakistan, Sri Lanka and Viet Nam.*

⁶² For example, *Algeria, Australia, Bahrain, Belgium, Chile, Cyprus, Czech Republic, Finland, Italy, Japan, Republic of Korea, Lithuania, Mauritius, New Zealand, Poland, Portugal, Singapore, Slovenia, South Africa and Turkey.*

⁶³ For example, *Denmark* (information on labour rights in *Denmark* provided in collaboration with advisers in *Bulgaria, Latvia, Lithuania, Poland and Romania*); *Greece* in collaboration with *Georgia* and *Republic of Moldova* under mobility partnership agreements; *Republic of Korea* (information on the Employment Permit System is provided by public institutions in the *Republic of Korea* and the countries of origin of migrant workers); *Nicaragua* (information campaign under a bilateral agreement with *Costa Rica*); *Poland* (information campaign in *Armenia, Belarus, Poland and Ukraine*).

⁶⁴ For example, *Algeria, Australia, Bahrain, Bangladesh, Belgium, Bulgaria, Chile, Cyprus, Denmark, Finland, Guatemala, Italy, Jamaica, Japan, Mali, Mozambique, New Zealand, Pakistan, Portugal, Senegal, Togo, Turkey, United States and Bolivarian Republic of Venezuela.*

⁶⁵ For example, *Cambodia.*

⁶⁶ For example, *Belarus and Colombia.*

⁶⁷ For example, *Cambodia, Costa Rica, Madagascar and Morocco.*

⁶⁸ ILO: *General survey on migrant workers*, 1999, para. 202.

⁶⁹ The IOE considered that employers' organizations should be involved in planning and creating an efficient and effective service, which should be free for employers as well as for workers.

public employment services charging fees in order to assess whether these fall within the meaning of Article 7(2) of the Convention and Article 4 of Annexes I and II.⁷⁰ The Committee recalls that charging workers for purely administrative costs of recruitment, introduction and placement by public employment agencies is prohibited under Annex II to the Convention.⁷¹

230. Looking at the issue of fee-charging from the viewpoint of private intermediaries, the Committee recalls that Article 7(1) of Convention No. 181, contains a general prohibition on the charging of fees or other costs, directly or indirectly, in whole or in part, to workers. However, Article 7(2) of Convention No. 181 permits exceptions through which member States may allow private agencies to charge fees or costs for certain categories of workers, as well as specified types of services. In its General Survey concerning employment instruments, the Committee noted that making use of Article 7(2) is subject to consultation, transparency and reporting.⁷²

Exceptions to prohibition of charging fees

- *Consultation.* Prior to the authorization of the exceptions to charge fees or costs, the most representative organizations of employers and workers have to be consulted. This ensures that the social partners can express their views and share their experiences and concerns regarding the use of this provision.
- *Transparency.* Member States are required to create an appropriate legal framework indicating that the authorization is limited to certain categories of workers, or specific types of services, and that it constitutes an explicit exception. Additionally, it is necessary for the fees and costs to be disclosed. This not only includes the actual service fees, but also other expenses related to recruitment, such as visa fees.
- *Reporting.* Article 7(3) of Convention No. 181 requires member States, as part of their reporting obligations under article 22 of the ILO Constitution, to provide to the Office with information and give the reasons for making use of the exceptions.

Source: ILO: *General Survey concerning employment instruments*, 2010, para. 334.

231. The Committee notes that, in their reports submitted for the purposes of this General Survey, certain member States indicated that national legislation prevented private intermediaries from requiring fees from migrant workers.⁷³ Certain other member States indicated that this was not a requirement of their legislation.⁷⁴ The Government of *Bahrain*, for example, indicated that the conditions for the issuing of a work permit for a migrant worker included the requirement that the employer shall pay all the fees and entitlements due to the Authority issuing a work permit. The Committee notes the observations by the ITUC that charging, directly or indirectly, fees or costs to workers, was a common practice by private recruiters in all migration corridors.⁷⁵

232. *The Committee emphasizes that services provided by public employment agencies should be free for migrant workers (pursuant to Article 7(2) of Convention No. 97).*

⁷⁰ *France* – CEACR, Convention No. 97, observations 2013 and 2016; and *Grenada* – CEACR, Convention No. 97, direct request, 2014.

⁷¹ For an indication on how the Organization has dealt with “administrative costs or fees” relating to recruitment and employment, see *General Survey on migrant workers*, 1999, para. 169 (making reference to Article 4 of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179)).

⁷² See ILO: *General Survey concerning employment instruments*, 2010, paras 332–335.

⁷³ For example, *Estonia, Finland* and *United States*.

⁷⁴ For example, *Jamaica*.

⁷⁵ The ITUC refers to research undertaken by the World Bank regarding costs of recruitment: World Bank (2013) Migration and Development Brief No. 21.

Provision of knowledge and information

233. Pursuant to Article 2 of Convention No. 97, employment and recruitment services for migrant workers should “in particular ... provide them with accurate information”. Article 4 of Convention No. 97 requires member States to take measures to facilitate the departure, the journey and the arrival of migrants for employment. In addition, as the existence of authorized information services does not necessarily guarantee that migrant workers are sufficiently and objectively informed, Article 3 of Convention No. 97 requires member States to take steps against the provision of “misleading propaganda”.⁷⁶

234. Most member States reported the existence of free services in their countries to assist migrant workers through the provision of knowledge and information. In *Bangladesh*, for example, the right to information for emigrant workers is guaranteed by law,⁷⁷ and the Government of *New Zealand* stated that anyone giving immigration advice – other than those who were exempt such as lawyers and citizens advice bureaux staff – must have a licence.⁷⁸

235. In many instances, the major service offered to facilitate the departure and arrival of migrant workers was the provision of information. Some member States, for example, referred to websites providing information about steps migrant workers should take when they arrived in a country of destination and their rights and duties.⁷⁹ The Government of *Honduras* referred to a portal of conditions of life and work in Central America and the *Dominican Republic*, updated annually for each country.

236. The Government of *Hungary* indicated that migrants should be assisted by providing them as much information as possible in order that they can adequately orientate themselves in various procedures, in the culture, traditions and values of the country concerned and overcome any language difficulties. The Government of *Singapore* stated that, as it was important that migrant workers understood their rights and obligations even before leaving their country of origin, those applying for work permits were issued with “in-principle approval letters” containing useful information, allowing them to make an informed choice to work in Singapore. Once migrant workers arrive in Singapore, they are provided with a guidebook in their own language, setting out employment rights and responsibilities and important contact information.

237. Some member States and workers’ organizations indicated programmes including information on migration procedures,⁸⁰ or concerning working conditions and labour and social security rights.⁸¹ For example, the Government of *Bahrain* indicated that workers’ guidance manuals informed migrant workers of their rights and duties; and the Government of *Guatemala* provided information to nationals on their labour rights abroad. Some workers’ organizations provided information on working conditions and

⁷⁶ See also paras 262–265 *infra*.

⁷⁷ Sections 22(3), 25, 26 and 46 of the Overseas Employment and Migrants Act 2013 (Act No. XLVIII of 2013).

⁷⁸ Section 6 of the Immigration Advisers Licensing Act, 2007 (Public Act 2007 No. 15).

⁷⁹ For example, *Bahrain* and *Belarus*.

⁸⁰ For example, *Austria*, *Belarus*, *Plurinational State of Bolivia*, *Colombia*, *Costa Rica*, *Czech Republic*, *Latvia* and *Lithuania*, and Confederation of Workers of *Argentina* (CTA Workers).

⁸¹ For example, *Algeria*, *Belarus*, *Bosnia and Herzegovina*, *Cyprus*, *Republic of Korea*, *Mali* and *Peru*.

labour rights abroad,⁸² while other workers' organizations provided information to migrant workers inside the country.⁸³

238. Other countries provided information and assistance to settle and adapt to the country of destination, including orientation programmes.⁸⁴ Certain member States indicated that they provided information on job vacancies in their countries on websites or through other means.⁸⁵ Other governments referred to legislative or policy requirements that migrant workers be provided with a copy of their employment contract,⁸⁶ sometimes translated into a language in which it would be understood.⁸⁷

239. Information was shared in a variety of ways, including through brochures and other documentation,⁸⁸ film or video,⁸⁹ telephone lines,⁹⁰ websites,⁹¹ governmental labour institutions,⁹² and individual or group meetings.⁹³ The Government of *Costa Rica* referred to a variety of activities aimed at various target audiences, including information fairs, radio and television spots, publications and brochures, and a "mobile migration programme" to provide migration services to communities, both in metropolitan and rural areas. The Governments of *Singapore* and *South Africa* referred to outreach programmes to educate the workers or to raise public awareness of immigration requirements. A number of countries, including *Japan*, *Republic of Korea*, *Turkey*, *United States*, *Uruguay* and *Viet Nam*, indicated that information was disseminated through their consulates, embassies or foreign missions abroad.

240. Many member States provided information concerning the establishment of contact or resource centres for migrant workers to respond to queries and provide information on legislation, rights and duties.⁹⁴ The Government of *Jamaica*, for example, referred to Jamaican Liaison Officers, based in close proximity to farms and hotels in the *United States* at which Jamaican migrant workers were employed, who addressed complaints and interfaced with employers concerning the conditions for Jamaican migrant workers, as well as prospective work for other Jamaican nationals.

⁸² For example, the Confederation of Independent Trade Unions in *Bulgaria* (KNSB/CITUB) and the General Confederation of Labour (CGT) of *Colombia*.

⁸³ For example, the General Confederation of Labour of the *Argentine Republic* (CGT RA).

⁸⁴ For example, *Algeria*, *Australia*, *Belgium*, *Estonia*, *Greece*, *Singapore* and *Slovenia*.

⁸⁵ For example, *Belarus*, *Bulgaria*, *Cyprus*, *Latvia*, *Ukraine* and *United States*.

⁸⁶ For example, *Belarus* and *Jamaica*.

⁸⁷ For example, *Cyprus* and *Mauritius*.

⁸⁸ For example, *Czech Republic*, *Peru*, *Poland*, *Slovenia*, *Trinidad and Tobago* and *United States*.

⁸⁹ For example, *Czech Republic* and *United States*.

⁹⁰ For example, *Indonesia*.

⁹¹ For example, *Denmark*, *Estonia*, *Italy*, *Japan*, *Latvia*, *Namibia*, *Poland*, *Slovenia*, *Togo* and *Ukraine*.

⁹² For example, *Japan* and *Latvia*.

⁹³ For example, *Denmark* and *Mauritius*.

⁹⁴ For example, *Bahrain*, *Cambodia*, *Czech Republic*, *Republic of Korea*, *Myanmar*, *Nepal*, *Portugal*, *Slovenia*, *Sweden*, *Turkey* and *Viet Nam*.

Training and other services provided pre-departure and upon arrival

241. A number of member States provided pre-departure training to their nationals before leaving to work abroad.⁹⁵ The Government of *Bangladesh* reported that the Bureau of Manpower, Employment and Training (BMET) offered two, free, pre-departure trainings to Bangladeshi migrant workers: (1) skills training (in vocational trades); and (2) mandatory Pre-departure Orientation Training for migrant workers processed by licensed recruitment agents with group visas certification, for which a certificate of attendance was required to leave the country. The BMET also provided assistance with regard to health and legal documentation and mandatory training for outbound domestic workers; further, the authorities registered migrant workers, maintained a data base and issued emigration clearance SMART cards to allow migrant workers to depart.

242. Certain countries of destination reported providing services, including training, to migrant workers before departure from their country of origin. The Government of *Italy*, for example, referred to pre-departure training, including Italian language, culture and elements of civil education, carried out in the countries of origin of migrants; and the Government of *Poland* mentioned anti-discrimination training sessions for migrant workers, within the framework of a 2014 project directed at the integration of third country nationals. Yet other member States referred to training for newly arrived migrant workers,⁹⁶ and the Governments of *Germany* and *Portugal* mentioned vocational training for migrant workers. The Government of the *Republic of Korea* referred to employment education sessions held both before and after entry to the country, indicating that before entry, migrant workers were provided with education on language and culture, and after entry on employment-related laws and systems, labour standards, seeking remedies, and occupational safety and health.

Translation and interpretation services

243. Many countries referred to the translation of information prepared for migrant workers into the languages of the main countries of origin of migrant workers.⁹⁷ The Government of *Cyprus* indicated that information brochures available in a number of languages had been disseminated to non-governmental organizations and private intermediaries and the Government of *Poland* indicated that administrative authorities were required to instruct foreigners in a language they understand in relation to proceedings.

244. In response to concerns expressed by the New Zealand Council of Trade Unions (NZCTU), the Government of *New Zealand* indicated that resource constraints meant that it was not possible to translate employment-related information into all languages spoken by migrant workers, particularly in relation to languages which were spoken by very few migrants in the country.

Special services for women migrant workers

245. Certain member States indicated special services for women migrant workers. In this regard, the Government of *Bangladesh* stated that an official Order made in 2005

⁹⁵ For example, *Myanmar, Nepal, Pakistan* and *Philippines*

⁹⁶ For example, *Czech Republic*.

⁹⁷ For example, *Australia, Cyprus, Czech Republic, Denmark, Singapore, Slovenia, Sweden, Turkey* and *United States*.

required recruiting agents to supply women workers with a Bengala-translated copy of their employment contract before their departure from Bangladesh. The Governments of *Italy* and *Slovenia* referred to support aimed at social and employment integration of specific target groups of migrant workers, including young people and women. The Government of *Nepal* indicated that its 2012 Foreign Employment Policy included particular steps to provide information and assistance to women migrant workers. In particular, female labour attachés or welfare officers were deployed in countries of destination with over 1,000 Nepali women workers; the cost of orientation courses for migrant workers departing Nepal could be reimbursed for women; and special reintegration programmes targeted women. The Government of *Singapore* referred to a Settling-In Programme for Foreign Domestic Workers, introduced in 2012, that aimed to orient first-time foreign domestic workers – largely women – including modules on how to work safely, manage stress and adapt to a foreign environment.

Services on return to country of origin

Services provided to migrant workers on return to the country of origin

Pursuant to Paragraph 5(2) and (3) of Recommendation No. 86, the free service to be provided in each country to assist migrants and their families should:

- (2) ... advise migrants and their families, in their languages or dialects or at least in a language which they can understand, on matters relating to emigration, immigration, employment and living conditions, including health conditions in the place of destination, return to the country of origin or of emigration, and generally speaking any other question which may be of interest to them in their capacity as migrants.
- (3) ... provide facilities for migrants and their families with regard to the fulfilment of administrative formalities and other steps to be taken in connection with the return of the migrants to the country of origin or of emigration, should the case arise.

246. In its supervision of Convention No. 97, the Committee has previously noted services provided by member States to returning migrant workers to assist in their reintegration in their home countries.⁹⁸ Certain member States indicated, in their reports submitted for this General Survey, that particular services were provided to migrant workers on return to their country of origin after working abroad.⁹⁹

247. The Government of *Morocco*, for example, referred to central units established to support the reintegration of returning migrants and investment. The Government of the *Philippines* indicated that National Reintegration Centres for Overseas Filipino Workers provided various services for Filipino migrant workers returning to the country, including entrepreneurship, investment and financial literacy programmes, and a database of returning migrant workers for local employment. The Government of *Uruguay* referred to services paying particular attention to the specific needs of returning migrant workers.

248. While most such programmes were described by countries of origin, the Government of the *Republic of Korea* indicated that it provided free return support programmes, including information sessions, assistance with departure preparations, and

⁹⁸ For example, *Albania* – CEACR, Convention No. 97, direct request, 2014; *Armenia* – CEACR, Convention No. 97, direct request, 2014; *Brazil* – CEACR, Convention No. 97, direct request, 2014; *Burkina Faso* – CEACR, Convention No. 97, direct request, 2015; *Ecuador* – CEACR, Convention No. 97, direct request, 2014; *Guatemala* – CEACR, Convention No. 97, direct request, 2013; *Philippines* – CEACR, Convention No. 97, direct request, 2013; *Uruguay* – CEACR, Convention No. 97, direct request, 2013.

⁹⁹ For example, *Colombia*, *Serbia* and *Sri Lanka*.

assistance with establishing networks among returned workers, for workers soon to return to their country of origin.

Medical services and testing

249. The Committee recalls that Article 5(a) of Convention No. 97 requires member States to provide appropriate medical services for “ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorized to accompany or join them are in reasonable health”. Given the significant developments in transportation since Convention No. 97 was adopted, the Committee reiterates the statements made in the previous two General Surveys on migrant workers that a single medical inspection (preferably on departure) may be sufficient to ensure application of the provisions.¹⁰⁰

250. With respect to medical examinations upon arrival, which is often routine practice in many countries of destination, the Committee has previously noted, in the context of its supervision of Convention No. 97, that certain countries have excluded migrant workers from entering countries on the basis of medical examinations including HIV and AIDS testing.¹⁰¹ In this regard, the Committee notes the observations by the ITUC that pregnancy or positive HIV status often result in migrant workers’ dismissal and deportation in several countries.

251. The Committee has noted that the legislation of some countries prohibits entry or stay on medical grounds to persons with a real or perceived disability.¹⁰² The Committee draws attention to the fact that, while medical testing and the prohibition of entry of persons on the ground that they may constitute a grave risk to public health is likely to be a routine and a responsible precaution prior to permitting entry of non-nationals, the exclusion of individuals on certain medical or personal grounds which do not pose a danger to public health or a burden to public funds may be outdated due to scientific developments or changing social attitudes, and some may constitute discrimination.

252. Furthermore, the Committee refers to Paragraph 28 of the HIV and AIDS Recommendation, 2010 (No. 200), according to which migrant workers, or those seeking to migrate for employment, should not be excluded from migration by countries of origin, of transit or of destination on the basis of their real or perceived HIV status.¹⁰³ Further, pursuant to Paragraph 3(c) of Domestic Workers Recommendation, 2011 (No. 201), in taking measures for the elimination of discrimination, member States should ensure that no domestic worker is required to undertake HIV or pregnancy testing, or to disclose HIV or pregnancy status.

253. The Committee welcomes that certain member States have developed specific HIV and AIDS legislation prohibiting mandatory HIV testing of workers, implicitly including migrant workers.¹⁰⁴ For example, the National Tripartite Policy on HIV and AIDS and the World of Work of the Government of *Jordan*, which was prepared with the technical

¹⁰⁰ ILO: *General survey on migrant workers*, 1999, paras 257 and 662.

¹⁰¹ For example, *Armenia* – CEACR, Convention No. 97, direct request, 2014; *Belize* – CEACR, Convention No. 97, direct request, 2014; *Republic of Moldova* – CEACR, Convention No. 97, direct request, 2014.

¹⁰² For example, *Belize* – CEACR, Convention No. 97, direct request, 2013; *Guyana* – CEACR, Convention No. 97, direct request, 2013; *Mauritius* – CEACR, Convention No. 97, direct request, 2014; and *Trinidad and Tobago* – CEACR, Convention No. 97, direct request, 2014.

¹⁰³ See further Paragraphs 25–27 of the HIV and AIDS Recommendation, 2010, (No. 200).

¹⁰⁴ For example, following the adoption of ILO Recommendation No. 200, the *Dominican Republic* adopted Law No. 135-11 of 7 June 2011, whose Article 6 prohibits mandatory HIV testing for employment purposes.

assistance of the ILO, explicitly covers migrant workers and encourages voluntary and confidential HIV testing for workers, while providing explicitly that there should be no mandatory HIV testing for access to or retention in employment.

254. A number of countries nevertheless continue to require migrant workers to undergo HIV testing in order to either enter or remain in the host country, which they justify on the grounds of public health.¹⁰⁵ *The Committee is therefore obliged to recall that refusal of entry or repatriation on the grounds that the worker concerned is suffering from an infection or illness of any kind which has no effect on the task for which the worker has been recruited, constitutes an unacceptable form of discrimination.*¹⁰⁶

Unregulated recruitment and migration in abusive conditions

255. The Committee notes that Convention No. 143 aims to prevent all forms of irregular labour migration in abusive conditions.¹⁰⁷ The Committee recalls that this includes both irregular migration and unauthorized employment of migrant workers as well as, in its most extreme form, trafficking in persons and forced labour of migrant workers. The ITUC noted that migration which took place outside regular channels, left workers vulnerable to abuse and exploitation, such as contract substitution, especially in case subagents, which avoided regulatory oversight, were involved. The IOE called for fair and transparent recruitment to protect migrant workers and to prevent problems to employers, who often did not know what kind of recruitment practices were taking place and what migrant workers had been subjected to or promised by intermediaries.¹⁰⁸ Further, some workers' organizations indicated that migrant workers' labour rights were violated by private intermediaries and that excessive fees were charged.¹⁰⁹ For example, the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) indicated that, in origin countries, labour recruitment agencies and other intermediaries charged legal and illegal fees, often between US\$1,000 and \$20,000, for securing work visas and placements in the *United States*. The AFL–CIO added that many workers were forced to borrow money at predatory interest rates or mortgage their land or homes to pay fees, which put migrant workers in a highly vulnerable situation and frequently led to economic coercion and debt bondage.¹¹⁰

256. *The Committee is of the view that the successful regulation and transparent management of recruitment of migrant workers plays an important role in effectively suppressing irregular migration and reducing labour migration in abusive conditions.*

¹⁰⁵ This justification was rejected by the European Court of Human Rights in its 2011 decision in *Kiyutin v. Russian Federation* (Application No. 2700/10), which involved an Uzbekistan national, who was denied a residency permit in the *Russian Federation* after a mandatory testing for HIV, which was positive. The Court held that the testing requirement was discriminatory and was not justified by public health interests. In its decision, the Court cited international human rights law, including the ILO Convention No. 111 and the ILO Recommendation No. 200.

¹⁰⁶ ILO: *General Survey on migrant workers*, 1999, para. 266.

¹⁰⁷ Articles 2–4.

¹⁰⁸ The IOE also made reference to the IOM's Public Private Alliance for Fair and Ethical Recruitment, especially the International Recruitment Integrity System (IRIS), a voluntary accreditation system for recruitment intermediaries.

¹⁰⁹ For example, the CGT of *Colombia* and the *Italian* General Confederation of Labour (CGIL).

¹¹⁰ The AFL–CIO referred in this regard to: International Labor Recruitment Working Group, "The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse", 2013.

The ILO Fair Recruitment Initiative

At the International Labour Conference in 2014, the ILO Director-General proposed a global Fair Migration Agenda, and made fair recruitment one of its main pillars. On this occasion, he highlighted the “growing international concern about abusive and fraudulent recruitment practices affecting migrant workers in particular and issues of human trafficking and forced labour”.

In response to those challenges, the ILO launched a global “Fair Recruitment Initiative” to:

- help prevent trafficking in persons and forced labour;
- 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);
- 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.

This multi-stakeholder initiative is implemented in close collaboration with governments, representative employers’ and workers’ organizations, the private sector and other key partners. It is based on a four-pronged approach which puts social dialogue at the centre, focusing on: enhancing global knowledge on national and international recruitment practices; improving laws, policies and enforcement mechanisms to promote fair recruitment practices; promoting fair business practices; and empowering and protecting workers.

See ILO: Fair Recruitment Initiative, available at: <http://www.ilo.ch/global/topics/fair-recruitment/lang-en/index.html>.

Prevention of irregular labour migration

257. Member States reported a variety of means of preventing irregular labour migration and misleading information in the recruitment process, including national legislative and regulatory measures¹¹¹ and the establishment of taskforces and other bodies.¹¹²

258. The Government of *Suriname*, for example, indicated that the implementation of measures aimed at irregular migration and the unauthorized employment of migrant workers was discussed in tripartite consultative committees and multi-departmental committees; and the Government of the *United States* referred to taskforces to combat immigration scams. Within its supervision of the application by *Albania* of Convention No. 143, the Committee has noted a preventive approach taken by the Government, by expanding opportunities for migration through regular channels and public employment structures, migration desks and bilateral agreements with a number of countries.¹¹³ With respect to the application by the *Netherlands* of Convention No. 97, the Committee noted that the Government had been working with major cities and the social partners to combat exploitation by fraudulent employers, in particular in the context of the EU project on labour migration. The Government and the social partners had also developed an action plan in the context of the Social Agreement signed in 2013, to tackle sham contracting leading to unequal terms of employment.¹¹⁴

¹¹¹ For example, *Austria, Burkina Faso, Mali, Mozambique, Nepal, Pakistan, Philippines, Sri Lanka* and *Uganda*.

¹¹² For example, *Indonesia*.

¹¹³ *Albania* – CEACR, Convention No. 143, direct request, 2014.

¹¹⁴ See the *Netherlands* – CEACR, Convention No. 97, direct request, 2015.

259. However, the *Italian Union of Labour (UIL)* indicated that despite legislation which had entered into force to combat irregular recruitment (*caporalato*), migrants in an irregular situation still suffered exploitation. Further, the lack of labour inspections and a functioning system of public employment services were identified as the major obstacles to efficiently enforce the law.

260. In some member States, measures concerned the preventing of irregular labour migration both out from the country and into the country. The Government of *Pakistan*, for example, referred to legislation prescribing penalties for fraudulently inducing a person to emigrate unlawfully,¹¹⁵ as well as to legislation prohibiting the unlawful entry and employment of immigrants into the country.¹¹⁶

261. Some member States referred in particular to bilateral agreements in this regard.¹¹⁷ The Government of *France*, for example, indicated that it proposed “new generation” bilateral agreements with countries of origin to organize regular migration, address irregular migration and promote cooperation and development. These agreements combated misleading propaganda, through the provision of correct information. The Government of the *Republic of Korea* indicated that memoranda of understanding under its employment permit system specified the duty of countries of origin to reduce irregular migration.

Misleading propaganda

Article 3 of Convention No. 97 provides that:

1. Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.
2. For this purpose, it will where appropriate act in co-operation with other Members concerned.

262. The Committee recalls the relevance of Article 3 of Convention No. 97 for the protection of workers from misleading information stemming from intermediaries who may have an interest in encouraging migration in any form to take place, regardless of the consequences for the workers involved. Unscrupulous agents who profit from migration flows may have an interest in disseminating erroneous information on the migration process, including exaggerated claims on living and working conditions in the host country, as well as on the chances of finding and maintaining work. Given migrants’ vulnerability to this form of abuse, it is essential that States take measures to combat such activities.¹¹⁸

263. Recognizing the pivotal role of information and knowledge in preventing irregular labour migration, a number of member States referred to measures taken against the provision of misleading information – including the provision of accurate information – regarding immigration and emigration through means such as telephone advice lines or dedicated email addresses for advice on safe recruitment,¹¹⁹ websites on the risks of

¹¹⁵ Sections 17 and 18 of the Emigration Ordinance 1979.

¹¹⁶ Foreigners’ Act 1946 (as amended).

¹¹⁷ For example, *Israel*, *Mauritania* and *Qatar*.

¹¹⁸ ILO: *General Survey on migrant workers*, 1999, para. 214.

¹¹⁹ For example, *Belarus* and *Indonesia*.

unregulated employment or rights,¹²⁰ broad awareness-raising and information campaigns about fraudulent offers of employment,¹²¹ provision of information including (sometimes multilingual) brochures,¹²² workshops for migrants on how to avoid deception,¹²³ the dissemination of information through media,¹²⁴ and the establishment of resource or information centres.¹²⁵ Certain workers' organizations also indicated that information on informal employment and trafficking in persons was provided to migrant workers.¹²⁶

264. The Government of *Ethiopia* reported that, as Ethiopian migrant workers were predominantly domestic workers subject to abuse and exploitation in the process of recruitment and placement, it made efforts to provide information for prospective migrants on migration realities. The Government of *Mali* indicated that a national decentralized information and awareness-raising campaign contributed to a reduction in irregular migration from the country; and the Government of *Myanmar* referred to meetings, forums and job fairs to promote regular migration and minimize irregular migration. The Government of *Mexico* referred to a campaign informing seasonal migrant workers in the *United States* of their rights in the recruitment process to avoid the payment of illegal charges for work permits. The Government of *Bangladesh* reported that the Overseas Employment and Migrants Act provided for punitive measures against misleading information, cheating and fraud.¹²⁷

265. The Committee has noted that the Government of *Belize*, through its Anti-Trafficking in Persons Committee, had carried out public awareness campaigns with the objective of addressing false and misleading information, especially to migrants. Specific campaigns were geared to women and girls, including the "My future is not for sale" campaign of the Youth Enhancement Services (YES) aimed at preventing commercial sexual exploitation, and the education sessions conducted in this context by the Belize Tourism Board.¹²⁸

Forced labour and trafficking in persons

266. The Committee notes that trafficking in persons is a severe form of migration in abusive conditions and recalls the provisions of the instruments in this regard, as well as the core international labour standards on forced labour. It also notes the complementarity of these standards with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000).

¹²⁰ For example, *Bulgaria, Czech Republic, France, Peru, Togo and Ukraine*.

¹²¹ For example, *Colombia, Guatemala and Madagascar*.

¹²² For example, *Czech Republic, Peru and Poland*.

¹²³ For example, *El Salvador*.

¹²⁴ For example, *Honduras and Nepal*.

¹²⁵ For example, *Viet Nam*.; see also *Armenia* – CEACR, Convention No. 97, direct request, 2014.

¹²⁶ For example, the KNSB/CITUB of *Bulgaria* and the CGT RA of *Argentina*.

¹²⁷ Section 12 of the Act.

¹²⁸ *Belize* – CEACR, Convention No. 97, direct request, 2014.

**The Forced Labour Convention, 1930 (No. 29), its Protocol of 2014,
and the Forced Labour (Supplementary Measures) Recommendation, 2014
(No. 203)**

Convention No. 29 prohibits all forms of forced or compulsory labour. The Convention requires the illegal extraction of forced or compulsory labour to be punishable as a penal offence, and places an obligation on ratifying States to ensure that penalties imposed by law are adequately and strictly enforced.

Article 2(d) of the 2014 Forced Labour Protocol provides that measures to be taken for the prevention of forced or compulsory labour shall include “protecting persons, particularly migrant workers, from possible abusive and fraudulent practices during the recruitment and placement process”.

Paragraph 4 of Recommendation No. 203 provides that member States should take effective preventive measures, including:

- Targeted awareness-raising campaigns, especially for those who are most at risk of becoming victims of forced or compulsory labour, to inform them, inter alia, about how to protect themselves against fraudulent or abusive recruitment and employment practices (Paragraph 4(b)).
- Promotion of coordinated efforts by relevant government agencies with those of other States to facilitate regular and safe migration and to prevent trafficking in persons, including coordinated efforts to regulate, license and monitor labour recruiters and employment agencies and eliminate the charging of recruitment fees to workers to prevent debt bondage and other forms of economic coercion (Paragraph 4(i)).

Pursuant to Paragraph 8 of Recommendation No. 203, member States should take protective measures to eliminate abuses and fraudulent practices by labour recruiters and employment agencies, such as eliminating the charging of recruitment fees to workers; requiring transparent contracts; establishing adequate and accessible complaint mechanisms; imposing adequate penalties; and regulating or licensing these services.

267. The Committee further recalls that action at the national and international levels is essential to eradicate abuses by intermediaries that engage in human trafficking or otherwise violate rights enshrined in the fundamental Conventions. Furthermore, the proper application of Convention No. 181 enhances the role of international labour standards in eradicating illegal practices by abusive private recruiters which might, if committed in a widespread or systematic manner, amount to a crime against humanity.¹²⁹

268. Many member States reported specific legislation and measures to combat trafficking in persons.¹³⁰ Often, such legislation will create an offence of trafficking in persons, using the services of a trafficked person, and supporting trafficking; recruitment of trafficked persons may be addressed specifically. The *Antigua and Barbuda Trafficking in Persons (Prevention) Act 2010*, for example, provides that “[A] person who knowingly recruits, or agrees to recruit, another person to participate in the commission of the offence of trafficking in persons, commits an offence” and is liable to a fine, imprisonment, or both.¹³¹

¹²⁹ ILO: *General Survey concerning employment instruments*, 2010, para. 363 and p. 93.

¹³⁰ For example, *Colombia, Costa Rica, Ecuador, Guatemala, Jamaica, Republic of Korea, Latvia, Mauritania, Pakistan, Senegal, Singapore, Trinidad and Tobago, United States and Uruguay*.

¹³¹ Section 23.

269. Some member States indicated, in addition, that coordination committees or national plans had been established to coordinate measures against trafficking in persons.¹³² The Government of *Cambodia*, for example, reported legislation to suppress trafficking in persons and sexual exploitation, a national committee to counter trafficking, and a memorandum of understanding on cooperation against trafficking in persons in the Greater Mekong Subregion. The Government of *Chile* referred to its National Plan on Trafficking in Persons, which coordinated efforts at an inter-institutional level to prevent, control and sanction trafficking at national and regional levels, including establishment of working groups composed of governmental and civil society actors.

270. Most member States that provided information for the purposes of this General Survey indicated the existence of information and awareness-raising campaigns aimed to prevent migrant workers from becoming victims of forced labour or trafficking, both before leaving the country of origin and once entering the country of destination. The Government of *Indonesia*, for example, indicated that it provided free information services and assistance to Indonesian migrant workers to protect them from such practices as illegal placement, trafficking in persons and forced labour.

* * *

271. *Mindful of the many recent international initiatives to improve the regulation of labour recruitment and placement services,*¹³³ *the Committee emphasizes that effective regulation and monitoring of recruitment practices in line with internationally recognized labour and human rights standards is an essential component of measures to prevent migrant workers from experiencing fraudulent and abusive conditions, including migration in irregular situations and through extreme examples such as trafficking in persons and forced labour. It is also important to identify victims of trafficking and forced labour expeditiously and offer them effective assistance and protection. The Committee is pleased to note the many positive initiatives to regulate recruitment processes at the national level, reported by member States, including the provision of practical services and measures to prevent irregular migration.*

272. *The Committee notes the comments of certain governments and of employers' and workers' organizations, including the IOE, the ITUC and the AFL-CIO, of the need for fair and transparent recruitment and further international cooperation on recruitment to prevent labour migration in abusive conditions. Further, recognizing the needs for effective enforcement and monitoring mechanisms, the Committee considers that such cross-border cooperation would enhance the effectiveness of the existing, wide-ranging national measures by ensuring that they are regularly and consistently implemented and enforced in and across migration corridors.*

273. *The Committee reminds member States that ILO technical assistance is available in this regard.*

¹³² For example, *Jamaica, Pakistan, Romania, Suriname* and *United States*. In *Latvia*, national guidelines for the prevention of human trafficking (2014–20) include cross-sectoral cooperation and collection of information.

¹³³ See paras 25–43 *supra* – current trends and ILO initiatives; see further Andrees, B., Nasri, A. and Swiniarski, P.: *Regulating labour recruitment to prevent human trafficking and to foster fair migration: Models, challenges and opportunities* (Geneva, ILO, 2015). For a discussion on innovative approaches to this problem, including a joint liability approach, or approaches that include giving workers a voice through workers' organizations, see Gordon, J.: *Global labour recruitment in a supply chain context*, Fundamentals working papers (Geneva, ILO, 2015).

Chapter 5

Protection of migrant workers: Minimum standards

274. In this chapter, the Committee considers the reports provided by member States in relation to the rights of migrant workers in an irregular situation. The Committee recalls that the instruments do not affect in any way the sovereign right of member States to determine which non-nationals may enter and remain in their territories and that it is left to each State to determine the manner in which it organizes or refuses the potential entry of migrant workers.¹ Recognizing that irregular migration is a significant global and complex issue² involving important human rights challenges, Convention No. 143 contains a number of provisions intended to ensure a basic level of protection to all migrant workers, including those in an irregular situation.³ These include the basic human rights of all workers, rights arising out of past employment for migrants in an irregular situation, and rights related to expulsion.

Basic human rights

Human rights for all migrant workers

Pursuant to Article 1 of Convention No. 143:

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

275. Part I of Convention No. 143 recognizes the need for both countries of origin and destination to ensure full respect of human rights of all migrant workers, including those in an irregular situation. The intention of Article 1 is to affirm, without challenging the right of States to regulate migration flows, the right of migrant workers to be protected, whether or not they are in a regular situation, or with or without documents. Delegates to the International Labour Conference, discussing the instruments in 1975, emphasized that Article 1 aimed to comply with a United Nations resolution inviting States to adopt measures to ensure that the human rights of migrant workers who entered their territory

¹ It should be noted that there can be some restrictions on this discretion, for example, as through the application of the principle of non-refoulement, international human rights, and humanitarian law.

² See ILO: *Italy*, Conclusions of the Committee on the Application of Standards, ILC, 99th Session, Geneva, 2009 and *Italy* – CEACR, Convention No. 143, observation, 2010.

³ For a definition of the terms “migrant worker in an irregular situation” and “irregular migration”, see paras 119–120 *supra*.

surreptitiously were fully respected;⁴ the Employer Vice-Chairperson stated that “the commitment of all States to respect the basic human rights of all migrant workers [was] at the very root of the whole matter.”⁵

Scope of “basic human rights” for migrants in an irregular situation

276. Article 1 of Convention No. 143 does not define the notion of “basic human rights”. The Committee, in its previous General Survey, indicated that Article 1 referred to the fundamental human rights contained in the international instruments adopted by the United Nations in this domain, some of which include the fundamental rights of workers.⁶ Notably, these include the fundamental rights at work as embodied in the eight ILO fundamental Conventions and reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work, 1998.⁷

277. Noting that many universal and regional instruments recognize fundamental principles and rights at work,⁸ the Committee particularly notes the provisions on fundamental principles and rights at work that apply to all migrant workers contained in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.⁹ In this regard, the Committee notes that, in their reports submitted for the purposes of this General Survey, some countries referred to international or regional human rights treaties and Conventions,¹⁰ notably the UN Convention on Migrant Workers,¹¹ and the ILO fundamental Conventions.¹² The Committee considers that the UN Convention on Migrant Workers and the ILO instruments on labour migration are complementary and mutually reinforcing.

278. The UN Convention on Migrant Workers elaborates on the human rights pertaining to all migrant workers and members of their families, including those in an irregular

⁴ General Assembly Resolution 3224 (XXIX) 6 November 1974, on Measures to improve the situation of migrant workers. See ILO: *Record of Proceedings*, ILC, 60th Session, Geneva, 1975, p. 641 (First Report of the Committee on Migrant Workers, para. 29: (paragraph 4(c)).

⁵ *ibid.*, p. 791.

⁶ The Universal Declaration of Human Rights, 1948, and the nine core human rights instruments, in particular the International Covenant on Civil and Political Rights, 1966; the International Covenant on Economic, Social and Cultural Rights, 1966, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.

⁷ The Committee has underscored the universal application of the ILO fundamental Conventions to all persons in the world, including migrant workers in an irregular situation: ILO: *General Survey on the fundamental Conventions*, 2012), para. 19. With respect to the application of the ILO fundamental Conventions to migrant workers, see paras 63, 79–80 (freedom of association); paras 295, 297–299 (forced labour and trafficking in persons); paras 453–454, 483, 580 (child labour, trafficking); paras 776–781, 821 (non-discrimination), and paras 941–943, 953 and 957 (relating to all fundamental Conventions).

⁸ For an overview see ILO: *General Survey on the fundamental Conventions*, 2012, paras 21–43.

⁹ See the non-discrimination principle in Part II (Article 7) and Part III (Human Rights of All Migrant Workers and Members of their Families) of the UN Convention on Migrant Workers. As of 30 September 2015, there were 48 State parties and 38 Signatories to the Convention, the majority of which are recognized countries of origin. See also Committee on Migrant Workers, *General Comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, (CMW/G/GC/2, 28 August 2013).

¹⁰ For example, *Cameroon, Colombia, Ecuador, Niger, Romania, Spain, Togo, Turkey and Ukraine*.

¹¹ For example, *Algeria, Argentina, Azerbaijan, Bangladesh, Cabo Verde, Ecuador, Egypt, El Salvador, Honduras, Indonesia, Mali, Morocco, Nicaragua, Niger, Togo and Turkey*.

¹² For example, *Australia, Cabo Verde, Colombia, Egypt, Eritrea, Gabon, Georgia, Honduras, Indonesia, Jamaica, Nicaragua, Qatar, Sudan, Suriname and Viet Nam*.

situation.¹³ These rights include the right to life (Article 9), protection against inhumane or degrading treatment (Article 10), freedom of thought and religion (Article 12(1)), equal access to legal proceedings (Article 18(1)), etc. The UN Convention also refers to the principle of no less favourable treatment of migrant workers with nationals with respect to remuneration; and that States shall take appropriate measures to ensure that migrant workers are not deprived of any of the rights derived from this principle by reason of the irregularity of their stay, etc (Article 25(1) and (3)).

279. Under international human rights law, everyone, without discrimination, must have access to the protection of basic human rights.¹⁴ In this context, differences of treatment between citizens and non-citizens, or between different groups of non-citizens, can be made only if they are consistent with international human rights obligations, justified by a legitimate objective, and proportional to the achievement of that objective.¹⁵

280. While migrants in an irregular situation are normally not permitted to work, the Committee is mindful of the fact that, in practice, many are employed in hazardous conditions and subject to harassment, including sexual harassment, and poor conditions of work including low or non-payment of wages.¹⁶ In this regard, the Committee has noted in the context of the examination of government reports on the application of fundamental Conventions, the particular vulnerability of women migrant workers, especially those employed in occupations such as domestic work, agriculture, manufacturing and the entertainment industry, to violations of their basic human rights.¹⁷

¹³ See the general non-discrimination principle in Part II (Article 7) and Part III (Human Rights of All Migrant Workers and Members of their Families) of the UN Convention on Migrant Workers. As of 30 September 2015, there were 48 State parties and 38 Signatories to the Convention, the majority of which are recognized countries of origin. See also CMW, *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families* (CMW/G/GC/2), 28 Aug. 2013.

¹⁴ In its *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families*, the CMW has stated that the non-discrimination clause as found in Article 7 of the UN Convention on Migrant Workers is applicable to the rights of all migrant workers, as found in Part III of the Convention (CMW/C/GC/2), 28 August 2013, para. 19.

¹⁵ See for example also: United Nations Committee on the Elimination of Racial Discrimination (CERD) *General Recommendation No. 30 on discrimination against non-citizens*, 10 Jan. 2004, para. 4: “Under the Convention differential treatment based on citizenship or immigration status will constitute discrimination if the criteria for such differentiation, judged in the legitimate light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim”; Committee on Economic, Social and Cultural Rights (ESCR): *General Comment No. 20 on non-discrimination in economic, social and cultural rights* (2009), para. 13: “Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. ... In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realised and the measures or omissions and their effects” (E/C.12/GC/20); and Human Rights Committee (CCPR), *General comment No. 18 on non-discrimination*, 1989, para. 13: “not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant”. With regard to distinctions or measures not deemed to be discrimination under Convention No. 111, see also ILO: *General Survey on the fundamental Conventions*, 2012, paras 826–837.

¹⁶ See OHCHR: *The economic, social and cultural rights of migrant workers in an irregular situation* (New York and Geneva, 2014), p. 112; *Report of the Special Rapporteur on the Human Rights of Migrants*, Human Rights Council, 26th Session (A/HRC/26/35), 3 Apr. 2014, paras 16, 33, 36 and 57.

¹⁷ See for example the following paragraphs in ILO: *General Survey on the fundamental Conventions*, 2012: forced labour (domestic work) (paras 295 and 942); non-discrimination (domestic work and agriculture) (paras 780,795, 947 and 965), and the vulnerability of domestic workers generally (para. 966). See also *Mauritius* – CEACR Convention No. 87, observation, 2015 (export processing zones) and *Thailand* – CEACR, Convention No. 29, observation, 2012 (sex industry).

The Inter-American Court of Human Rights and the rights of migrant workers in an irregular situation

In 2003, the Inter-American Court on Human Rights issued an Advisory Opinion reinforcing the application of international labour standards to non-national workers, particularly those in an irregular status. The Court found that non-discrimination and the right to equality applied to all residents regardless of their migration status, and States thus cannot restrict the labour rights of unauthorized workers, including their equal rights to social security; and that once the employment relationship is initiated, unauthorized workers are entitled to the full panoply of labour and employment rights available to authorized workers. The Court took the unanimous view that:¹

The migratory status of a person can never be a justification for depriving him [or her] of the enjoyment and exercise of his [or her] human rights, including those related to employment. On assuming an employment relationship, the migrant acquires rights as a worker, which must be recognized and guaranteed, irrespective of his [or her] regular or irregular status in the state of employment. These rights are a consequence of the employment relationship.

While advisory opinions are not legally binding, they produce legal effects not only on the State or organ requesting an advisory opinion, but also on all member States of the Organization of American States (OAS). Moreover, the Court has since reiterated that the principle of equality before the law, equal protection and non-discrimination applies to undocumented workers in its contentious jurisdiction. For example, in *Vélez Loo v. Panama*, the Court ruled that “States should respect human rights and guarantee their exercise and enjoyment to all persons who are within their territory, without discrimination based on their regular or irregular status, or their nationality, race, gender or any other reason”.²

¹ *Juridical Condition and Rights of Undocumented Migrants*, Advisory Opinion OC-18/03, Inter-American Court of Human Rights, (ser. A) No. 18, 17 Sep. 2003.

² Judgment of 23 November 2010, Inter-American Court of Human Rights (ser. C) No. 218, para. 100. *Pacheco Tineo Family v. Plurinational State of Bolivia* (judgment of 25 November 2013, Inter-Am. Ct. H.R. (ser. C) No. 272, para. 129).

See further: Inter-Parliamentary Union, ILO and OHCHR: *Migration, human rights and governance: Handbook for Parliamentarians*, No. 24 (Geneva, 2015).

Varied levels of protection

281. Most countries that reported on Article 1 referred to the protection of basic human rights in their national constitutions, and the Committee notes the varied nature of constitutional provisions relating to fundamental principles and rights at work. Some guarantee fundamental rights and freedoms for “all persons”, “for everyone”¹⁸ or for “inhabitants”.¹⁹ Other countries reported that the constitutional provisions guarantee equal rights for citizens and foreign nationals,²⁰ irrespective of nationality,²¹ while yet other governments referred to constitutional provisions guaranteeing equality of rights and liberties for all, unless provided otherwise by the constitution or national legislation, which limit these rights for reasons of public order and interest.²²

282. The Committee notes, however, that the extent to which these constitutional provisions apply and may lead to meaningful and enforceable protection and redress for migrant workers, in particular those in an irregular situation, is not always obvious. The

¹⁸ For example, *Bosnia and Herzegovina, Czech Republic and Jamaica*.

¹⁹ For example, *Argentina, El Salvador, Uruguay and Bolivarian Republic of Venezuela*.

²⁰ For example *Albania*.

²¹ For example *Azerbaijan*, article 25 of the Constitution.

²² For example *Belarus, Cabo Verde, Costa Rica and Honduras*.

Committee observes that in some countries constitutional provisions on equality of treatment only apply to citizens²³ or residents.²⁴

283. The Committee notes the same lack of legal clarity in labour and migration laws, including provisions guaranteeing fundamental rights at work, regarding their application to all migrant workers. A number of member States, such as *Belarus*, *Pakistan* and *Zimbabwe*,²⁵ reported that labour law, including provisions concerning fundamental rights, covered all workers unless specified otherwise.

284. Little information was provided by member States on the extent to which they respect the basic human rights of migrants in an irregular situation in particular. Some countries, including *Argentina*, *Italy* and *Portugal*, reported that the constitution or national legislation specifically covered migrant workers in an irregular situation. The Government of the *United States* indicated that all federal labour and employment law generally applied to all workers, regardless of immigration status.²⁶ The Government of *Mexico*, for example, indicated that its Migration Act²⁷ guarantees all migrants in an irregular situation the right to be treated without discrimination and with due respect for the human rights, with special attention devoted to women, as well as certain groups such as persons with disability and indigenous peoples. The Government of *Australia* reported that the Human Rights Act 2004 (Australian Capital Territory (ACT)) provided that everyone, without distinction, has the right to enjoy his or her human rights.

Fundamental principles and rights at work

285. Having reviewed the reports provided by member States, the Committee notes that many countries referred to relevant legal provisions or policies aimed at protecting migrant workers from the worst forms of child labour and forced labour, including trafficking in persons.²⁸ Many countries also emphasized the principle of non-discrimination with respect to the protection of human rights.²⁹ Specifically, with regard to child labour, the Committee notes the information provided by the Government of *Mexico* that in the context of the project “Stopping child labour in agriculture”, it was carrying out a third phase of technical cooperation with special focus on indigenous children and child labour as a consequence of the migration of agricultural day labourers and their families.

²³ See for example article 18 of the Constitution of the Kingdom of *Bahrain*.

²⁴ For example, *Cuba* (article 34 of the Constitution).

²⁵ Constitution of 2013, and Labour Act [Chapter 28:01], Part II, sections 4, 4A-6 and 11 (amended 2006).

²⁶ According to the Government, the following legislation applies to migrant workers regardless of immigration status: the National Labour Relations Act (NLRA) 29 US Code, paras 151–169 of which guarantee the right to organize and collective bargaining; however, the NLRA excludes agricultural workers and domestic workers from its coverage; The US Code, Chapter 77, Title 18, prohibits forced labour of any person in the United States; and the Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment on the basis of national origin, race, colour, sex or religion.

²⁷ Sections 2 and 67 of the Migration Act 2011, as amended.

²⁸ For example, *Antigua and Barbuda*, *Australia*, *Burkina Faso*, *Côte d’Ivoire*, *Czech Republic*, *Eritrea*, *France*, *Gabon*, *Indonesia*, *Japan*, *Republic of Korea*, *Latvia*, *Lesotho*, *Mauritania*, *Mexico*, *Namibia*, *Nicaragua*, *Pakistan*, *Panama*, *Romania*, *Seychelles*, *Spain*, *Sudan*, *Suriname*, *United Republic of Tanzania*, *Togo*, *Trinidad and Tobago*, *United States* and *Uganda*. For the difficulties in application of the fundamental Conventions on child labour, see ILO: *General Survey on the fundamental Conventions*, 2012, paras 453–454, 483 and 580.

²⁹ For example, *Algeria*, *Argentina*, *Australia*, *Bahrain*, *Bulgaria*, *Costa Rica*, *Djibouti*, *Ecuador*, *Egypt*, *Gambia*, *Guatemala*, *Lao People’s Democratic Republic*, *Madagascar*, *Mauritius*, *Mexico*, *Bolivarian Republic of Venezuela* and *Viet Nam*.

286. However difficulties continue to exist in ensuring respect of fundamental rights, particularly the right to freedom of association,³⁰ the protection from discrimination and freedom from forced labour, for all migrant workers. The ITUC indicated that national laws worldwide deny the guarantee of fundamental rights to migrant workers in an irregular situation. Many workers' organizations highlighted the vulnerability of migrant workers in an irregular situation to exploitation.³¹

Trade union rights

287. The labour migration instruments underscore the fundamental principle that migrant workers should enjoy freedom of association. In this regard, the Committee recalls the general principle set out in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that the right to organize should be guaranteed to all workers, without distinction or discrimination of any kind.³² This means that anyone working in the country, whether or not they have a residence permit, should benefit from the trade union rights provided in Convention No. 87, without any distinction based on nationality.³³

288. In this regard, the Committee welcomes the En Banc Decision of the Supreme Court of the *Republic of Korea*, which found that: "persons living on wages, salary or other equivalent from of income earned in pursuit of any type of job, fall under the category of workers under the Trade Union and Labour Relations Adjustment Act (TULRAA), and even if he/she is a foreigner not qualified for employment, he/she cannot be seen as being beyond the scope of worker as prescribed by the TULRAA, and thus a foreign worker who does not have the status of sojourn eligible for employment may organize or join trade unions".³⁴ The Decision opened the way to the recognition of a migrant workers trade union in the country which had been denied registration due to its composition which included irregular workers.³⁵

289. While the majority of countries now recognize the right to freedom of association, the Committee must note that little information has been received on the extent to which migrant workers in an irregular situation effectively enjoy this right in law or in practice. The Committee has noted that in some countries the legislation remains unclear as to whether migrant workers, irrespective of their legal status, can form and join trade

³⁰ Trade union rights of migrant workers in a regular situation will be discussed in Chapter 6 of the General Survey.

³¹ For example, the Single Confederation of Workers of *Colombia* (CUT), the Confederation of Workers of *Colombia* (CTC), and the *New Zealand* Council of Trade Unions (NZCTU), the General Workers Union of *Portugal* (UGT) and the General Confederation of Portuguese Workers (CGTP-IN), and the Trade Union Confederation of Workers' Commissions (CCOO) of *Spain*. The General Confederation of Labour of the *Argentine Republic* (CGT RA) underlined the importance of fighting informal employment with a view to integrating migrant workers into the labour market, while at the same time giving them access to fundamental labour and human rights.

³² Article 2 of Convention No. 87. As of 30 November 2015, Convention No. 87 had been ratified by 153 member States.

³³ In this regard see *Spain* – CEACR, Convention No. 87, observation, 2011. The Committee welcomed the decision of the Constitutional Court of Spain (Rulings Nos 236/2007 of 7 November and 259/2007 of 19 December 2007), which found unconstitutional the requirement imposed on foreign nationals to be legally resident in the country in order to benefit from the right to organize or to join an occupational organization freely under the same conditions as those applicable to nationals. This led to the amendment of Basic Act No. 4/2000, now no longer imposing such requirement.

³⁴ Supreme Court En Banc Decision 2007Du4995 of 25 June 2015.

³⁵ The Government issued a certificate of registration of the Seoul-Gyeonggi Migrants' Trade Union (MTU) on 20 August of 2015.

unions.³⁶ In other countries, only migrant workers with residence status, who are lawfully in the country³⁷ or who have a work permit can join trade unions,³⁸ contrary to the Convention.

Equality and non-discrimination

290. The “basic human rights”, referred to in Article 1 of the Convention, include the fundamental right to non-discrimination embodied in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The Committee recalls that the principle of non-discrimination enshrined in Convention 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 does not require member States to eliminate distinctions or preferences on the basis of nationality.³⁹ ***However, Convention No. 111 applies to all workers, nationals and non-nationals, in the countries which have ratified it, and the Committee has noted that migrant workers in an irregular situation should enjoy protection against discrimination with respect to the grounds set out in that Convention.***⁴⁰ Xenophobia against non-nationals, and in particular, migrants, constitutes one of the main sources of contemporary racism,⁴¹ and the Committee has emphasized the importance of specific steps being taken against social and cultural stereotypes that contribute to discrimination against migrants.⁴² In this context, the Committee has also noted the importance of measures to ensure that the economic and financial crisis do not hamper the enjoyment of migrant workers’ human rights.⁴³ The General Workers’ Union (UGT) of *Portugal* indicated in this regard that the economic crisis, together with the changes in the labour market and the rise in unemployment, increased the vulnerability of migrant workers, particularly women migrant workers, low and medium-skilled migrant workers, and young migrants.

291. While most countries reaffirmed their commitment to the principle of equality and non-discrimination, few countries provided information addressing how this principle applied to migrant workers in an irregular situation.⁴⁴ In this connection, some trade

³⁶ See for example, *Albania* – CEACR, Convention No. 143, observation, 2014.

³⁷ See for example, *Hong Kong Special Administrative Region* (section 17 of the Trade Union Ordinance refers to “ordinarily resident”).

³⁸ *Lebanon* (section 92 of the Labour Code of 1946).

³⁹ Article 1(1)(a) and Article 2 of Convention No. 111. In this regard, the Committee further recalls that nationality is different from national extraction, which “covers distinctions made on the basis of a person’s place of birth, ancestry or foreign origin. Discrimination based on national extraction may be directed against persons who are nationals of the country in question, but who have acquired their citizenship by naturalization or who are descendants of foreign immigrants, or persons belonging to groups of different national extraction living in the same State”, see *General Survey on the fundamental Conventions*, 2012, para. 764. As of 30 November 2015, Convention No. 111 had received 172 ratifications.

⁴⁰ See several observations regarding the *Dominican Republic* – CEACR, Convention No. 111, observations, from 2009 to 2015; ILO: *General Survey on the fundamental Conventions*, 2012, paras 776–781.

⁴¹ “Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere” (A/HRC/20/33), para. 2); Report of the Special Rapporteur on the Human Rights of Migrants to the Human Rights Council, 26th Session (A/HRC/26/35, 3 Apr. 2014), paras 16, 33, 36 and 57; and *Italy* – CEACR, Convention No. 143, observations, 2009 and 2010.

⁴² *Dominican Republic* – CEACR, Convention No. 111, observations, 2014 and 2015 and *Italy* – CEACR, Convention No. 143, observations 2009 and 2010.

⁴³ *Portugal* – CEACR, Convention No. 143, direct request, 2014.

⁴⁴ *Burkina Faso* stated that foreigners do not need an authorization to settle in the country or work and that therefore, the principle of non-discrimination applies to all workers, irrespective of their nationality or migration

unions drew attention to the fact that discrimination often occurred in practice, despite nominally equal application of the law.⁴⁵

292. In this regard, the ITUC indicated that stereotyped perceptions, xenophobic attitudes and unbalanced and inaccurate media reporting resulted in unequal treatment of migrant workers in employment and occupation. The General Confederation of Labour (CGT) of *France* and the Trade Union Confederation of Workers' Commissions (CCOO) of *Spain* indicated that statements by political leaders led to the stigmatization of migrants or nourished xenophobic attitudes. The General Confederation of Labour–Force Ouvrière (CGT–FO) of *France* underlined the importance of regularly diffusing accurate statistics to combat false statements, especially with regard to the impact of immigration on public finances and social protection.

293. A number of countries have reported on specific measures aimed at addressing xenophobia and racial discrimination against migrant workers. For example, the *Australian* Government reported that the National Anti-Racism Partnership draws on the existing expertise on anti-racism and multicultural matters across government and non-government representatives to successfully raise community awareness about racism and to empower individuals and organisations to prevent and respond effectively to racism. The Government of the *Czech Republic* referred to campaigns with a general focus against xenophobia and prejudices in society and on enhancing tolerance of difference.

294. Further, the Committee notes that some countries consider the irregular entry or stay an offence, including a criminal offence, sanctioned with a fine or imprisonment.⁴⁶ In this regard, the Committee notes the views expressed by the United Nations Committee on the Protection of the Rights of Migrant Workers (CMW) and the Special Rapporteur on the Human Rights of Migrants that irregular entry or stay should not be considered a criminal offence, and that migrants in an irregular situation are not criminals per se and should not be treated as such. The CMW also considered that such criminalization fosters public perceptions that migrant workers and members of their family in an irregular situation are “illegal” or unfair competitors for jobs and social

status. The Government of *Costa Rica* reported that migrants workers in an irregular situation still benefit from the protection of all labour laws because section 4 of the Labour Code, as amended, defines workers as “all physical person which provides a service to another or others”.

⁴⁵ For example, the CTC and the CUT of *Colombia*, the NZCTU of *New Zealand* and the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) of the *United States*.

⁴⁶ See for example, *Italy* – CEACR, Convention No. 143, observation, 2009 and *Italy* – CEACR, Convention No. 29, direct request, 2010 relating to section 10bis of the Act of 25 July of 1998 regulating immigration and the status of foreign nationals, under the terms of which “illegal entry and residence of migrants” constitute a criminal offence. Other examples of legislation criminalizing both irregular entry and stay of foreigners punishable with a fine and or imprisonment include *Cyprus* (section 19(2) of the Aliens and Immigration Act); in the *United Kingdom*, section 8(3) of the draft Immigration Bill, by inserting section 24B in the Immigration Act 1971, would introduce the crime of “illegal working”, punishable with imprisonment or a fine, or both. In other countries, the irregular entry of the foreigner is considered a criminal offence, such as for example in *Bulgaria* (section 279 of the Criminal Code); *Finland* (Chapter 17, section 7 of the Criminal Code); *Latvia* (section 284 of the Criminal Law); *Lithuania* (section 291 of the Criminal Code) and *Romania* (section 70 of the Government Emergency Ordinance no. 105/2001 concerning the state border of Romania). In yet other countries, irregular entry or stay, are offences, and are being sanctioned with a fine or imprisonment, for example: *Austria* (section 120 of the Alien's Police Act); *Belgium* (section 75 of the Immigration Act) and *Denmark* (section 59(1) of the Aliens Act); *Singapore* (section 6(1) and (3), section 9(5) and section 15 of the Immigration Act). However, pursuant to sections 6(3)(a) and 15(3)(b) of the Act, a person who is guilty of the offence of entry without a valid permit and of remaining in Singapore after cancellation of any permit for more than 90 days shall, on conviction, subject to sections 325(1) and 330(1) of the Criminal Procedure Code 2010, be punished with caning with not less than three strokes); *South Africa* (section 49(1)(a) of the Immigration Act). Further on this issue, the General Federation of *Tunisian* Workers (UGTT) indicated that foreign workers without a valid permit are subject to paying a fine to exit the country.

benefits, thereby fuelling, discrimination and xenophobia.⁴⁷ *Mindful that such criminalizing may increase the vulnerability of migrant workers to violations of their basic human rights,*⁴⁸ *the Committee stresses the particular importance of measures to combat stereotypes and prejudices of migrants as being more susceptible to crime or violence and to protect all migrant workers from racial discrimination and xenophobia.*

Gender equality

295. The Committee welcomes the legislation in a number of countries of origin providing for the principle of equality and prohibiting gender discrimination, or including special measures of assistance and support with respect to certain groups. For example, the Foreign Employment Act of *Nepal* prohibits gender discrimination and provides that the Government may provide special facilities for women, as well as certain groups such as Dalit or indigenous persons. Institutions sending workers for foreign employment must reserve a certain percentage of those deployed for women and these groups.⁴⁹ The Overseas Employment Migrants Act of *Bangladesh* provides for the principle of equality to be applied at all times and prohibits discrimination on a wide range of grounds including gender, birth, colour, age, ethnicity or national origin, religion, marital or social identity.⁵⁰ However, the Committee notes that these laws include exceptions to this principle.⁵¹ The Migrant Workers and Overseas Filipino Act of the *Philippines* recognizes “the contribution of overseas migrant women workers and their particular vulnerabilities” and provides that “the State shall apply gender sensitive criteria in the formulation and implementation of policies and programmes affecting migrant workers and the composition of bodies tasked for the welfare of migrant workers”.⁵²

296. The Committee notes that in this regard, the ITUC indicated that women migrant workers in an irregular situation were particularly prone to gender-based violence, multiple discrimination in the labour market and exclusion from social protection including access to sexual and reproductive health facilities. The Confederation of *Turkish* Trade Unions (TÜRK-İŞ) indicated that most women migrant workers in an irregular situation worked in domestic services and the entertainment sector, while their male counterparts worked in construction, the garment sector, agriculture, seafaring, cleaning, the hotel trade or as sales clerks.

297. The Committee further notes that legislation in some countries prohibits entry on the basis of sexual orientation.⁵³

Protection from forced labour

298. The ILO instruments on forced labour⁵⁴ contain no provisions limiting the scope of their application. These instruments are designed to protect all categories of workers in

⁴⁷ See CMW: *General comment No. 2 on the rights of migrant workers in an irregular situation and members of their families* (CMW/C/GC/2), 28 August 2013, paras 2 and 24; and *Report of the Special Rapporteur on the human rights of migrants*, Human Rights Council, 20th Session (A/HRC/20/24), 2 Apr. 2012, para. 13).

⁴⁸ See also para. 498 *infra*.

⁴⁹ Section 9(1) and (2) of the Foreign Employment Act of 2007.

⁵⁰ Section 6 of the Overseas Employment Migrants Act of 2013.

⁵¹ See para. 541 *infra*.

⁵² Section 2(d) of the Migrant Workers and Overseas Filipinos Act of 1995 (RA No. 8042).

⁵³ *Belize* (section 5(1)(e) of the Immigration Act) and *Trinidad and Tobago* (section 8(1)(e) of the Immigration Act) prohibit entry to homosexuals.

the countries which have ratified them from the imposition of forced labour.⁵⁵ The Committee, on numerous occasions has expressed concern about the vulnerable situation of migrant workers who may be subject to abusive practices by employers which cause their employment to be transformed into situations that could amount to forced labour. The Committee has considered it necessary that governments adopt measures to protect this category of workers, for example by adopting legislative provisions specially tailored to the difficult situation they face, by controlling the activities of private recruitment agencies, with a view to suppressing any exploitation, or by providing the necessary assistance to enable them to assert their rights and denounce the abuses of which they may be victims. The Committee has indicated that the measures taken to protect migrant workers from the exaction of forced labour should be taken regardless of their legal status.⁵⁶ In this regard, the newly adopted Protocol of 2014 to the Forced Labour Convention, 1930, recognizes that certain groups of workers have a higher risk of becoming victims of forced or compulsory labour, especially migrants. As a consequence, both the Protocol and Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), contain a number of provisions aiming at addressing the specific situation of migrant workers. Article 4 of the Protocol provides that victims of forced or compulsory labour, “irrespective of their presence or legal status in the national territory”, have access to appropriate and effective remedies, such as compensation, and should be protected from punishment for unlawful activities that they were compelled to commit.⁵⁷

299. Some of the information provided by member States and some workers’ organizations concerning legal and practical measures aimed at eradicating forced labour and combating trafficking are discussed in Chapters 4 and 8. The Committee notes in particular the information provided by the Government of the *United States* that cases of forced labour, including trafficking in persons, involving migrant workers, often involve cases of discrimination based on national origin and race, including harassment, sexual exploitation, and setting different terms and conditions of employment. The Committee welcomes in this regard the efforts by the Equal Employment Opportunities Commission (EEOC) to enforce federal laws on non-discrimination, particularly those prohibiting discrimination on the bases of race, national origin, and sex, including sexual harassment, as an integral part of the fight against trafficking in persons.⁵⁸

300. *The Committee emphasizes that, with respect to the basic human rights referred to in Article 1 of Part I of Convention No. 143, member States must respect the fundamental rights at work of all migrant workers, including migrants in an irregular situation, in particular those that are embodied in the ILO fundamental Conventions and recognized in universal and regional human rights instruments.*

⁵⁴ The Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), and the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).

⁵⁵ Forced labour is defined as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”.

⁵⁶ See ILO: *General Survey on the fundamental Conventions*, 2012, para. 295.

⁵⁷ The ILO forced labour instruments complement and strengthen existing international law including the Palermo Trafficking Protocol (2000).

⁵⁸ For further information on the link between forced labour, including trafficking in persons, and non-discrimination, see: <http://www.eeoc.gov/eeoc/interagency/trafficking.cfm> (consulted December 2015). Regarding national origin discrimination against Thai farmworkers hired under the H2-A temporary visa programme, see www.eeoc.gov/eeoc/newsroom/release/9-5-14.cfm (consulted December 2015).

301. *Recalling that respect for fundamental principles and rights at work should not be limited by a worker's nationality or migration status, the Committee considers that the adoption of specific legislative provisions to ensure the application of basic human rights to all migrant workers, both men and women, including those who are in an irregular situation, would increase legal certainty as regards their basic rights and accordingly improve protection. Notwithstanding this, the Committee observes that despite the adoption of constitutional and legislative provisions, the human rights, including fundamental rights at work, of migrant workers remain unfulfilled in many parts of the world.*

302. *The Committee recalls that, pursuant to Article 1 of the Convention, all migrant workers, including those in an irregular situation, should enjoy trade union rights in law and practice. The right for all workers to establish organizations of their own choosing is an enabling right, contributing to the effective attainment of other fundamental principles and rights at work and making it possible to promote and realize decent conditions at work.*

Rights arising out of past employment

Rights of migrants in an irregular situation

Article 9(1) of Convention No. 143 provides that:

Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

Paragraph 34 of the Migrant Workers Recommendation, 1975 (No. 151), states that:

- (1) A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his or her stay:
- (a) to any outstanding remuneration for work performed, including severance payments normally due;
 - (b) benefits which may be due in respect of any employment injury suffered; and
 - (c) in accordance with national practices
 - (i) to compensation in lieu of any holiday entitlement acquired but not used;
 - (ii) to reimbursement of any social security contributions which have not given or will not give rise to rights under national laws or regulations or international agreements. Provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants.

303. Article 9(1) of Part I of Convention No. 143 and the corresponding provisions in Recommendation No. 151 aim to ensure that migrant workers in an irregular situation and engaged in unlawful employment should not be deprived of their rights for the work they have actually performed. Furthermore, in the event of a dispute, these migrant workers should be able to present their cases to a competent body.⁵⁹ Although Article 9(1) advocates equal treatment, it does not specify that such equality is with nationals. Equality of treatment between nationals and migrant workers in a regular situation is the subject of Part II of Convention No. 143, and will be discussed in

⁵⁹ Article 9(2) of Convention No. 143; see Chapter 8 infra.

Chapter 6 of this Survey. It seems from the context of this provision that Article 9(1) should be understood as requiring migrant workers in an irregular situation to enjoy equality of treatment with lawfully employed migrants in a regular situation and not with nationals of the country of immigration.

304. From a review of the governments' reports, the Committee notes the lack of specific information provided on this issue. A number of governments reported that their national labour laws applied to workers without distinction as to nationality⁶⁰ or that, generally, workers who left the country were entitled to payment of outstanding wages and benefits.⁶¹ Other governments reported in general terms that migrant workers could claim their rights, without specifying whether this included migrants in an irregular situation.⁶² In relation to provisions of the labour law that apply generally without distinctions based on nationality, the Committee is mindful that migrants in an irregular situation will find it difficult to claim their rights, or to gain access to the courts, especially due to the fear of deportation.⁶³ The Committee notes that in cases where the contract of employment of the migrant worker in an irregular situation is null and void, they can result in the migrant workers being unable to ascertain any rights arising out of past employment. Certain governments reported that migrant workers in an irregular situation had no claim, for example, because a violation of the contractual provisions on the part of the employer nullified the contract, meaning the migrant worker would have no contractual basis on which to claim.⁶⁴

Remuneration

305. Certain governments such as for example *Bulgaria*⁶⁵ reported that migrants in an irregular situation have specific rights arising out of past employment with respect to remuneration. The Government of the *Republic of Korea*, for example, indicated that regardless of the status of migrant workers who leave the country, any foreign worker who provided labour and is entitled to wages had the right to receive unclaimed wages for the service period. The Committee welcomes the steps taken by some member States of the European Union to transpose the provisions of the Employer Sanctions Directive⁶⁶ into national legislation. For example, the Government of *Greece* reported that pursuant to the legislation transposing the Directive, third-country nationals

⁶⁰ For example, *Austria* and *Finland*.

⁶¹ For example, the *United States* indicated that US federal courts can hear cases of non-immigrant visa holders who have returned to their country and who were seeking to recover wages they should have earned while in the United States.

⁶² For example, *Australia*, *Republic of Korea* and *Trinidad and Tobago*.

⁶³ See Chapter 8, *infra*.

⁶⁴ See for example, *Cameroon* – CEACR, Convention No. 143, observation, 2013; and para. 492 *infra*. In this regard, the General Union of *Tunisian Workers* (UGTT) stated that only regular status migrant workers benefited from the provisions regarding the transfer of rights arising out of past employment according to the provisions of the employment contract; migrants in an irregular situation must leave the country in the case of the invalidity of their residence permit and do not enjoy any social security benefits.

⁶⁵ *Bulgaria* (section 73(3) of the Employment Encouragement Act of 2001 provides that an employer shall pay outstanding remuneration to a migrant worker in an irregular situation); see also *Albania* – CEACR, Convention No. 143, direct request, 2013: section 137(1)(d) and (e) and (2) of the Law on Foreigners No. 108 of 28 March 2013, which provides that in the case of unlawful employment of a foreigner, the employer shall pay the arrears for the work performed and of the taxes and social contributions; unlawful employment of at least six months shall be presumed unless the employer proves otherwise.

⁶⁶ Paragraph 14 and Article 6(1) and (2) of the Directive 2009/52/EC of the European Parliament and the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (Employer Sanctions Directive).

employed without authorization have recourse to courts and authorities to claim any unpaid remuneration and to protect their legal rights in general, and have the relevant court decisions enforced against their employers, even if they have returned or have been returned to their countries of origin.⁶⁷

306. In this connection, the Committee notes however that the ITUC indicated that in a number of countries, migrant workers in an irregular situation do not have the right to claim unpaid or withheld wages,⁶⁸ despite the terms of Paragraph 34(1)(a) of Recommendation No. 151. The Committee highlights that this situation is particularly unfair, as a worker has provided labour without any financial compensation.

Social security rights and benefits

307. With respect to social security benefits arising out of past employment, Article 9(1) of the Convention needs to be read in connection with Paragraph 34 of Recommendation No. 151. The Committee notes that national legislation and the principle of equality of treatment should determine the extent to which migrant workers in an irregular situation are entitled to such benefits.

308. The Committee recalls that, as the Convention refers to “rights arising out of past employment”, the enjoyment of these rights does not necessarily extend to benefits, the granting of which is not dependent on periods of past employment. This situation typically concerns benefits which are granted through non-contributory social security schemes and subjected to a minimum period of residence in the country. The granting of such benefits does not usually depend on direct financial participation by the persons protected or their employer, or on a qualifying period of occupational activity.⁶⁹ Article 9(1) only refers to the rights which workers acquired by virtue of their period of employment and by fulfilling other qualifying conditions required in the case of migrants in a regular situation.

309. The right to social security benefits is often made conditional upon being lawfully employed or resident.⁷⁰ However, where workers have been employed and affiliated to social security in spite of the fact that they were in an irregular situation, Article 9(1) aims at guaranteeing that those rights cannot be nullified due to the irregular situation of the migrant worker. The Government of *Switzerland* reported that migrant workers in an irregular situation could, under certain conditions, enjoy certain social security benefits as social security coverage did not depend on the legal status, but resulted from the obligation to be affiliated to a social insurance scheme. The Government of *Honduras* reported that without taking into account migration status, migrant workers had the right to health, legal and physical security, the right to life and the right to social security. Certain countries, such as *Mexico*⁷¹ and *Uruguay*,⁷² referred to access to health care for all persons within their territory irrespective of migration status. The Government of

⁶⁷ Section 86(1) of Law No. 4052/2012 transposing Directive 2009/52/EC; see also *Sweden* – CEACR, Convention No. 143, direct request, 2013.

⁶⁸ The Confederation of Labour of *Russia* (KTR) referred to the difficulties of migrant workers without an employment contract to prove the level of remuneration before the courts.

⁶⁹ This is a common feature of all ILO Social Security standards to allow for derogatory treatment of this type of social security benefits (see also in this respect article 2(6)(a) of the Equality of Treatment (Social Security) Convention, 1962 (No. 118).

⁷⁰ For example, *Australia, Djibouti, Japan, Netherlands, New Zealand, Philippines, Sri Lanka and United States*.

⁷¹ Section 8 of the Migration Act of 2014.

⁷² Section 9 of the Migration Act No. 18.250 of 2007.

Sweden reported that it has taken measures to extend access to health care to undocumented workers.⁷³

310. The Committee wishes to underline in this respect the particular situation of employment injury benefits for which a number of countries have decided, as suggested by Recommendation No. 151, to grant these benefits regardless of the migratory situation of the workers and of whether such workers and/or their employer had paid or not, contributions to the social security system. For example, the Governments of *Japan*⁷⁴ and the *Republic of Korea*⁷⁵ indicated that all workers were eligible to receive industrial accident compensation provided for in the legislation, regardless of their legal status. In *Spain*, the Committee noted with interest in the framework of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), the protection afforded by the Spanish social security system for employment accidents and occupational diseases to employed persons who are nationals of a State that has ratified Convention No. 19,⁷⁶ including the situation when the latter were not lawfully resident in Spain and did not have a work permit.

311. In certain cases, however, social security rights arising out of periods of past employment may be lost due to the irregular nature of the residence or the employment relationship. A number of governments reported that, contrary to Convention No. 143, migrant workers in an irregular situation did not benefit from equal treatment in relation to rights arising out of past employment.⁷⁷

312. Some governments indicated that the rights of migrant workers arising out of past employment in terms of social security and other benefits were recognized solely on condition that specific agreements on social security were signed with other countries concerned.⁷⁸ The Committee recalls in this respect that, under the provisions of the Convention, the principle of reciprocity does not apply in this context.

313. *The Committee emphasizes the importance of the principle that migrant workers, even if they have been unlawfully employed or are not lawfully residing in the country, enjoy equal treatment with migrant workers in a regular situation with regard to rights arising out of past employment for which they have been affiliated to social security and, in particular, with respect to any outstanding remuneration and benefits due.*

314. *The Committee emphasizes that under Part I of Convention No. 143 migrant workers in an irregular situation are entitled to those social security rights and benefits which they have acquired by virtue of their period of employment and by fulfilling the other qualifying conditions required in the case of migrants in a regular*

⁷³ Act on health and medical care for persons staying in Sweden without necessary permits, 2013:407. See also *Sweden* – CEACR, Convention No. 143, direct request, 2013.

⁷⁴ Chapter VIII of the Labour Standards Act, Law No. 49 of 1947. The Government also indicated that even after immigrant workers have left Japan, the employer provides compensation to those who suffer an injury or illness in the course of employment.

⁷⁵ Sections 5(2) and 6 of the Industrial Accident Compensation Insurance Act of 1963 (as amended) provides that the Act applies to workers generally. The Committee refers in this regard to several observations on the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19): For example, *Dominican Republic* – CEACR, Convention No. 19, observation, 2015; *Myanmar* – CEACR, Convention No. 19, observation, 2013; and *Thailand* – CEACR, Convention No. 19, observation, 2015.

⁷⁶ 121 ratifications as of 30 November 2015.

⁷⁷ For example, *Antigua and Barbuda*, *Brunei Darussalam*, *Georgia*, *Indonesia*, *Namibia* and *Uzbekistan*; see para. 299 supra.

⁷⁸ See for example, *Benin* and *Bosnia and Herzegovina*.

situation. In addition, the Committee considers that, as provided for in Paragraph 34(1)(b) of Recommendation No. 151, it is essential that all migrant workers, irrespective of their legal status, whether regular or irregular, be entitled to benefits due in respect of any employment injury suffered.

Costs of expulsion

Costs of expulsion and return

Article 9(3) of Convention No.143 provides that:

In case of expulsion of the worker or his family, the cost shall not be borne by them.

315. From a review of the governments' reports, the Committee observes that few member States have provided information on this issue and, in relation to those governments that did provide information, there was a great deal of variation in this regard.

316. Some member States, for example, stated in general terms that they paid the expenses related to expulsion;⁷⁹ other governments reported that the costs of expulsion primarily fell upon the irregular migrant, from whom they could be claimed,⁸⁰ with some governments indicating that if the migrant worker, the employer or institution receiving him or her could not cover the costs, the State would assume the responsibility.⁸¹ Yet other countries indicated that the employer or sponsor who unlawfully employed the foreign worker must cover the costs of deportation.⁸² In this connection, the IOE indicated that employers' organizations should ensure that Article 6(2) of Convention No. 143 – which allows the employer who is being prosecuted for the illegal employment of migrant workers to provide proof of his or her good faith – was upheld in the case of employers who were required to pay the costs of expulsion but who were acting in good faith.

317. A number of countries reported that costs of expulsion were initially attributed to the employer or the subcontractor, unless it was proven that the foreign national submitted a forged residence permit.⁸³ Other countries stated that in the case of mandatory expulsion the costs of expulsion had to be covered by the foreigner being expelled.⁸⁴ In the case that no one could pay the costs, the costs would be borne by the State.⁸⁵ Some countries⁸⁶ indicated that they provided some support towards the costs of expulsion before the mandated expulsion period, but attributed the costs to migrants

⁷⁹ For example, *Denmark, Gambia, Republic of Moldova and Saudi Arabia.*

⁸⁰ For example, *Republic of Korea and Suriname.* Section 34(3) of the Immigration Act of *South Africa* allows the state to order the foreigner subject to deportation to deposit sufficient funds to cover in whole or in part expenses related to deportation, detention, maintenance and custody.

⁸¹ For example, *Azerbaijan, Belarus, Georgia, Serbia and Slovenia.*

⁸² For example, *Indonesia, Netherlands, Poland and Serbia.* The Government of *Bulgaria* specifically referred to the Employer Sanctions Directive (2009/52/EC) which provides that the employer pays the costs of the foreigner staying unlawfully in the territory.

⁸³ For example, *Czech Republic.*

⁸⁴ For example, *Estonia* (article 26(13)(4) of the Obligation to Leave and Prohibition on Entry Act) and *Germany.*

⁸⁵ For example, *Georgia, Romania, Serbia and the former Yugoslav Republic of Macedonia.*

⁸⁶ For example, *Estonia.*

who were subject to mandatory deportation. Certain governments⁸⁷ indicated that they initially attributed the costs of expulsion to the foreigner, but that in the case of financial hardship of the migrant worker or in the case of unlawful employment, the costs were claimed from the State. The Committee notes the measures taken in some countries providing financial incentives (support for the costs of expulsion) to encourage voluntary departure.⁸⁸

318. The Committee has noted on a number of occasions⁸⁹ that a clear distinction should be made between: (a) cases where migrant workers were in irregular situations for reasons which cannot be attributed to them (such as redundancy before the expected end of contract, or where the employer failed to fulfil the necessary formalities), in which case the cost of their return, as well as the return of family members, including transport costs, should not fall upon the migrant workers; and (b) cases where migrant workers were in an irregular situation for reasons which can be attributed to them, in which case, only the actual costs of expulsion may not fall upon the migrant.⁹⁰

319. The Committee observes that the information provided by member States for the purposes of this General Survey does not make this distinction. In the context of the supervision of Convention No. 143, it has been requesting governments to specify whether the legislation concerning costs of expulsion is meant to cover all migrant workers who are in an irregular situation, or only those who are in an irregular situation for reasons that can be attributed to them,⁹¹ or has invited the Governments concerned to take adequate steps to bring the legislation into line with the Convention.⁹²

320. The Committee recalls that it is not in conformity with the Convention to recover from the migrant worker the costs of expulsion – that is, the costs incurred by the State in ensuring that the worker in an irregular situation leaves the country, for example the costs of the administrative or legal proceedings involved in issuing an expulsion order or in implementing the order and escorting the worker from the country. The Committee reminds governments that administrative costs, such as costs arising out of placing a foreigner under supervision or surveillance,⁹³ or costs arising from foreigners' temporary detention in reception centres, within the context of escorting the migrant worker to the border,⁹⁴ should be borne by the State. This would also apply to the costs of sustenance or accommodation incurred in a closed centre.⁹⁵ The Committee notes that

⁸⁷ For example, *Japan and Russian Federation*.

⁸⁸ For example, *Czech Republic, Greece and United Kingdom*.

⁸⁹ See *Albania* – CEACR, Convention No. 143, direct request, 2014; *Bosnia and Herzegovina* – CEACR, Convention No. 143, direct request, 2013; *Norway* – CEACR, Convention No. 143, direct request, 2014; *Serbia* – CEACR, Convention No. 143, direct request, 2014; *Slovenia* – CEACR, Convention No. 143, direct request, 2014; *Sweden* – CEACR, Convention No. 143, direct request, 2013; *the former Yugoslav Republic of Macedonia* – CEACR, Convention No. 143, direct request, 2013.

⁹⁰ See Article 9 of Annex II to Convention No. 97.

⁹¹ For example, *Philippines* – CEACR, Convention No. 143, direct request, 2014; *Sweden* – CEACR, Convention No. 143, direct request, 2013.

⁹² For example, *Albania* – CEACR, Convention No. 143, direct request, 2014; *Bosnia and Herzegovina* – CEACR, Convention No. 143, direct request, 2013; *Slovenia* – CEACR, Convention No. 143, direct request, 2014.

⁹³ See *Bosnia and Herzegovina* – CEACR, Convention No. 143, direct request, 2013.

⁹⁴ *The former Yugoslav Republic of Macedonia* – CEACR, Convention No. 143, direct request, 2013.

⁹⁵ See *Albania* – CEACR, Convention No. 143, direct request, 2014 and *Slovenia* – CEACR, Convention No. 143, direct request, 2014.

some governments have reported, that they included the costs of transport within expulsion costs.⁹⁶

Regularization

Regularization measures

Article 9(4) of Convention No. 143 provides the opportunity to member States to regularize men and women migrant workers in an irregular situation:

Nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and to take up legal employment.

Paragraph 8(1) of Recommendation No. 151 further provides that:

Without prejudice to measures designed to ensure that migrant workers and their families enter national territory and are admitted to employment in conformity with the relevant laws and regulations, a decision should be taken as soon as possible in cases in which these laws and regulations have not been respected so that the migrant worker should know whether his or her position can be regularised or not.

Article 9(4) of Convention No. 143 is a declaratory provision and does not require members States to take any specific measures. Recommendation No. 151 suggests that the decision on whether or not the workers' situation should be regularized should be taken quickly. Once the decision is taken to regularize, the worker should benefit from all rights provided to migrant workers lawfully admitted within the territory of a member State.

321. From a review of the reports received, the Committee notes that regularization programmes may vary across countries and regions, and with respect to the conditions for regularization.⁹⁷ Some countries, such as *Azerbaijan*,⁹⁸ *Brazil*,⁹⁹ *Cabo Verde*,¹⁰⁰ *Mexico*¹⁰¹ and *Saudi Arabia*¹⁰² reported launching temporary regularization campaigns to address or rectify the situation of unauthorized migrant workers within their borders.¹⁰³ The Government of *Morocco* reported that in 2013 official temporary measures (covering 2014) aimed at the regularization of foreigners residing in the country in an irregular situation, including foreigners with a contract of employment of two years, or with five years of continued residence in the country, or those suffering

⁹⁶ For example, *Czech Republic*.

⁹⁷ See, for example, *Thailand* – CEACR, Convention No. 19, direct request, 2012: a Cabinet resolution of 19 January 2010 allowed migrants in an irregular situation from *Cambodia*, the *Lao People's Democratic Republic* and *Myanmar* to register within two years in order to obtain temporary passports and to be granted the right to work, provided that they engaged in a nationality verification process.

⁹⁸ Regularization of residence of irregular migrants in 2012 (3,409), in 2013 (3,465) and in 2014 (2,934).

⁹⁹ Regularization Law No. 11.961 which regularized the situation of undocumented migrants in the year 2009.

¹⁰⁰ Legislative Decree No. 1/2015, 6 January 2015 provides for the regularization of foreign citizens who were in an irregular situation before 17 November 2011, continued to be so, allowing them 90 days to request for a residence permit.

¹⁰¹ Temporary Regularization Programmes on Migration.

¹⁰² 2013 campaign regularizing the situation of a large number of migrant workers of all nationalities; see also *Saudi Arabia* – CEACR, Convention No. 111, observation, 2015.

¹⁰³ The Committee notes in this regard the observations by the AFL–CIO regarding deferred action programmes for undocumented persons – the most recent one announced in November 2014 for over 5 million undocumented individuals who would be able to apply for work authorization in the *United States* if they met certain criteria – and the challenges encountered.

from a serious disease. Other countries such as *Algeria*,¹⁰⁴ *Honduras*¹⁰⁵ and *Panama*¹⁰⁶ for example, reported regularization for human rights or humanitarian grounds. The Governments of *Ecuador*, *Finland*¹⁰⁷ and the *United States*,¹⁰⁸ reported that their migration law and policy provided for the regularization, often through a temporary residence permit, of persons in need of special protection such as children, persons with disabilities, or victims of trafficking or exploitation, including in the context of pre-trial investigations.

322. Some regularization programmes may relate to certain employment sectors, such as the regularization programmes targeting the care sector in *Italy* in 2009 and 2012,¹⁰⁹ or entire immigrant groups, such as the Patria Grande Plan in *Argentina* which is aimed at the regularization of conditions of residence of migrants from neighbouring countries and the integration of irregular migrants.¹¹⁰

323. A number of Governments, such as *Austria*, *Benin*, *Burkina Faso* and *Slovenia* reported that there was no provision for the regularization of migrants in an irregular situation. The Government of *Brazil*, for example, indicated that because the legislation in force did not permit the regularization of undocumented migrants, the only alternative was often to seek asylum; to avoid abuse of the procedures available to asylum seekers and refugees, legislative proposals currently under discussion allowed regularization. Other countries, such as *France*¹¹¹ and *New Zealand*¹¹² provide for regularization on a case-by-case basis and have adopted legislation granting, in exceptional circumstances and under certain conditions, temporary residence to foreigners for purposes of work, to take account of certain humanitarian considerations.

324. The Confederation of Independent Trade Unions in *Bulgaria* (KNSB/CITUB) and the *Italian* Confederation of Workers' Trade Unions (CISL) referred to temporary regularizations programmes for migrants involved in penal proceedings against their employer.¹¹³ The CCOO of *Spain* indicated that a legislative amendment to the foreigners law, which the CCOO had proposed and which was approved by the social

¹⁰⁴ Reporting that it was examining the situation of refugees and asylum seekers from *Syrian Arab Republic* and sub-Saharan Africa, in particular from *Mali* and *Nigeria*, taken into account the exceptional humanitarian situation.

¹⁰⁵ *Honduras*, Repatriation and Foreigners Act of 2003.

¹⁰⁶ Extraordinary Migration Regularization Process "Panamá, Crisol de Razas", formalized by Legislative Decree No. 547 of 25 July 2012 (Annex 2).

¹⁰⁷ Sections 52a and 52d of the Aliens Act.

¹⁰⁸ "T" non-immigrant status (T visa) or "U" non-immigrant status (U visa) provide immigration protection for victims of a "severe form of human trafficking" or victims of crimes who have suffered severe mental or physical abuse and who can assist law enforcement in the investigation and prosecution. They are eligible for employment authorization and may be eligible to apply for permanent residence after a certain period. Certain family members may also be eligible for a T or U visa.

¹⁰⁹ Law No. 102 of 3 August 2009 and Legislative Decree No. 109 of 16 July 2012.

¹¹⁰ The Patria Grande Plan complementing the Migration Act No. 25.871, National Directorate of Migration provision No. 53.253/05 and National Directorate Migration provision No. 14.949/2006.

¹¹¹ Articles L.313-10 and L.313-14 of the Code concerning the entry and stay of foreigners and the right to asylum: conditions include existing employment contract or job offer, work experience and minimum residence (usually five years) in the country.

¹¹² Section 61 of the Immigration Act 2009.

¹¹³ The *Turkish* Confederation of Employers' Associations (TİSK) indicated that temporary regularization was possible in case migrant workers in an irregular situation paid fines imposed for the violation of the immigration rules.

partners, gives migrant workers in an irregular situation the possibility to temporarily regularize their status under the conditions that they can prove two years residence in Spain and irregular employment for six months. Other workers' organizations criticized regularization campaigns for their complexity, lack of transparency and as low numbers of regularized migrants.¹¹⁴ Yet other workers' organizations indicated that further regularization campaigns were needed to protect migrant workers' human and labour rights and to reduce their vulnerability.¹¹⁵

325. The Committee draws to the attention of governments the uncertainty that some migrants in an irregular situation face for long periods of time in trying to regularize that status, which it considers makes them vulnerable to abusive conditions and exploitation including in the workplace. Mindful that the consequences of the slowness of proceedings and the inherent difficulties in detecting illegal employment of migrants could negatively impact on the migrant worker in an irregular situation, the Committee reiterates the importance of a prompt decision as to the assessment of their circumstances and as to whether or not to regularize them, as well as their humane treatment and respect for their basic human rights. It is also important that victims or persons in particular conditions of vulnerability enjoy this kind of specific protection, especially in the context of pre-trial investigations.

¹¹⁴ For example, the General Labour Federation of *Belgium* (FGTB), the General Confederation of Liberal Trade Unions of *Belgium* (CGSLB) and the Confederation of Christian Trade Unions (CSC) of *Belgium*.

¹¹⁵ For example, the CTC and the CUT of *Colombia*, the General Confederation of Labour (CGT) of *France* and the UGT of *Portugal*.

Chapter 6

Protection of migrant workers: Equality of opportunity and treatment

326. The principle of equality and non-discrimination is at the heart of the instruments under review.¹ In this Chapter, the Committee considers the reports of member States in relation to equality of opportunity and treatment of migrant workers in a regular situation. Having reviewed the reports submitted for the purposes of this General Survey, the Committee notes that while there is considerable awareness and acceptance among member States of the principle in its general application, there is less certainty about its application to migrant workers. The Committee further notes that the multiple forms of discrimination and inequalities to which migrant workers are subject in countries of employment are increasingly well documented, and that this has been recognized as a persistent challenge in international labour migration.²

327. The Committee highlights the fact that women migrant workers often face discrimination in the labour market on multiple grounds including migrant status, sex, religion and ethnicity. In view of the growing numbers of women migrants, and mindful of the requirement in Article 6(1) of Convention No. 97 that equality of treatment must be pursued “without discrimination in respect of nationality, race, religion or sex”, in recent years the Committee has requested governments to report on measures taken to ensure that women migrant workers are treated on equal footing with men migrant workers, in terms of the matters covered by Article 6 of the Convention.³ On a number of occasions, in the context of its supervision of Convention No. 97, the Committee has addressed inequalities faced by women migrant workers, particularly domestic workers or caregivers, with respect to their conditions of work, remuneration or social security.⁴ Further, the Committee notes that the IOE stated that employers’ organizations should encourage the government to ensure that there were adequate protections for women

¹ The basic human rights protected generally in Part 1 of Convention No. 143, including the fundamental right to non-discrimination, which should be enjoyed by all migrant workers irrespective of legal status, has been discussed in Chapter 5.

² See for example, ILO: *Fair migration, Setting an ILO agenda*. Report of the Director-General, International Labour Conference, 103rd Session, 2014, Report I(B), ILO, Geneva, paras 30, 79–80; ILO: *Labour protection in a transforming world of work: A recurrent discussion on the strategic objective of social protection*, ILC, 104th Session, 2015, Report VI, ILO, Geneva, paras 138–139; and ILO: *Labour migration and development: Setting a course for the future*, 2013, pages 4–5.

³ See for example, *Bahamas* – CEACR, Convention No. 97, direct request, 2013; *Belgium* – CEACR, Convention No. 97, direct request, 2014; *Ecuador* – CEACR, Convention No. 97, direct request, 2014; *France* – CEACR, Convention No. 97, observation, 2013; and *Zambia* – CEACR, Convention No. 97, direct request, 2013.

⁴ See for example, *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, observation, 2015; *France* – CEACR, Convention No. 97, observation, 2013; *Israel* – CEACR, Convention No. 97, observation, 2013. See also *Norway* – CEACR, Convention No. 143, direct request, 2014.

migrants, and that the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) of the *United States* referred to the employment discrimination and precarious working conditions faced by immigrant women workers.

Exclusions from protection

328. The exclusion of certain categories of workers or certain occupations from the scope of protection of labour or employment laws, including provisions on equality and non-discrimination, may constitute a significant obstacle to the effective implementation of the principle of equality and non-discrimination.⁵ Recalling the broad scope of the Conventions, the Committee emphasizes the importance of providing protection against discrimination for all migrant workers lawfully in the country.

329. As noted in Chapter 2, domestic workers⁶ and workers in agriculture,⁷ including, in particular, workers on family farms and other small agricultural undertakings,⁸ and casual⁹ or temporary workers, are often excluded from the scope of labour legislation. In this regard, the Committee notes that the exclusion of domestic or agricultural workers from the application of the labour legislation was highlighted by some workers' organizations.¹⁰

330. The Committee emphasizes that in countries where migrant workers constitute a significant proportion of seasonal agricultural workers or domestic workers, the exclusion of these categories may have an important impact on the extent to which the rights of such workers are protected under the law, and could result in unequal treatment,¹¹ with respect to the matters covered in the equality provisions of the instruments. In situations in which the employment of such workers is regulated by a

⁵ See ILO: *General Survey on the fundamental Conventions*, 2012), paras 738–739.

⁶ For example, *Egypt* (section 7(2) of the Labour Code of 2003, as amended); *Gambia* (Part 1, section 3(2)(d) of the Labour Act of 2007); *Japan* section 116(2) of the Labour Standards Act of 1947, as amended); *Kuwait* (section 5 of the Private Sector Labour Law of 2010, as amended); *Oman* (section 2(3) of the Labour Code of 2003); *Qatar* section 3(4) of the Labour Law of 2004); *Saudi Arabia* (section 7(2) of the Labour Law of 2006); *Singapore* (Part I, section 2(1) of the Employment Act of 1968, as amended; however, pursuant to Part VII, section 67, the Minister may apply the Act to domestic workers); *Sudan* (section 3(f) of the Labour Act of 1997); *Syrian Arab Republic* (section 5(a)(4) of the Labour Law 2010); *Tuvalu* (Part I, section 2 of the Employment Act of 1966, revised); *United Arab Emirates* (section 3(c) of the Labour Law of 1980, as amended); *United States*: (section 152(3) of the National Labor Relations Act (NLRA) of 1935, as amended); *Yemen* (section 3(2) of the Labour Code of 1995, as amended).

⁷ For example, *Plurinational State of Bolivia* (section 1 of the Labour Act of 1939, as amended); *Jordan* (section 3(D) of the Labour Law of 1996, as amended); *United States* (section 152 (3) of the National Labor Relations Act (NLRA) of 1935, as amended), and the minimum wage provisions of the Fair Labor Standards Act of 1938 (FLSA), as amended are not applicable to certain categories of farmworkers (section 213(6)(A)), and farmworkers are also excluded from overtime pay provisions).

⁸ For example, *Saudi Arabia* (section 7(4) of the Labour Law of 2006); *United Arab Emirates* (section 3(d) of the Labour Law of 1980, as amended); *Yemen* (section 3 of the Labour Code of 1995, as amended).

⁹ For example, *Angola* (section 2(d) of the Labour Law of 2015); *Qatar* (section 3(3) of the Labour Law of 2004); *Saint Kitts and Nevis* (section 3(f) of the Protection of Employment Act of 1986, as amended); *Sudan* (section 3(i) of the Labour Act of 1997); *Syrian Arab Republic* (section 5(a)(6) of the Labour Law of 2010); and *Yemen* (section 3(2) of the Labour Code of 1995, as amended).

¹⁰ For example, the ITUC, the AFL–CIO of the *United States*, the General Union of Workers of *Côte d'Ivoire* (UGTICI), and the *Malaysian Trade Unions Congress* (MTUC).

¹¹ See ILO: *General Survey on the fundamental Conventions*, 2012, para. 739.

specific law or bilateral agreements,¹² attention should be paid to ensuring that at least the same level of protection is provided as exists in the general labour law.

Scope of the principle and actions required by the instruments

331. The main objective of the instruments is the elimination of discrimination in employment and living conditions for migrants in a regular situation, although the two Conventions take different approaches to achieve this objective. The provisions on equality of treatment in Article 6 of Convention No. 97 and in Part II of Convention No. 143 apply only to migrant workers (and members of their families) who are lawfully admitted in the country.

Convention No. 97 and Recommendation No. 86

Treatment no less favourable than that applied to nationals

Article 6(1) of Convention No. 97 provides that:

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

- (a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities –
 - (i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on homework, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) accommodation;
- (b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
 - (i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - (ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension;
- (c) employment taxes, dues or contributions payable in respect of the person employed; and
- (d) legal proceedings relating to the matters referred to in this Convention.

332. Convention No. 97 prohibits unequal treatment resulting from legislation or administrative practices. Member States should ensure that equality legislation is applied effectively, including through labour inspection or other supervisory authorities.¹³ In requiring “no less favourable treatment”, the Convention allows the application of treatment to migrant workers which, although not identical to that enjoyed by nationals, is equivalent in its effects.¹⁴ Further, Article 6(1) of the Convention implies the repeal or

¹² See paras 141–152 *supra*.

¹³ See paras 476–487 *infra*.

¹⁴ See for example, *Algeria* – CEACR, Convention No. 97, direct request, 2014; *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, observation, 2013. See in this connection the preparatory

abolition of discriminatory legislative measures and administrative practices in respect of terms and conditions of work, membership in trade unions, accommodation, social security, employment taxes, and access to judicial proceedings.

333. Convention No. 97 does not cover access to employment and particular occupations, although its accompanying Recommendation No. 86 acknowledges the importance of achieving equality in this respect, at least after a certain period of time.¹⁵

334. The Committee further recalls that Article 6(2) of Convention No. 97 enables federal States to ratify the Convention, even though they may not be able to meet the obligations arising from Article 6(1) in full because of the way in which powers and responsibilities are shared between the federal authorities and those of constituent units including States, provinces or cantons.¹⁶

Convention No. 143 and Recommendation No. 151

335. Whereas the purpose of the 1949 instruments is to proscribe inequality of treatment arising principally out of legislation or action by the administrative authorities, Part II of Convention No. 143 and Recommendation No. 151 go further and aim to promote equality of opportunity and eliminate discrimination against migrant workers in practice. The national equality policy referred to in Article 10 of Convention No. 143 focuses in particular on differences in treatment and opportunities based on nationality.¹⁷

National policy on equality of opportunity and treatment

Article 10 of Convention No. 143 provides that:

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

Article 12 requires member States, by methods appropriate to national conditions and practice, to take active steps in this regard, including:

- seek the cooperation of workers' and employers' organizations and other appropriate bodies (Article 12(a));
- enact legislation and promote educational programmes (Article 12(b));
- taking measures aimed at acquainting migrant workers with the national equality policy (Article 12(c));
- repealing discriminatory law and administrative action (Article 12(d));
- formulating and applying a social policy (Article 12(e));

work to Convention No. 66, Art. 6 of which contains an identical formulation, and in particular ILC, 25th Session, Geneva, 1939, Report III, p. 127.

¹⁵ Paragraph 16(1) and (2)(a) of Recommendation No. 86 provide that migrant workers and members of their families should as far as possible be admitted to employment in the same conditions as nationals after a certain period of time – but not later than after five years.

¹⁶ See further with respect to the application of Article 6(2) of Convention No. 97 and Part II of Convention No. 143 to federal States, ILO: *General Survey on migrant workers*, 1999, paras 373 and 380.

¹⁷ See Preamble of Convention No. 143 recalling that the definition of the term “discrimination” in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), does not mandatorily include distinctions on the basis of nationality and further standards in this regard are needed supplementing those of Conventions Nos 97 and 111.

- taking steps to assist and encourage efforts of migrant workers to preserve their national and ethnic identity and cultural ties (Article 12(f)); and
- guaranteeing equality of treatment with regard to conditions of work for all migrant workers who perform the same activity (Article 12(g)).

Paragraph 2 of Recommendation No. 151 provides that:

Migrant workers should enjoy *effective* equality of opportunity and treatment with nationals in respect of a number of areas: access to vocational guidance, vocational training and employment of their own choice, advancement, security of employment, remuneration for work of equal value, conditions of work, social security, membership in trade unions, membership in cooperatives, and conditions of life, including housing.

336. While the national equality policy can be implemented progressively, and adapted to national conditions, active and positive measures by the public authorities to achieve this aim of equality of opportunity and treatment are required, as set out in Article 12 of the Convention and Paragraphs 2–5 and 7 of Recommendation No. 151. In this respect, noting that the 1975 instruments are largely modelled on and supplement Convention No. 111,¹⁸ the Committee refers to its observations on equality of opportunity and treatment in employment and occupation in its recent General Survey on the fundamental Conventions.¹⁹

National equality policy

Legislative protections against discrimination

337. Article 12(b) of Convention No. 143 envisages the enactment of legislation to secure the acceptance and observance of the national equality policy. Legislative protection against discrimination based on actual or perceived nationality is fundamental to migrant workers, and the Committee recalls in this respect the broad definition of discrimination set out in Convention No. 111.²⁰

338. Having reviewed the reports received for this General Survey, the Committee observes that considerable differences exist between countries with regard to the legal framework providing protection against discrimination of migrant workers. In some cases, nationality or citizenship are explicitly included as a prohibited ground of discrimination in national constitutions,²¹ labour legislation,²² or specific equality or non-discrimination laws.²³ Other countries, such as *Azerbaijan, Bosnia and Herzegovina,*

¹⁸ Paragraph 8 of Recommendation No. 111 already referred specifically to the provisions of Convention No. 97 relating to equality of treatment and to those of Recommendation No. 86 relating to the lifting of restrictions on access to employment for immigrant workers.

¹⁹ See ILO: *General Survey on the fundamental Conventions*, 2012, Part V (Equality, non-discrimination and equal remuneration), Chapter 1, Chapter 3 (Convention No. 111) and Chapter 4 (monitoring and enforcement).

²⁰ Article 1(1)(a) of Convention No. 111. For a definition of the concepts of direct and indirect discrimination, see also ILO: *General Survey on the fundamental Conventions*, 2012, paras 743–745.

²¹ For example, *Argentina, Azerbaijan, Cyprus, Ecuador and Russian Federation*.

²² For example, *Djibouti* (Labour Code 2006); *Eritrea* (Labour Proclamation No. 118 of 2001); *Ethiopia* (Labour Proclamation No. 377/2003); *Japan* (Labour Standards Act); *Kenya* (Employment Act 2007); *Republic of Korea* (Labour Standards Act); *Lithuania* (Labour Code 2002); *Republic of Moldova* (Labour Code 2003); *Mongolia* (Law on Employment Promotion 2001); *Seychelles* (Employment (Amendment) Act, 2006); *Syrian Arab Republic* (Labour Law 2010); and *United Republic of Tanzania* (Employment and Labour Relations Act 2004).

²³ For example, *Argentina* (section 1 of the Anti-discrimination Act No. 23582); *Belgium* (sections 2(1) and 3(1) of the Decree of the French Community of 12 December 2008 concerning the fight against certain forms of discrimination); *Plurinational State of Bolivia* (section 5 of the Act against racism and all forms of

Cuba, Cyprus, Denmark, Lesotho, Syrian Arab Republic and United States, for example, reported that their Constitution or national legislation referred to the ground of “national origin”.

339. The prohibition of discrimination based on nationality or national origin can relate to all aspects of employment,²⁴ or employment relations.²⁵ In other countries, legislation provides protection against nationality-based discrimination specifically in respect of working conditions,²⁶ including remuneration,²⁷ or hiring or termination of employment,²⁸ social security,²⁹ or other areas.³⁰ Some countries reported that the legislation governing the employment of migrants included specific provisions guaranteeing equal treatment of foreign workers lawfully in the country with nationals,³¹ or with respect to specific terms and conditions of employment, including remuneration, or freedom of association.³²

340. Certain countries, such as *Ireland*³³ and *Portugal*,³⁴ have adopted strong non-discrimination and equality provisions in their national laws that consider nationality as a protected ground. In relation to *Kenya*, the Committee has welcomed the adoption of the Employment Act of 2007 which provides that the Minister, labour officers and the Industrial Court shall promote and guarantee equality of opportunity for migrant workers or a member of their family lawfully within Kenya, and prohibits direct and indirect discrimination on a wide range of grounds, including nationality, with respect to recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of employment.³⁵

discrimination); *Bulgaria* (section 4 of the Protection Against Discrimination Act 2006); *Chile* (section 2 of the Act No. 20609 of 2012 to establish measures against discrimination); *Finland* (section 8(1) of the Non-Discrimination Act No. 1325/2014); and *Serbia* (Act on the Prohibition of Discrimination No. 22/09).

²⁴ For example, *Australia* (section 9 of the Racial Discrimination Act, 1975); *Djibouti* (section 3 of the Labour Code (Law No. 133/AN/05/5ième L)); *Ecuador* (section 79 of the Labour Code); *Georgia* (section 1 of the Law on the Elimination of All Forms of Discrimination); and *United Republic of Tanzania* (section 7(1) and (4)(b) and section 7(9) of the Employment and Labour Relations Act, 2004).

²⁵ See for example, *Chile* (section 2 of the Labour Code).

²⁶ For example, *Japan* (section 3 of the Labour Standards Act).

²⁷ For example, *El Salvador* (section 123 of the Labour Code) and *Islamic Republic of Iran* (article 38 of the Labour Law).

²⁸ For example, *Azerbaijan* (section 18/1 of the Labour Code 1999, as amended).

²⁹ For example, *Burkina Faso* (Act No. 015-2006 on the social security system applicable to wage workers and assimilated workers).

³⁰ For example, *Germany* (section 75(1) Works Constitution Act, 2001, as amended, requires the employer and the Works Council to ensure that no one is subject to discrimination on grounds of nationality).

³¹ For example, *Cabo Verde* (sections 60, 64–65 and 69 of Law No. 66/VIII/2014 defining the legal regime concerning the entry, residence, exit and expulsion of foreigners, and their legal status, provide for equal treatment with nationals with respect to the exercise of economic activity, access to health, social security, fiscal benefits, the recognition of diplomas, access to public goods and services, and freedom of association and the right to strike, as well as membership in professional associations); and *Romania* (section 5(1) of the Labour Code No. 53/2003 and section 80(1) of Government Emergency Ordinance (GEO) No. 194/2002 on foreigners).

³² For example, *Belarus* (section 33 of the International labour Migration Act).

³³ Employment Equality Act 1998 (section 6(2)(h) provided that the ground of race shall mean being “of different race, colour, nationality or ethnic or national origin”).

³⁴ Sections 4, and 23–28 of the Labour Code 2007.

³⁵ Section 5 of the Employment Act 2007; see *Kenya* – CEACR, Convention No. 143, observation, 2013; in previous comments, the Committee had considered that the former policy of “Kenyanization” of employment was contrary to the principle of equality of opportunity and treatment established by the Convention.

341. Most countries have adopted general anti-discrimination provisions in line with Convention No. 111 and a number of countries reported that migrant workers and nationals enjoyed equally the general protection provided in labour laws or specific equality legislation.³⁶ In this regard, the Committee recalls that although Convention No. 111 does not cover discrimination based on nationality, it does extend to grounds such as race, colour, national extraction, religion or social origin which may form the basis of discrimination in practice against migrant workers. Therefore the measures discussed in the Committee's General Survey on this fundamental Convention may be of guidance in combating discrimination against migrant workers.³⁷

Varied measures to implement equality policies

342. The Committee recalls that the absence of discriminatory legislation, or even the existence of anti-discrimination or equality legislation, although important, is not sufficient to ensure equality of opportunity and treatment in practice. As indicated in Chapter 3, proactive measures are required to effectively respond to the complex realities and de facto inequalities of treatment against migrant workers, to secure the acceptance and observance of the principle of non-discrimination by society generally, and to assist migrant workers to make use of the equal opportunities offered to them. Article 12 of Convention No. 143 sets out a range of measures aimed at the effective promotion of the national equality policy.

343. In this regard, the Committee notes that the Governments of *Ecuador* and *Mali* indicated that they had adopted an equality policy; the Governments of *Lithuania* and *Slovakia* referred to national integration policies; and the Governments of *Bulgaria*, *Cabo Verde*, *Luxembourg* and *Spain* mentioned strategic plans on integration.³⁸ The Government of *Egypt* referred to a national policy on migrant workers to achieve equal opportunity and treatment between national and foreign workers, and a national policy on equality including committees specialized in the welfare of Egyptians abroad.

344. The Governments of *Ecuador* and *Lithuania* also referred to the establishment of institutions with responsibility for the national equality policy,³⁹ while the Governments of *Kenya* and *Luxembourg* mentioned institutions responsible for the integration of migrant workers.⁴⁰

³⁶ For example, *Austria*, *Lesotho* and the *Russian Federation*.

³⁷ See ILO: *General Survey on the fundamental Conventions*, 2012, paras 776–781, 796, 801 and 850–867.

³⁸ The Government of the *Russian Federation* indicated that its state migration policy included the integration of labour migrants.

³⁹ For example, *Ecuador* (Vice-Ministry of Human Mobility within the Ministry of Foreign Affairs and Human Mobility); and *Lithuania* (Ministry of Social Security and Labour – policy-making).

⁴⁰ For example, *Kenya* (National Cohesion and Integration Commission) and *Luxembourg* (National Council for Foreigners and consultative commissions on integration at the local level).

Equality and integration policies: Good practices

Cabo Verde: The General Immigration Department undertook initiatives, including conferences on migration to generally sensitize the local population and migrants to the importance of migration and mutual respect. Regular training plans for both public care services and the national police are also organized, to ensure that migrants receive equal access to public services and an improved access to the enforcement of their rights. The National Immigration Strategy (Resolution No. 2/2012) is based on the principle of non-discrimination and includes measures aimed at integration and inclusion of migrant workers in society. The Government also provided the results of the diagnostic study (between October 2013 and March 2014) on the identification of the needs of immigrants in the process of social integration in the country. The Study concluded that racial discrimination and xenophobia seriously hindered the integration process of immigrants, especially those originating from ECOWAS countries, who represented 80 per cent of the victims of discrimination.¹

Mexico: The Special Programme for Migration 2014–18 (PEM) and the National Programme for Equality and Non-Discrimination 2014–18 (PRONAI) established coordinated actions between the various entities of the Federal Public Administration to combat xenophobia. Such actions include initiatives to acknowledge and value the presence and the cultural, social and economic contributions of migrants and refugees. Other initiatives seek to promote the non-discrimination of migrants in the code of conduct of public and private institutions. One of the strategies of the PEM seeks to communicate with and raise awareness among the population to promote respect and value of migrants.

Morocco: Has put in place a new migration policy providing equality of treatment for migrant workers focusing on the situation of refugees and asylum seekers, migrants in an irregular situation, the fight against trafficking in persons and the improvement of conditions for migrants in a regular situation. The objectives of the integration programme include, among others, to recognize immigrants' enjoyment of civil, social, economic, cultural and political rights, to guarantee equality of treatment between nationals and foreigners, and to establish facilities to integrate persons who are in a vulnerable situation.

Portugal: Various integration measures were adopted: the creation of the National and the Local Immigrant Support Centres (CNAI and CLAI, respectively), a national telephone information service and the Translation Phone Service. The CNAI consist of a one-stop shop providing free services, where immigrants can have access to different governmental services relevant for their integration. The Government also developed information guides, brochures, internet portals and television programmes to inform migrants as well as to sensitize public opinion on migrants' rights.

¹ *Estudio Diagnóstico. Identificação das necessidades dos imigrantes no processo de integração social em Cabo Verde*, Unidade de Coordenação de Imigração (UCI) and Office français de l'immigration et de l'intégration (OFII), 2014).

345. Reflecting the flexible requirements of the 1975 instruments in terms of the format of policies and choice of means to achieve the desired results appropriate to national circumstances, member States reported varied measures, including policies, legislation, programmes to integrate migrants and programmes against xenophobia, and campaigns to ensure equal opportunity and treatment for migrant workers. The Government of *Norway* referred to the need to integrate migrants in the labour market to the same extent as the rest of the population. The Governments of *Brunei Darussalam*, *Germany*, *Netherlands* and *Sweden*, for example, referred to legislation and, variously, information campaigns, programmes aiming at integrating migrant workers, measures against xenophobia and racism, and governmental committees. The Government of *Morocco* indicated that its national migration policy focused on integration through cooperation agreements with non-governmental organizations.

346. The *Austrian* Federal Economic Chamber (WKÖ) reported on a “mentoring of migrants” programme, which aimed at providing support for the integration of people with a migrant background into the labour market, as self-employed workers or otherwise, while promoting an international environment in Austrian enterprises. The Federal Chamber of Labour (BAK) of *Austria* welcomed the fact that the Government recognized that integration policies should also target EU nationals.

347. *The Committee wishes to underline that, if migrant workers are to enjoy effective equality of opportunity, it is necessary to ensure that the national equality policy is well disseminated and observed, not only by workers and employers, but also by the general public. The Committee once again emphasizes that migrants, more than many other groups, are often victims of prejudice regarding their suitability for certain types of jobs and discrimination in regard to their working and living conditions, exacerbated in times of economic recession.*⁴¹

348. Within its supervision of Convention No. 97, the Committee has requested a number of governments to provide information on measures taken against misleading propaganda relating to immigration targeting the national population by addressing xenophobia, prejudices and stereotyping of migrant workers.⁴² Further, the Committee notes that a number of workers’ organizations referred to the need for similar measures. The *Japanese* Trade Union Confederation (JTUC–RENGO), for example, stated that it had called for multicultural education at school to eliminate discrimination against migrants, and the General Federation of *Tunisian* Workers (UGTT) referred to awareness raising to fight xenophobia and racism.

Subject matters covered by the principle

Employment and occupation

349. Article 10 of Convention No. 143 requires the adoption of a national equality policy in respect of employment and occupation, the terms of which are similar to those used by Convention No. 111, pursuant to which “employment and occupation” includes: access to vocational training, employment and particular occupations, and to terms and conditions of employment.⁴³

Access to employment

350. Once a migrant worker has been admitted to a country for the purpose of employment, he or she will become entitled to the protection provided by Part II of Convention No. 143. *The Committee notes that Article 10 does not affect the right of member States to admit or refuse to admit a foreigner to their territory, nor does it regulate the issuance or renewal of work permits. However, when residence and work permits contain restrictions or conditions contrary to the principle of equality of opportunity and treatment, the Convention requires States to amend or modify their law or practice in accordance with Article 12(d).*

⁴¹ See, for example, paras 290–294 *supra*; see also the observations made by a number of workers’ organizations in this regard, paras 551–555 *infra*.

⁴² For example, *Cyprus* – CEACR, Convention No. 97, direct request, 2014; *France* – CEACR, Convention No. 97, observation, 2013; *Israel* – CEACR, Convention No. 97, direct request, 2013; *Madagascar* – CEACR, Convention No. 97, direct request, 2013; *New Zealand* – CEACR, Convention No. 97, direct request, 2014; *United Kingdom* – CEACR, Convention No. 97, direct request, 2015.

⁴³ The provisions of Recommendation No. 111 detailing the content of these various subjects (Paragraph 2(b)(i) to (vi)) were also included in similar terms in Recommendation No. 151 (Paragraph 2(a)–(f)).

351. The Committee notes that for most countries free access to employment for migrant workers who have acquired permanent residence does not raise major issues. Pursuant to the Law on Foreigners of *the former Yugoslav Republic of Macedonia*, for example, foreigners with a permanent residence permit shall enjoy on an equal basis with citizens access to employment or self-employment, unless otherwise provided.⁴⁴

352. The Committee further notes the policies regarding freedom of movement and access to employment in the context of regional frameworks. For example, European Union (EU) Member States adopted legislation and policies,⁴⁵ transposing relevant EC Directives to provide access to employment to EU nationals and their families, nationals of the European Economic Area (EEA), as well as third-country nationals with long-term residence permits.⁴⁶ Certain Caribbean countries mentioned legislation to establish the CARICOM Single Market and Economy (CSME), which aims at removing restrictions on the freedom of movement of skilled nationals of qualifying Caribbean Community States, including any restriction on the right to engage in gainful employment or other occupation.⁴⁷ The Committee furthermore notes the Agreement on residence for nationals of the States parties of MERCOSUR and the associate States of the *Plurinational State of Bolivia and Chile*,⁴⁸ the Protocol of 1979 the Economic Community of West African States (ECOWAS) on the free movement of persons, the right of residence and settlement,⁴⁹ and the SADC Protocol on the Facilitation of Movement of Persons in 2005.

353. In that context, the Committee notes that the ITUC indicated the urgency of a rights-based approach to migration based on non-discrimination, providing migrant workers with opportunities for decent work. According to the ITUC, there were higher unemployment rates among migrants, segregation in low-skilled occupations with less advantageous working conditions, and skills mismatch. The ITUC considered that the gap in equal treatment was reinforced by policies of limited duration work permits, circular, temporary and seasonal migration programmes, and placement by unregulated “transnational temporary work agencies”. Other workers’ organizations equally highlighted the low employment rate for migrant workers compared to national workers, or their frequent employment in lower-paid positions or low-wage sectors,⁵⁰ and the specific situation of women as dependent visa holders with respect to access to employment.⁵¹ Other workers’ organizations indicated that in practice migrant workers

⁴⁴ For example, *the former Yugoslav Republic of Macedonia* – CEACR, Convention No. 143, direct request, 2012; (sections 8(3) and 88 of the Law on Foreigners).

⁴⁵ For example, *Belgium, France and Spain*. See also *Cyprus* – CEACR, Convention No. 97, direct request, 2014; *Germany* – CEACR, Convention No. 97, direct requests, 2009 and 2013; and *Italy* – CEACR, Convention No. 97, direct requests, 2009 and 2014.

⁴⁶ See also the box on EU law on labour migration from third countries and on freedom of movement for EU citizens.

⁴⁷ For example, *Suriname and Trinidad and Tobago*. See also *Belize* – CEACR, Convention No. 97, direct request, 2010; *Grenada* – CEACR, Convention No. 97, direct request, 2008; and *Jamaica* – CEACR, Convention No. 97, direct request, 2002.

⁴⁸ For example, *Argentina, Plurinational State of Bolivia, Brazil and Uruguay*. See also *Brazil* – CEACR, Convention No. 97, direct request, 2009; and *Uruguay* – CEACR, Convention No. 97, direct request, 2008.

⁴⁹ For example, *Burkina Faso, Mali, Niger, Senegal and Togo*. See also *Benin* – CEACR, Convention No. 97, direct request, 1995.

⁵⁰ For example, the Federal Chamber of Labour (BAK) of *Austria*, the General Labour Federation (FGTB), the General Confederation of Liberal Trade Unions (CGSLB) and the Confederation of Christian Trade Unions (CSC) of *Belgium*, the UGT of *Portugal* and the Confederation of Labour of *Russia* (KTR) .

⁵¹ AFL–CIO of the *United States*.

were concentrated in certain sectors, such as construction, domestic work, agriculture or the textile industry.⁵²

Restrictions to access to employment

Free choice of employment

Article 14 of Convention No. 143 provides that:

A Member may –

- (a) ... make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;
- ...
- (c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

354. Article 14 of Convention No. 143 allows for certain restrictions to the principle of equality of treatment with regard to access to employment. General restrictions on the free choice of employment may be authorized for a certain period not exceeding two years.⁵³ On the other hand, restrictions on the right to geographical mobility are not acceptable.⁵⁴ Restrictions on permanent access to limited categories of employment or functions, where this is necessary in the interests of the State, are also permitted.⁵⁵

355. The Committee notes that the IOE considered that restricting the free choice of employment to two years had both positive and negative aspects: employers who were dependent on migrant workers for contracts longer than two years might lose workers; however, permitting free choice of employment after a shorter period of time could make the country more attractive for workers, especially those with higher skills. The employers' organization *Business New Zealand* was of the view that the term "equality of opportunity" was not appropriate in relation to temporary migrant workers with visas tied to a specific employer.

(i) General direct and indirect restrictions

356. The legislation of most countries contains varying restrictions on free choice of employment. Some restrictions directly limit the access of migrant workers to employment by regulating the circumstances in which they may change jobs, or by establishing priorities for employment in favour of national workers.

357. The practice shows that in many countries, work permits for temporary migrant workers are only issued, at least during the initial period, for a given occupation or branch of activity,⁵⁶ employer,⁵⁷ or a post in a given enterprise.⁵⁸ The *Iranian*

⁵² For example, the General Confederation of Labour of the *Argentine Republic* (CGT RA). See also for similar observations from some workers' organizations, paras 554–555 *infra*.

⁵³ Article 14(a).

⁵⁴ Article 14(a).

⁵⁵ Article 14(c).

⁵⁶ See, for example *Austria* (Employment of Foreign Nationals Act, as amended, Chapter II; paragraphs 4(1), 2 and 6); *Australia* (Migration Regulations 1994, Schedule 2, subclass 457: permits for sponsored temporary residents under the 457 programme are restricted for skilled occupations and visa holders are granted a visa for the length of their work contract for a maximum period of four years).

Confederation of Employers' Associations (ICEA) indicated that migrant workers were authorized to work only in limited fields and in particular geographical regions.

358. In most countries, when the permit is issued for a specific job or given employer, the worker may usually change his or her employment or employer only under certain conditions.⁵⁹ Temporary workers may not in principle change employer, at least during the first year of employment, and workers holding a work permit issued for a given occupation may not, as a rule, engage in another occupation.⁶⁰ Often, the authorization to change employer or occupation is granted only after an examination of the employment market.⁶¹

359. Other measures indirectly affect the employment of migrant workers. In some countries, the employer may employ a foreign worker only if he or she has been authorized to do so. This authorization, which is a requirement for the employer, must be distinguished from the work permit, which is required from the worker. In some countries, the requirement for an employer to obtain an employment authorization may indirectly restrict the occupational mobility of migrant workers already in the country of employment, as workers may not be hired by employers who have been refused such authorizations. For example, depending on the case, the employment authorization may be granted only if warranted by the employment market situation,⁶² or if the quota of foreign workers⁶³ is not exceeded. ***The Committee considers that such provisions run counter to the principle of equality of treatment between foreign and national workers, when continuing past the maximum period permitted in Article 14(a) of the Convention.***

360. In some cases, legislation fixes the total amount of wages which may be paid to foreigners.⁶⁴ Depending on the composition of the foreign workforce, provisions of this kind may involve the risk of restricting the possibilities of access to employment, at least for certain occupational categories of foreign workers.

361. Finally, restrictions on the free choice of employment of foreign workers may be the result of employment priorities in favour of national workers, either generally⁶⁵ or in relation to certain posts. Depending on the case, priority will generally be given to

⁵⁷ See, for example, the *United States* (for workers under the non-immigrant H-2B visa); see also *Philippines* – CEACR, Convention No. 143, direct request, 2013; and *Slovenia* – CEACR, Convention No. 143, observation, 2012.

⁵⁸ See, for example, *Bosnia and Herzegovina* – CEACR, Convention No. 143, direct request, 2013; *Cyprus* – CEACR, Convention No. 143, direct request, 2014.

⁵⁹ See, for example, *Republic of Korea* (Employment Permit System); *Sweden* (Foreigners Act).

⁶⁰ For example, as reported by *Turkey*, *Uzbekistan*, *United Kingdom* and *Zimbabwe* (certain circumstances).

⁶¹ See, for example, *Jordan*.

⁶² For example, *Burkina Faso* – CEACR, Convention No. 143, direct request, 2014.

⁶³ See for example, *Bosnia and Herzegovina* – CEACR, Convention No. 143, direct request, 2012; see also *Russian Federation* (Act on the Legal Status of Foreign Nationals in the Russian Federation (Federal Act No. 115-FZ of 2002)) and *Switzerland* (Federal Act on Foreign Nationals, 2005). In this regard, the *Swiss Federation of Trade Unions (USS/SGB)* indicated that the quota system increased poor working conditions of migrant workers and the risk of discrimination against them.

⁶⁴ See for example, the *Bolivarian Republic of Venezuela* – CEACR, Convention No. 143, observation, 2013.

⁶⁵ For example, *South Africa* and *Suriname* (for workers under the Work Permit System).

nationals,⁶⁶ followed by certain categories of foreigners, such as foreign spouses or workers belonging to the same regional or subregional community.

362. Employment restrictions (whether work permits or employment authorizations), including restrictions on the possibility of changing employment are generally progressively relaxed.⁶⁷ The duration of restrictions on employment varies considerably among countries. The Committee notes that, in some countries, the duration of restrictions may be different for nationals from countries with which bilateral or multilateral agreements have been concluded.⁶⁸ Restrictions may also be waived for nationals of member States of regional frameworks providing for freedom of movement and free access to employment. The Committee recalls that the maximum period to restrict the free choice of employment authorized under Article 14(a) of the Convention is two years.

363. The Committee notes that some countries make a clear distinction between migrant workers with permanent residency and temporary migrant workers;⁶⁹ other countries recognize only or primarily temporary migration, and issue work permits for a specific period and specific employer. The Committee notes that in these cases migrant workers may not change employment without obtaining a new permit, whatever the length of time they have been staying in the country.

364. In this connection, some employers' and workers' organizations indicated that migrant workers encountered difficulties in changing employer or workplace.⁷⁰ The ITUC, the FNV of the *Netherlands* and the *New Zealand* Council of Trade Unions (NZCTU) drew specific attention to increased vulnerability and lack of protection of migrant workers' rights due to the high dependency of the worker on the employer, live-in requirements and employer-tied visas, including in temporary and seasonal migration programmes.⁷¹ With regard to these programmes, the Committee draws the attention of member States to the long-term impact of the indefinite renewal of temporary permits limited to a specific occupation or employer on the human and labour rights of migrant workers.

⁶⁶ In most cases, however, it seems that legislation giving preference to nationals over foreigners only when they do not reside in the country.

⁶⁷ For example, *Sweden* – CEACR, Convention No. 143, direct request, 2012: Pursuant to the Foreigners' Act, a work permit may be granted for the duration of the offered employment or a maximum of two years, with the work permit linked to a particular employer and referring to a particular kind of work (Chapter 6, sections 1 and 2); after that period, the work permit shall only be linked to a particular occupation, but the foreign worker who wishes to change occupations must reapply for a new permit (Chapter 6, sections 2 and 2a). A permanent residence permit may be granted to a foreigner who for the past five years had a temporary residence permit for work for an aggregate period of four years (Chapter 5, section 5). See also box on European Union legislation [Introduction].

⁶⁸ For example the Agreement establishing an Association between the European Economic Community and *Turkey* (1973); and the Agreement on the European Economic Area (EEA); *New Zealand* referred to its bilateral relationship with *Australia*.

⁶⁹ For example, *Australia*, *Canada* and *United States*.

⁷⁰ For example, the *Iranian* Confederation of Employers' Associations (ICEA); and the *Korea* Employers' Federation (KEF) which, however pointed to the flexible implementation of the Employment Permit System (EPS) permitting change of workplace because of unfair treatment or other justifiable reason. The *Malaysian* Trade Unions Congress (MTUC) indicated that only victims of forced labour and those employed by companies under receivership were allowed to change employment; the General Confederation of Labour (CGT) of *Colombia* and the AFL–CIO of the *United States*.

⁷¹ See also in this respect Chapters 4, 5 and 8 of this General Survey. See also Article 9 of Convention No. 189, which addresses some of the issues regarding migrant domestic workers in terms of live-in requirements.

365. *The Committee welcomes the advances made in the freedom of movement and integration of foreign workers within regional frameworks. It considers, however, that employment priorities in favour of national workers or workers belonging to certain regional groups may be contrary to the principle of equality of treatment as regards access to employment when they exceed the period allowed by Article 14(a) of the Convention.*

(ii) *Geographical mobility*

366. Pursuant to Article 14(a) of Convention No. 143, the right of migrant workers to geographical mobility must be assured whatever the duration of the residence or employment. The Committee notes that while few member States have reported on this issue, some countries continue to impose restrictions on geographical mobility.⁷²

(iii) *Restrictions in the interest of the State*

367. Under Article 14(c) of Convention No. 143, States may “restrict access to categories of employment or functions where this is necessary in the interests of the State”. This provision allows foreign workers to be permanently excluded from certain categories of employment or functions. For example, in most countries, public service jobs are restricted to nationals. In some countries, restrictions on access to state employment are applicable to all state jobs,⁷³ and in other countries, citizenship requirements apply to public sector recruitment processes at the federal and subnational level.⁷⁴

368. In *Cyprus*, pursuant to the Public Service Law 1990–2006, EU citizens can be appointed to the public service provided that the post is not one that involves the exercise of public authority and the responsibility for the safeguarding of the general interests of the State. However, the Law on Foreigners and Immigration prohibits access of third-country nationals with a long-term residence permit in the public service.⁷⁵

369. The Confederation of Employers of the *Mexican* Republic (COPARMEX) indicated that foreigners could not work in the public service and that in all companies, 90 per cent of the workers had to be Mexican; in the technical and professional fields all workers had to be Mexicans and exceptions were only allowed for specific sectors. The Confederation of *Turkish* Trade Unions (TÜRK-İŞ) indicated that equality of treatment was restricted in case of professions connected with public order.

370. *The Committee recalls that general prohibitions as regards the access of foreigners to certain occupations, when permanent, are contrary to the principle of equal treatment unless they apply to limited categories of occupations or public services and are necessary in the interest of the State.*

⁷² For example, *Benin* – CEACR, Convention No. 143, observation, 2013; *Tajikistan* – CEACR, Convention No. 143, direct request, 2014.

⁷³ For example, *Benin* – CEACR, Convention No. 143, direct request, 2013; *Togo* – CEACR, Convention No. 143, direct request, 2012.

⁷⁴ For example, *Australia*: Australian citizenship is generally necessary to be employed in the Australian public service (Public Service Act (Cth)), 1999, as amended. Only citizens and permanent residents are eligible to be appointed to the Australian Capital Territory (ACT) Public Service (Public Sector Management Act 1994 (ACT), as amended. Certain citizenship requirements apply to public sector employment in New South Wales (NSW), in particular employment of teachers in NSW public schools (NSW Government Sector Employment Rules 2014).

⁷⁵ Section 31(a) of the Public Service Law and section 18JG(1)(a) of the Law on Foreigners and Immigration, *Cyprus* – CEACR, Convention No. 143, direct request, 2014.

Access to employment of refugees, displaced persons and asylum seekers

371. The Committee is mindful of the very large numbers of displaced persons, refugees and asylum seekers globally. The migrant workers instruments cover displaced persons and refugees where they are employed as workers outside their country of origin.⁷⁶

372. The Governments of *Bulgaria*, *Denmark*, *Romania*, *Suriname* and *Ukraine*, for example, stated that refugees did not need to apply for a work permit, while the Government of *Tunisia* stated that it ensured that refugees enjoyed the right to employment. The Government of *Lebanon* reported that Palestinians who were registered at the Department of Refugee Affairs at the Ministry of the Interior and Municipalities could access occupations generally reserved for Lebanese citizens.

373. Some member States, including the Governments of *Azerbaijan*, *Czech Republic* and *Ukraine*, stated that asylum seekers were not required to obtain a work permit. The Government of *Serbia* clarified that asylum seekers with temporary protection should be granted a personal work permit. Other member States reported that asylum seekers had the right to work (or were authorized to work) after a certain period of time⁷⁷ or under certain conditions.⁷⁸ The Government of *Sweden* highlighted that rejected asylum seekers could apply for residence and work permits while they remained in the country.⁷⁹

374. Certain member States provided information on the extent to which refugees were covered by equality of treatment provisions. For example, the Government of *Cyprus* indicated that refugees and asylum seekers enjoyed equality of treatment with the general working population with regard to conditions of employment, and the Government of *Estonia* highlighted that asylum seekers enjoyed equal treatment regarding the right to receive labour market services and benefits.

Conditions of work

375. Article 6(1)(a)(i) of Convention No. 97 provides for no less favourable treatment of migrant workers in a regular situation with nationals with respect to terms and conditions of employment. Pursuant to Article 12(g) of Convention No. 143, States must guarantee equality of treatment with regard to working conditions for all migrant workers who perform the same activity. This provision was adopted “to avoid discrimination between migrant workers according to their nationality and their particular form of employment”.⁸⁰

⁷⁶ See ILO: *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949: Convention No. 97 “should apply only to migrants for employment, including, of course, refugees and displaced persons migrating for employment, and not to migrants in general”. In addition, the 1951 Convention relating to the Status of Refugees also includes provisions on the right of refugees lawfully in the country to engage in wage-earning employment (Article 17) or self-employment (Article 18) and practice a liberal profession (Article 19).

⁷⁷ For example, *Costa Rica* (after three months); *Latvia* (after nine months), although asylum seekers, refugees and displaced persons cannot be granted an EU Blue Card for the purpose of highly qualified employment. The Committee notes in this regard that relevant EU Directives include this requirement); and *United States* (after 180 days after the date of filing an asylum application).

⁷⁸ For example, *Slovakia*, where asylum seekers can be issued a special regulation to have access to the labour market.

⁷⁹ In this connection, the Federal Chamber of Labour (BAK) of *Austria* raised concerns regarding the situation of asylum seekers, who were not entitled to work and were consequently forced into irregular employment.

⁸⁰ See ILO: *Record of Proceedings*, ILC, 60th Session, Geneva, 1975, para. 74.

Remuneration

376. Both Conventions Nos 97 and 143 underscore the right to remuneration without discrimination and Paragraph 2(e) of Recommendation No. 151 refers to equality of treatment with respect to remuneration for work of equal value.⁸¹ Having reviewed the reports by member States, the Committee notes that most countries recognize the right of migrant workers to equality of treatment with regard to remuneration. However, the Committee has noted situations in which migrant workers may face less favourable treatment compared to nationals with respect to remuneration, either due to their exclusion from minimum wage legislation, or due to differences between migrant workers and nationals, in law or in practice.⁸²

377. In this regard, the Committee has commented on the exclusion of domestic workers from minimum wage legislation. Moreover, the Committee has noted that when minimum wages are fixed by sector of economic activity, and there is no national minimum wage acting as a safety net for workers not covered by a sectoral minimum wage, many workers may find themselves excluded from any form of protection.⁸³ In *Cyprus*, where minimum wages are fixed through collective agreements or orders covering a specific sector, there is no minimum wage for the agricultural sector, which mainly employs migrant workers; as a result, the wages paid in that sector are significantly lower than those applied in other branches of activity.⁸⁴

378. The Committee is aware of differences between national and migrant workers in the determination of minimum wages in a number of countries. In *Seychelles*, for example, while a 2008 ordinance excluding non-national workers in the tourism and construction sectors from the national minimum wage was repealed in 2010, the increase in wages for that year set a lower rate of increase for non-national workers than for nationals.

379. In this regard, the Committee notes certain signs of improvement in some instances. In *Jordan*, the latest increase of the minimum wage, in 2011, excluded foreign workers. The Committee welcomes the signing in November 2014 of a sector-wide memorandum of understanding between employers' associations and the garment union in Jordan, which intends to have unified wages and equality for all workers in the garment sector.⁸⁵ However, the agreement, in setting out the broad lines for calculating the cash and in-kind wages (accommodation, food and other amenities) of foreign workers, provides for an estimated cost of the in-kind wage, which raises the issue of benefits being taken into account in the minimum wage. The Committee recalls that the value of in-kind wages needs to correspond to the real value and should not be arbitrary. While welcoming

⁸¹ Paragraph 2(e) of Recommendation No. 151 refers to equal remuneration for work of equal value. This right is also recognized in international human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) (Article 7(a)) and the UN Convention on Migrant Workers (Article 25(1)).

⁸² For example, *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, observation, 2014; *Malaysia (Sabah)* – CEACR, Convention No. 97, observations, 2014 and 2016.

⁸³ See ILO: *Minimum wage systems, General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135)*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 103rd Session, Geneva, 2014 (hereinafter *General Survey on minimum wage systems*, 2014), para. 93.

⁸⁴ *ibid.*

⁸⁵ See Memorandum of Understanding on realizing Equality in the Payment and Calculation of Wages between the *Jordan Garments, Accessories and Textiles Exporters Association (JGATE)* and the Association of Owners of Factories, Workshops and Garments (AOFWG), and the General Labour Union in the Weaving, Textiles and Garment Industry.

efforts towards achieving equality between migrant workers and nationals, the Committee recalls that the Protection of Wages Convention, 1949 (No. 95), requires that in cases where partial payments in-kind are authorized, appropriate measures shall be taken that the value attributed to such allowances is fair and reasonable.⁸⁶

380. The Committee further noted that in *Malaysia*, the minimum wage which was established in 2012, only applied since January 2014 to all migrant workers and that employers were authorized to deduct the levy on employing migrant workers from their wages. The Committee had in the past warned against the possible negative impact of such a levy system on the wages and general working conditions and rights of migrant workers, especially when levy rates are high and being deducted from employees' wages. The Committee considers that allowing, in practice, the amount of the levy to be deducted from the wages of foreign workers may result in less favourable treatment of these workers as compared to nationals, contrary to Article 6(1)(a) of the Convention.⁸⁷

381. The Committee observes that some countries of origin have fixed a minimum wage for their nationals employed abroad.⁸⁸ While the Committee welcomes measures to protect the rights of migrant workers, it has noted in the past that such negotiations risk introducing competition between countries of origin to ensure employment for their nationals abroad and at the same time giving rise to discrimination between migrant workers on grounds of nationality.⁸⁹

382. Furthermore, the Committee notes that regardless of legislative prohibitions against differences in wages between migrant workers and nationals and among migrant workers, wage differentials still occur in practice.⁹⁰ The Committee notes in this respect the observations made by a number of workers' organizations⁹¹ relating to significant wage gaps between foreign workers and nationals affecting both high- and low-wage foreign workers, which could not be explained by differences in experience, education, occupation or productivity; and payments below the minimum wage for young graduates in seasonal work and technical interns entering under government-sponsored programmes.

383. The Committee further notes the impact of regional integration frameworks on the equality of treatment with respect to conditions of work and wages. In this regard, the ITUC indicated that the equality gap widened in some cases of regional economic

⁸⁶ Article 4(2)(a) and (f) of Convention No. 95.

⁸⁷ See for example, *Malaysia (Sabah) – CEACR*, Convention No. 97, observations, 2015 and 2016; See also, ILO: *General Survey on minimum wage systems*, 2014, para. 189.

⁸⁸ For example, *Indonesia and Philippines*.

⁸⁹ See ILO: *General Survey on minimum wage systems*, 2014, para. 192.

⁹⁰ See ILO: *Global Wage Report 2014/15: Wages and income inequality* (Geneva, ILO, 2015), pp. 51–53, and 61: Comparisons on the wages of migrants with those of national workers showed that in various countries the mean wage gap would reverse if the unexplained part of the gap (which captures wage discrimination) was eliminated. The report also found that extending minimum wages and collective bargaining to low-paid workers would generally be helpful in reducing inequality among migrants who are over-represented among these workers, along with equal pay policies and measures to combat stereotypes, and by promoting wider adoption of fair and effective labour migration policies that ensure greater coherence across employment, education/training and development policies at national, regional and global levels.

⁹¹ The ITUC; the General Confederation of Labour–Force Ouvrière (CGT–FO) of *France*, *Italian Union of Labour (UIL)*; the JTUC–RENGO of *Japan*; the NZCTU of *New Zealand*, the Confederation of Labour of *Russia (KTR)* and the MTUC of *Malaysia*.

integration and free movement of labour processes.⁹² The General Confederation of *Portuguese Workers–National Trade Unions* (CGTP–IN) indicated that the establishment of different categories of migrant workers does not foster equality of treatment and may give rise to cases of discrimination.

384. The Committee recalls that workers sent or posted by their employers to work outside their own country are covered by the provisions of Convention No. 97, including Article 6 prohibiting unequal treatment between migrant workers in a regular situation and nationals.

The European Committee of Social Rights and posted workers

With respect to equal treatment of posted workers, the European Committee of Social Rights (ECSR) decided that: "... the facilitation of free cross-border movement of services and the promotion of the freedom of an employer or undertaking to provide services in the territory of other States – which constitute important and valuable economic freedoms within the framework of EU law – cannot be treated as having a greater a priori value than labour rights ..., including the right for posted workers to receive from the host State treatment not less favourable than that of other workers, in respect of the enjoyment of the benefits of collective bargaining, as well as in respect of remuneration and other employment conditions". Further, the ECSR held that "posted workers, for the period of their stay and work in the territory of the host State, should be treated by the host State as all the other workers who work in that State; and foreign undertakings should be treated equally, by the host State, when they provide services by using posted workers. ... Excluding or limiting the right to collective bargaining or action with respect to foreign undertakings, for the sake of enhancing free cross border movement of services and advantages in terms of competition within a common market zone, constitutes, according to the Charter, discriminatory treatment on the ground of nationality of the workers, on the basis that it determines, in the host State, lower protection and more limited economic and social rights for posted foreign workers, in comparison with the protection and rights guaranteed to all other workers".¹

¹ ECSR, *Swedish Trade Union Confederation (LO) and Swedish Confederation of Professional Employees (TCO) v. Sweden*, 3 July 2013 (Complaint No. 85/2012), paras 140–141.

Occupational safety and health

385. The Committee notes that migrant workers are particularly vulnerable to industrial accidents and emphasizes the urgency of reinforcing safety and health mechanisms in occupations in which they are primarily employed.

386. In this regard, the ITUC indicated that occupational accident rates were commonly much higher for migrant workers than for native workers; migrant workers, especially seasonal migrant workers, were placed in high-risk, hazardous and unhealthy, low-paid jobs with poor supervision. The AFL–CIO of the *United States* drew attention to the unique vulnerabilities of temporary workers with respect to work injuries and fatal accidents.

387. Certain governments reported on measures to protect migrant workers against occupational safety and health risks. The Government of *New Zealand* for example, reported that all workers were subject to New Zealand's occupational safety and health measures and employers were responsible for making sure that work was undertaken in a safe and healthy way. The Government of the *United States* reported that the

⁹² The ITUC indicated that the Intra-corporate Transfer Directive (2014/66/EC), and the Posting of Workers Directive (96/71/EC) allowed for employment of third-country nationals under – usually lower than European – employment and social protection standards of countries of origin.

Occupational Safety and Health Administration had issued standards for general industry and specialized standards for construction, the maritime industry and agriculture. Furthermore, the Committee welcomes the information provided by some member States that employers have the obligation to educate workers about occupational safety and health.⁹³

388. *The Committee reiterates the importance of taking the appropriate measures to prevent any special health risks to which migrant workers may be exposed, in particular those employed in hazardous occupations such as agriculture, construction, mining and fishing, manufacturing, and domestic work. Member States are therefore urged to make every effort to ensure that migrant workers receive training and instruction in occupational safety and health in connection with their practical training or other work preparation, where possible in a language they understand.*⁹⁴

Social security

389. Both Conventions Nos 97 and 143 provide that equality of treatment must also cover social security. Pursuant to Article 6(1)(b) of Convention No. 97, the equal treatment principle with respect to social security applies to all migrant workers lawfully in the country, whether they have permanent or temporary residence status. Under this provision, social security comprises “legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme”,⁹⁵ subject to limitations.

390. Convention No. 97 provides that arrangements can be made for the maintenance of acquired rights and rights in the course of acquisition (Article 6(1)(b)(i)), and for benefits payable solely from public funds, or those paid to persons who do not satisfy conditions for a normal pension under non-contributory schemes (Article 6(1)(b)(ii)). Accordingly, the imposition of minimum requirements as regards the duration of residency or employment would not necessarily be contrary to the Convention, if those conditions also apply to nationals.

391. The Committee has reminded member States that such arrangements do not permit the automatic exclusion of certain categories of migrant workers from qualifying for social security benefits.⁹⁶ The main purpose of the exceptions permitted under the Convention is to prevent abuses and to safeguard the financial balance of non-contributory schemes.⁹⁷

392. By including social security among the fields to be covered by the national equality policy, Convention No. 143 built upon Convention No. 97, the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Equality of Treatment

⁹³ For example, *Czech Republic, Japan, Republic of Korea and United States*. The Government of the *United States* furthermore stated that certain standards of the Occupational Safety and Health Administration required employers to provide training in a manner or language that the worker could understand taking into account the workers’ educational level, literacy, and language skills.

⁹⁴ Recommendation No. 151, paras 20 and 21.

⁹⁵ It should be pointed out that, unlike the English version, the French and Spanish texts of Article 6(1)(b), of Convention No. 97 do not mention “invalidity” among the contingencies covered. This omission is, however, of no consequence in view of the general terminology used in this clause, which also includes “any other contingency which ... is covered by a social security scheme”.

⁹⁶ See ILO: *General Survey on migrant workers*, 1999, para. 431.

⁹⁷ For example, *New Zealand – CEACR*, Convention No. 97, observation, 2008 and direct request, 2014.

(Social Security) Convention, 1962 (No. 118).⁹⁸ Convention No. 143 lays down the principle of equality of treatment in respect of social security in a general way without expressly excluding non-contributory benefits. However, the Convention does not prohibit that in the case of non-contributory benefits, special arrangements to be concluded, similar to those authorized under Article 6(1)(b)(ii) of Convention No. 97 and Article 4(2) of Convention No. 118.⁹⁹

Payment of benefits abroad

393. Article 6 of Convention No. 97 and Part II of Convention No. 143 apply only to benefits to migrant workers and members of their families within the country of employment. The issue of payment of benefits to beneficiaries residing abroad is dealt with in Paragraph 34(1)(b) and (c) of Recommendation No. 151, which provides that “a migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his or her stay therein ... to benefits which may be due in respect of any employment injury suffered”, and “to reimbursement of social security contributions which do not give rise to benefits”. The Recommendation further encourages member States to conclude bilateral or multilateral agreements to protect the rights in course of acquisition related to periods of contributions during past employment in the country.

The situation in member States

394. The application of the principle of equality of treatment in respect of social security raises complex technical issues, some of which have been discussed in the Committee’s 2011 General Survey on the social security instruments.¹⁰⁰ The Committee has addressed the issue of equality of treatment in social security in a number of member States that have ratified Convention No. 97.¹⁰¹

395. While migrant workers might have regular immigration status, registration and a valid work permit is usually required for access to contributory social security benefits; residence status is also necessary for entitlement to non-contributory benefits, social assistance and social services, which are governed by the principle of territoriality and intended primarily for national residents.¹⁰²

⁹⁸ The major difference between Conventions Nos 102 and 118 and Conventions Nos 97 and 143 is that the former are based on the principle of reciprocity, whereas Article 6 of Convention No. 97 and Part II of Convention No. 143 apply to migrant workers and members of their families, regardless of whether they are nationals of a country which has ratified the Convention in question.

⁹⁹ See ILO: *General Survey on migrant workers*, 1999, para. 433.

¹⁰⁰ See ILO: *Social security and the rule of law, General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 100th Session, Geneva, 2011 (hereinafter *General Survey on social security and the rule of law*, 2011), paras 57, and 208–223.

¹⁰¹ See for example, *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, observation, 2009 and direct request, 2013 (social security of migrant domestic workers); *Israel* – CEACR, Convention No. 97, direct request, 2013; *Malaysia (Sabah)* – CEACR, Convention No. 97, observation, 2015; *Mauritius* – CEACR, Convention No. 97, direct request, 2014; *New Zealand* – CEACR, Convention No. 97, observation, 2008, and direct request, 2014; *Slovenia* – CEACR, Convention No. 97, direct request, 2014; *United Kingdom* – CEACR, Convention No. 97, direct request, 2015; and *Zambia* – CEACR, Convention No. 97, direct request, 2014.

¹⁰² In *Latvia*, for example, section 3(1) of the Law on Social Services and Social Assistance of 31 October 2002 determines: “The right to receive social services and social assistance shall be enjoyed by Latvian citizens and non-citizens and aliens who have been granted a personal identity number, except for persons who have received a temporary residence permit.”

396. A large number of countries reported that their social security legislation did not distinguish between nationals and foreign residents and covered generally everyone who was lawfully resident or working in the country.¹⁰³ This was particularly the case with respect to contributory benefits which were granted equally to all employed workers fulfilling the conditions of entitlement.¹⁰⁴ The Committee notes that in an increasing number of countries, equality of treatment with respect to social security is enshrined in constitutional provisions establishing the right of all inhabitants to social security¹⁰⁵ or stating that foreigners have the same rights as nationals.¹⁰⁶ A number of African countries reported that national legislation prescribed equal protection for all workers, requiring employers to register all their employees with social security schemes.¹⁰⁷

397. In practice, however, the Committee is aware that migrant workers are often excluded from basic coverage by social security schemes or face restrictive conditions under the social security system of the host country, at the same time as losing social security entitlements in their country of origin due to their absence.

398. In this connection, the Committee notes that the ITUC considered social security to be an area in which migrant workers faced particular difficulties, as social security rights were usually dependent on nationality, periods of employment, contributions or residency. ITUC also indicated that costs of medical treatment, inability to take time off work, or lack of childcare, prevented many migrant workers from seeking medical treatment. Further, migrant workers often had restricted access to disease prevention, detection and treatment facilities.

399. In some countries, labour migration laws regulate the conditions under which migrant workers and their family members enjoy the same rights to social protection as national workers for some benefits, while rights to other benefits are determined through bilateral or multilateral social security agreements.¹⁰⁸ Other countries referred to anti-discrimination legislation or awareness-raising measures. The Government of *Uruguay*, for example, reported that it had taken measures to inform migrant workers of employment-related rights and obligations including the modalities of registration with the employment service so as to receive information on social security; the Government of *El Salvador* referred to the monitoring by public bodies of compliance with labour and social security legislation in respect of migrant workers; and the Government of *Ecuador* reported that its national migration policy promoted access to social security for persons in a situation of mobility, allowing voluntary affiliation for those who are not in a dependent employment relationship.

¹⁰³ For example, *Argentina, Brazil, Chile, Costa Rica, Cuba, Ecuador, El Salvador, Finland, France, Luxembourg, Netherlands, Montenegro, Panama, Suriname, Sweden, Switzerland, United States, Uruguay* and *Bolivarian Republic of Venezuela*.

¹⁰⁴ For example, *Bangladesh, Costa Rica, Germany, Hungary, India, Latvia, Lithuania, Netherlands, Pakistan, Poland, Spain, Turkey* and *Turkmenistan*. In *Honduras*, the Government indicates that migrant workers are treated equally subject to certain limitations related to public order or security established by law.

¹⁰⁵ For example *Colombia*; see also: ILO: *General Survey on social security and the rule of law*, 2011.

¹⁰⁶ For example, *Costa Rica*.

¹⁰⁷ For example, *Algeria, Benin, Burkina Faso, Gabon, Madagascar, Mali, Morocco, Senegal, Tunisia* and *Zimbabwe*.

¹⁰⁸ For example, *Azerbaijan, Belarus, Colombia, Mauritius, Slovenia* and *Uruguay*. More particularly, in *Azerbaijan* equality of treatment is granted for social protection and medical assistance, while pension rights are regulated by bilateral agreements.

400. The Committee notes, however, that some countries reported an absence of any social security protection for migrant workers.¹⁰⁹ In this respect, ITUC indicated that most of the Gulf States excluded foreigners from the public social security system.

401. National immigration policies often distinguish between citizens and non-citizens depending on type of residency status, and the requirements may vary by benefit.¹¹⁰ In particular, while permanent residents usually have access to all benefits, the rights of temporary residents are often determined by special provisions and international agreements.¹¹¹ For example, the Committee has noted differences between nationals or permanent migrant workers, on the one hand, and temporary migrant workers, on the other hand, in respect of social security benefits in the case of industrial accidents.¹¹²

402. The Committee has also commented on the particular vulnerability of certain categories of temporary migrant workers,¹¹³ including seasonal¹¹⁴ and domestic workers,¹¹⁵ to less favourable treatment. For example, the Committee has considered that while contractual protections providing free medical care by the employer under a standard employment contract might be sufficient in some instances, such provisions might not cover all the instances for which the need to access public health-care services would be indispensable, and thus deprive certain migrant workers, especially the low-waged, from health-care benefits available to national workers.¹¹⁶ The Committee had therefore welcomed that the Government of *China (Hong Kong Special Administrative Region)* abandoned a plan to implement a seven-year residence requirement for domestic workers to be eligible for public health-care benefits;¹¹⁷ and welcomed steps taken by the Government of *New Zealand* to reduce the taxation rate for Recognized Seasonal Employment Scheme (RSE) workers and to require that such workers had acceptable health insurance.¹¹⁸

403. The Committee further observes that certain countries of origin have made efforts to develop either voluntary affiliation to their national social insurance schemes or

¹⁰⁹ For example, *Georgia* and *Namibia*. *Nicaragua* signals that it has no knowledge of cases in which the social security acquired rights arising out of past employment have been guaranteed.

¹¹⁰ In *Bulgaria* (section 74(c), para. (2)(i)(2) of the Employment Encouragement Act: “The holder of a single permit for work and residence is equally positioned relative to Bulgarian citizens in respect of ... the use of social security rights in the framework of European Union law”). For workers under the Employment Permit System in the *Republic of Korea*, industrial accident and health insurance is obligatory, but employment insurance is optional, and national pension based on the principle of reciprocity. In the *Russian Federation*, foreign nationals who are in employment are entitled to compulsory social insurance for accidents at work and occupational diseases, while those with temporary or permanent residence are entitled also to sickness and maternity insurance, provided that insurance contributions have been paid for no less than six months.

¹¹¹ For example, *Australia*, *Georgia*, *New Zealand*, *United Kingdom* and *United States*. Note should be taken that Article 1(2) of the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19), guarantees, with regard to compensation for occupational accidents, equality of treatment to foreign workers without any condition as to residence. See also *Malaysia (Sabah)* – CEACR, Convention No. 97, observation, 2015.

¹¹² See, for example, *Malaysia (Sabah)* – CEACR, Convention No. 97, observation, 2015.

¹¹³ See, for example, *Israel* – CEACR, Convention No. 97, observation, 2008.

¹¹⁴ See, for example, *New Zealand* – CEACR, Convention No. 97, observation, 2008 and direct request, 2014.

¹¹⁵ See, for example, *China (Hong Kong, Special Administrative Region)* – CEACR, Convention No. 97, observation, 2014.

¹¹⁶ See, for example, *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, observations, 2008 and 2009.

¹¹⁷ *ibid.*

¹¹⁸ See for example, *New Zealand* – CEACR, Convention No. 97, direct request, 2014.

special mechanisms aimed at protecting nationals working abroad. For example, the *Philippines Overseas Workers Welfare Administration* is recognized as a pioneer in social protection for overseas migrant workers. In *Sri Lanka*, an Overseas Workers Welfare Fund provides social insurance for migrants and their families remaining in the country of origin, covering payments in the case of death, disability or the need to cover travel expenses.

Maintenance of acquired rights

404. Countries differ considerably in relation to the exportability of pensions and other benefits abroad. Traditionally, only foreigners with permanent residence are granted the right to pension equal to nationals.¹¹⁹ Most countries reported that the export of long-term benefits in the case of transfer of residence abroad was regulated by bilateral or multilateral social security agreements.¹²⁰ Such agreements usually condition the granting of social security benefits on reciprocity¹²¹ and coordinate the social security schemes of two or more countries, ensuring the portability of social security entitlements. Such agreements generally provide for the maintenance of acquired rights and rights in the course of acquisition, and the payment of benefits to beneficiaries residing abroad. In the majority of cases, these agreements concerned long-term benefits such as old-age, disability, and survivors' pensions, rather than health-care benefits and social assistance allowances.¹²² The Committee recalls that the provisions of Conventions Nos 97 and 143 are not subject to reciprocity.

405. Measures to coordinate the functioning of social protection systems often exist in economic integration areas. Under the EU's complex system of portability of benefits, EU nationals enjoy non-discriminatory access; the portability of social benefits is also granted to third-country nationals after five years of residence.¹²³ Globally, the conclusion of bilateral and multilateral¹²⁴ agreements is increasing, including in Africa,¹²⁵ and such agreements exist for the Gulf countries,¹²⁶ Eastern European and

¹¹⁹ For example, *Estonia, France and Russian Federation*. In *Denmark*, migrant workers who leave the country – while they cannot export the rights – retain the rights arising out of past employment when they return. In *Bahrain*, a “non-citizen or his heirs shall be paid, upon final departure after more than three years of participation in the social insurance against old-age, disability and death, the total of his contributions and his employer's contributions plus a grant equivalent to not less than 3 per cent of such total”.

¹²⁰ For example, *Uruguay and United States*.

¹²¹ For example, in Africa, *Burkina Faso, Cameroon, Mali and Senegal*.

¹²² The *Netherlands Trade Union Confederation (FNV)* indicated that unemployment insurance benefits could not be exported to other countries, which it considered to be unfair.

¹²³ The EU social security coordination legislation includes Regulation (EC) No 883/2004 and Implementing Regulation (EC) No 987/2009. Further Regulation (EU) No 1231/2010 extends modernized coordination to third-country nationals legally resident in the EU and in a cross-border situation. Family members and survivors are also covered if they reside in the EU.

¹²⁴ For example, the Multilateral Convention on Social Security of the Inter-African Conference of Social Scheme (CIPRES), the General Convention on Social Security of the Common African Organisation of Madagascar and Mauritius (OCAM) and the General Convention on Social Security as part of the Economic Community of West African States (ECOWAS).

¹²⁵ For example, *Senegal* indicates it has concluded agreements with *Benin, Burkina Faso, Côte d'Ivoire, France, Gabon, Italy, Mali, Mauritania, Spain and Togo*. *Morocco* has signed agreements with a number of host countries: *Belgium, Canada, Denmark, France, Germany, Libya, Netherlands, Portugal, Romania, Spain, Sweden and Tunisia*.

¹²⁶ The 2006 Unified Law of Insurance Protection Extension for citizens of the Gulf Co-operation Council (GCC) States working outside their countries in any of the Council member States had the effect of improving pension protection and contributing to greater labour mobility.

Central Asian countries,¹²⁷ and within CARICOM and MERCOSUR. ASEAN countries are considering establishing a multilateral social security agreement.

406. Finally, the Committee notes that, in the context of the economic crisis and fiscal consolidation, there has been a decrease of the level of protection granted by social security systems generally as well as through the stiffening of the conditions of granting and verifying the resident status of foreign nationals for the purpose of claiming social security benefits.¹²⁸

407. *The Committee considers that the apparent gaps in social security coverage for migrant workers suggest a need for the review of national legislative frameworks to understand the extent to which migrant workers are disadvantaged with regard to their eligibility for social security benefits both in countries of destination and in countries of origin. The Committee welcomes the development of bilateral and multilateral social security agreements that guarantee the application of the principle of equality of treatment in practice by providing practical arrangements for the maintenance of acquired rights and rights in the course of acquisition. At the same time, the Committee is mindful that migrant workers from countries of origin that have not concluded such agreements with the country of employment, may not enjoy the same rights as those workers covered by such agreements even though, under the national legislation, they are entitled to be treated without discrimination.*¹²⁹ *The Committee thus considers it important that governments specify the social rights and benefits covered in bilateral agreements and clarify the situation of migrant workers who originate from countries not covered by the agreement.*

Trade union rights

Trade union rights

Article 6(1)(a)(ii) of Convention No. 97 provides for equality of treatment of migrants lawfully in the country with nationals in relation to trade union membership and enjoyment of the benefits of collective bargaining.

Article 10 of Convention No. 143 requires governments to pursue a national equality policy with respect to “trade union rights”.

Paragraph 2(g) of Recommendation No. 151 refers to effective equality of opportunity between regular migrant workers and nationals and treatment with respect to trade union membership, exercise of trade union rights and eligibility for trade union office and in labour–management relations bodies, including bodies representing workers in undertakings.

408. The labour migration instruments underscore the principle that migrant workers should enjoy freedom of association. In a number of countries, the Committee has noted progress in guaranteeing equality of treatment to migrant workers in a regular situation with respect to trade union rights.¹³⁰ The Committee has welcomed, for example, the adoption of legislation removing reciprocity requirements for migrant workers to

¹²⁷ The 2005 Baku Declaration on “Enhancing Social Protection of Migrant Labour”.

¹²⁸ See, for example, *United Kingdom* – CEACR, Convention No. 97, direct request, 2014.

¹²⁹ For example, in *Trinidad and Tobago* social security reciprocal agreements which provide for, among other things, the transferability of contributions paid under social security schemes in the different jurisdictions, exist only with other countries of the Caribbean Community (CARICOM) and *Canada*; workers from other countries cannot benefit from such legislative and administrative arrangements.

¹³⁰ For example, *Kuwait* and *Spain*.

become trade union officials in the *Syrian Arab Republic*¹³¹ and *Burkina Faso*.¹³² The Government of *Turkey* stated that the new Unions and Collective Agreements Act (Statute No. 6356), which entered into force in 2012, eliminated the citizenship requirement for trade union founders, and now provided for the possibility of non-Turkish citizens to become a founding union member.

409. While the majority of countries recognize in general terms the right to establish and join trade unions, the Committee notes that certain States continue to require citizenship for the establishment of trade unions, require a certain proportion of members to be nationals,¹³³ or subject foreign nationals to conditions of residence and reciprocity in terms of eligibility for trade union membership.¹³⁴ In a number of countries, labour legislation does not allow migrant workers to establish trade unions,¹³⁵ or restricts this right to foreigners who have taken the nationality of the host country.¹³⁶ In this respect, the Committee has welcomed the recent change in the Labour Law of *Kuwait* as to the right of migrant workers to join trade unions, but noted that the Labour Law still limited the rights of migrant workers to establish trade union organizations.¹³⁷ In certain countries, relevant legislation regarding the right to freedom of association may exclude certain categories of workers.¹³⁸

410. ***The Committee reiterates that rules concerning the election of union officers should be generally left to the unions concerned and that prohibitions applied to foreign workers imposed by the legislation of some member States are incompatible with the principles of freedom of association.***¹³⁹ The Committee recalls that while it has acknowledged in some cases certain exceptions for legislation restricting the ability of migrant workers to take up trade union office, it has emphasized that migrant workers should be able to take up trade union office at least after a reasonable period of residence in the host country.¹⁴⁰

¹³¹ *Syrian Arab Republic* – CEACR, Convention No. 87, observation, 2002.

¹³² *Burkina Faso* – CEACR, Convention No. 143, observation, 2009.

¹³³ For example, *Algeria* and *Libya*.

¹³⁴ See for example, *Algeria* – CEACR, Convention No. 87, observation, 2016; *Central African Republic* – CEACR, Convention No. 87, observation, 2016; *Philippines* – CEACR, Convention No. 143, direct request, 2013; and *Philippines* – CEACR, Convention No. 87, observation, 2013.

¹³⁵ For example, *Lebanon* (section 91 of the Labour Code of 1946); and *Viet Nam* (section 5 of the Law on Trade Unions of 2012).

¹³⁶ For example, *Algeria*, section 6 of the Labour Act No. 90-14 of 1990.

¹³⁷ For example, *Kuwait* (section 99 of the Labour Law, 2010); see also *Kuwait* – CEACR, Convention No. 87, observation, 2011.

¹³⁸ For example, *United States*, the National Labor Relations Act (NLRA) 29 U.S.C., §§151.169 (sections 1[§151] and 2[§152(3)]) of which provide freedom of association and collective bargaining does not cover agricultural labourers and domestic workers, among others.

¹³⁹ See ILO: *Giving a voice to rural workers, General Survey concerning the right of association and rural workers' organizations instruments*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 104th Session, Geneva, 2015 (hereinafter *General Survey on giving a voice to rural workers*, 2015), para. 144; see also ILO: *General Survey on the fundamental Conventions*, 2012, para. 103; and ILO, *Freedom of Association, Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO fifth (revised) edition*, 2006, paras 392 and 420.

¹⁴⁰ See ILO: *General Survey on giving a voice to rural workers*, 2015, para. 144 and ILO: *General Survey on the fundamental Conventions*, 2012, para. 103; see also *Bolivarian Republic of Venezuela* – CEACR, Convention No. 143, observation, 2008 and *Bolivarian Republic of Venezuela* – CEACR, Convention No. 87, observation, 2012.

411. The ITUC, and other workers' organizations,¹⁴¹ referred to a range of legal restrictions excluding migrant workers in some countries from the right to join or establish trade unions or the right to be elected as union officials. The MTUC of *Malaysia* indicated that even though migrant workers had the right to join trade unions, in practice, they did not participate in union activities because of fear of repatriation or deportation. The Association of *Seychelles* Employers indicated that difficulties for migrant workers to organize had an impact on the effective settlement of disputes.

412. TÜRK-İŞ emphasized the positive effects of migrant workers' trade union membership, and the Trade Union Confederation of Workers' Commissions (CCOO) of *Spain* stressed its importance to guarantee migrant workers' integration and to improve their capacity to contribute to the socio-economic progress of the country of destination.

413. *The Committee emphasizes that the instruments guarantee migrant workers the right to establish and join organizations of their own choosing without previous authorization. The Committee notes the challenges faced by migrant workers in relation to the exercise of their organizational rights in practice, but stresses that the fact of being a foreign worker should not present an obstacle to membership of trade unions. The Committee considers that the full exercise of migrant workers' trade union rights would allow their needs and concerns to be effectively represented when negotiating their terms and conditions of work. The Committee further emphasizes the potential of collective bargaining, and in particular of collective agreements, as a means of ensuring greater equality of migrant workers with nationals.*

Housing

414. Article 6(1)(a)(iii) of Convention No. 97 and Paragraph 2(i) of Recommendation No. 151 provide that equality of treatment should cover accommodation or housing. The provisions do not refer to ownership and any related public assistance programmes, but to the occupation of a dwelling to which migrant workers must have access in the same conditions as nationals.

415. Few countries provided specific information on these provisions. The Government of *Brazil*, for example, reported that permanent residents may participate in a programme through which they can gain access to low-cost financing for housing. Other governments, such as *Trinidad and Tobago* and *the former Yugoslav Republic of Macedonia* reported that equality legislation prohibited discrimination in respect of the provision of accommodation, or, as in the case of *Zimbabwe*, that the labour law did not differentiate between nationals and migrant workers in this respect.

416. The Committee considers that the provisions on access to housing maintain their relevance for seasonal and temporary workers and live-in domestic workers.¹⁴² The Committee has previously noted the vulnerability of agricultural workers, especially when living at their workplaces, and emphasized the crucial role of the labour inspectorate in rural areas.¹⁴³ The MTUC of *Malaysia* indicated that migrant workers were forced to live in overcrowded and unhygienic hostels lacking food preparation facilities.

¹⁴¹ For example the MTUC of *Malaysia*. The UGTT of *Tunisia* indicated that exceptions were possible if a permission was granted by the competent authority according to section 251 of the Labour Code.

¹⁴² Note that for domestic workers residing in the household, Article 6 of Convention No. 189 requires decent living conditions that respect their privacy.

¹⁴³ See ILO: *General Survey on giving a voice to rural workers*, 2015, para. 286.

417. The Committee notes that in a number of countries, housing is the responsibility of the employer, in particular for certain categories of workers in the domestic service, agriculture or construction.¹⁴⁴ The Government of *Singapore* reported, for example, that under the Employment of Foreign Manpower (Work Passes) Regulations, employers are responsible for proper housing. An ongoing priority was to speed up the construction of purpose-built dormitories that not only met the basic living needs of migrant workers, but also their social and recreational needs. Since 2009, the Government has established dedicated recreation centres for migrant workers which provide a wider range of amenities that individual dormitories might not be able to support.

418. The Committee has addressed the housing conditions of migrant workers and unequal treatment with nationals in this respect in a number of countries.¹⁴⁵ It has welcomed a Decision of the Supreme Administrative Court of *France* repealing legislative provisions imposing a two-year residence requirement to certain categories of foreigners to benefit from the enforceable right to decent housing. The Court ruled that the decree was not in conformity with the Convention, and had ignored the equality principle by excluding temporary short-term residence permit holders from the enforceable right to housing.¹⁴⁶

419. The Committee draws attention to the Workers' Housing Recommendation, 1961 (No. 115), which may be of particular relevance to temporary and seasonal migrant workers. Paragraph 2 of this Recommendation provides that it should be an objective of national housing policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent housing accommodation and a suitable living environment are made available to all workers and their families.

* * *

420. *The Committee emphasizes that migrant workers in a regular situation are entitled to equality of opportunity and treatment in relation to the matters set out in Article 6(1) of Convention No. 97 and further elaborated in Articles 10 and 12 of Convention No. 143. Governments should implement active measures appropriate to the national circumstances so as to ensure that this right is effective in practice as well as in law. In this regard, the Committee stresses that innovative approaches that are integrated into national migration and employment policies may be necessary.*

¹⁴⁴ For example, *China (Hong Kong Special Administrative Region)*, *Israel*, *Qatar* and *Saudi Arabia*.

¹⁴⁵ For example, *Belgium*, *Italy*, *Norway* and *Slovenia*.

¹⁴⁶ For example, *France* – CEACR, Convention No. 97, observation, 2013; Decision of the Supreme Administrative Court of 11 April 2012 (Conseil d'Etat Ass 11 April 2012, GISTI et FAPIL, No. 322326). The Committee notes the observations of the General Confederation of Labour–Force Ouvrière (CGT–FO) of *France* that access to social housing was still limited to migrants holding a temporary residence permit of at least one year (*carte de séjour temporaire*) and in practice, often only those holding a long-term residence permit (*carte de résident*) can apply for social housing.

Chapter 7

Protection of migrant workers: Rights of employment, residence and return

421. The migrant workers instruments guarantee migrant workers' rights relating to the right to reside in the receiving country beyond periods of actual employment, and rights relating to the possible return to the country of origin. These provisions essentially concern application of the instruments within the country of employment, although certain rights relating to return and integration also create obligations for the country of origin.

422. Conventions Nos 97 and 143 guarantee rights of residence in specific situations. Recommendations Nos 86 and 151 provide additional guidance in this regard.

Residence and loss of employment

Loss of employment

Article 8 of Convention No. 143:

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

2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

423. Pursuant to Article 8 of Convention No. 143 migrant workers who have “resided legally” in the territory for the purpose of employment are protected under the Convention in the case of loss of employment. Such migrant workers should not be considered in an irregular situation by the mere loss of their employment. They are also entitled “to enjoy equality of treatment with nationals in respect to particular guarantees of security of employment, the provision of alternative employment, relief work and retraining”.

424. From a review of the country reports, the Committee notes the practice in a number of countries, when issuing permits for temporary or time-bound contracts, to specify a period of time and to require that the migrant worker returns to the country of origin upon completion of this period.¹ In this regard, the Committee recalls that the practice of returning migrant workers at the end of a time-bound contract does not, in itself, constitute a violation of the Convention. Article 8(1) refers exclusively to migrant

¹ See for example, *Armenia, Bosnia and Herzegovina, Cyprus, Mauritius and the former Yugoslav Republic of Macedonia*.

workers who *lose* their employment, as opposed to those whose employment comes to an end as foreseen in the employment contract.²

425. The Committee recalls that Article 8 of Convention No. 143 does not distinguish between situations of migrant workers with permanent residence, long-term residence or short-term. Nonetheless, the Committee notes, from the review of the reports, that a number of governments make a distinction between the treatment of migrant workers with permanent or long-term residence, or citizens of countries who are members of regional integration frameworks, and those accepted on temporary or time-bound contracts.³

Migrants with permanent residence

426. The Committee notes that in most countries, migrants who have been granted permanent resident status maintain the right to reside in the country, and enjoy the same privileges as national workers in the case of loss of employment. A number of governments from the African region such as *Benin*, *Côte d'Ivoire*,⁴ *Gambia*, *Madagascar* and *Togo*, for example, reported in general terms (without specifying the residence status) that the incapacity to work or mere loss of employment generally did not lead to the withdrawal of the residence or work permit of the migrant worker, or a change in migration status,⁵ or that the migrant worker did not have to leave the country when the contract expired.⁶ *Argentina* reported that no worker shall be deprived from his or her residence permit or be expelled by the mere fact of not having completed a contractual obligation unless that obligation was the reason to issue the permit.⁷

427. The Committee notes that similar protections are often also provided in the context of regional integration, for example for migrant workers who are nationals of member States of the European Union, the European Economic Area (and *Switzerland*) or third-country nationals who are long-term residents,⁸ or who are highly qualified workers (Blue Card), such as reported, for example, by the *Czech Republic*, *Germany* and *Poland*.

Temporary migrant workers

428. Time-bound employment of migrant workers may range from seasonal work to time-bound, short-term and medium-term employment to employment that can extend several years. Some countries⁹ reported that loss of employment did not automatically imply the withdrawal of the residence permit. The Government of *Japan*, for example, reported that a temporary foreign worker is not immediately deprived of his/her status of residence upon loss of employment, and may be employed by a new employer within the

² See for example, *Bosnia and Herzegovina* – CEACR, Convention No. 143, direct request 2012.

³ For example, *Bulgaria* and *United States*.

⁴ In this regard, the General Union of Workers of *Côte d'Ivoire* (UGTCI) indicated that the fact that the employer has to inform the authorities of the loss of employment resulted in the migrant worker losing his or her work permit.

⁵ For example, *Mali*.

⁶ For example, *Cameroon*.

⁷ *Argentina* (section 65 of Law No. 25871 on migration).

⁸ See Council Directive 2003/109/EC concerning the status of third-country nationals who are long term residents (2003 OJ L16/44), Article 11 (equality of treatment).

⁹ For example, *Gambia*, *Guinea*, *Suriname* and *Uganda*.

scope specified in the status of residence. Some countries¹⁰ reported that a new permit was issued for the remaining period of the validity of the permit. The Government of *Armenia* reported that the migrant worker was allowed to sign a new contract for the remainder of the period, provided this was at least three months before expiry and the new employer had received approval.

429. The Committee notes however that in a number of countries difficulties exist in ensuring that, in the case of loss of employment before the end of the period specified in the contract, residence of the migrant worker is guaranteed until the end of that period. A number of countries reported that non-permanent residents, including long-term residents, are not permitted to remain in the country beyond the actual period of employment.¹¹ Other countries reported that residence permits can be revoked or cancelled due to loss of employment,¹² or that the migrant worker should leave the country if the work permit becomes invalid and other grounds are lacking for the labour migrant to stay.¹³

430. The Committee has also noted that in some cases loss of employment due to non-compliance by the employer negatively changed the legal status of the migrant workers, and has requested governments concerned to take the necessary legislative and other measures to ensure that the permission of a migrant worker to reside lawfully in the country for the purpose of employment shall not be revoked where the migrant loses his or her employment prematurely.¹⁴

431. From the review of the reports, the Committee notes that in many countries residence and employment permits for migrants are linked, in particular where the work permit is tied to one employer, which often implies that, a temporary residence permit is withdrawn, once the work permit of the foreign worker has been withdrawn.¹⁵

432. Some employers' and workers' organizations¹⁶ also indicated that loss of employment led to the withdrawal of the residence permit. The Committee notes the observations made by the *Malaysian Trade Unions Congress (MTUC)* that if a worker stopped working, he or she was subject to immediate repatriation or deportation and did not have the right to seek alternative employment; in addition, the employer had to apply for an exit pass and make arrangements for the worker's immediate return to his or her country.

¹⁰ For example, the *former Yugoslav Republic of Macedonia* (section 13(3) of the Law on Employment and Work of Foreigners and section 58 of the Law on Foreigners): for holders of an "employment permit" (issued for one year), the employment permit shall be discontinued if the labour relationship is terminated, and a temporary residence permit issued for the purposes of employment or work shall be issued for period corresponding to the period of the validity of the work permit.

¹¹ For example, *Kenya*, (section 41(1)(b) of the Kenya Citizenship and Immigration Act 2011); *Mauritius*, according to the Government, sections 9(2) and 9(4) of the Immigration Act [Act No. 13 of 1970 – 17 May 1973], should be understood as that upon loss of employment, the residence permit may be cancelled and the migrant worker would be made to leave the country.

¹² For example, *Brazil and Indonesia*.

¹³ *Azerbaijan* (section 71 of the Migration Code 2013).

¹⁴ *Philippines* – CEACR, Convention No. 143, direct request, 2013 (sections 40 and 41 of the Labour Code and section 6(a) of Book I, Rule XIV).

¹⁵ For example, *Turkey*; see also *Lithuania*, Law on the Legal Status of Aliens, Point 5, para. 1.

¹⁶ For example, the National Employers' Association of *Colombia* (ANDI) and the AFL-CIO of the *United States*.

433. Some countries¹⁷ reported however that both permits could be renewed should the worker fulfil the same conditions for which the permit is issued in the first place. Other governments, such as *Chile*,¹⁸ for example, reported that while withdrawal of the work permit implied withdrawal of residence, the migrant could make a new application, or, such as in the case of *Jamaica*, is required to apply for a new work permit in respect of any new employment. Some countries, for example, *Australia* and *Finland* reported that temporary residence can be cancelled if the conditions, on which the permit was originally granted, no longer exist, but that cancellation takes into account the individual's specific circumstances.

434. *The Committee wishes to remind member States that Article 8 of Part I of Convention No. 143 extends beyond permitting migrants to reapply for a new work permit, and expressly requires that permission to reside in the country should not be revoked where the migrant loses his or her employment prematurely. The Committee recalls that to the extent that these provisions would imply that due to the mere loss of his or her employment the migrant worker finds himself or herself in an irregular situation, these provisions would not be in conformity with Convention No. 143.*

435. The Committee is mindful of some difficulties that may occur in cases where a temporary migrant worker with an employer or job-tied contract, is dismissed for serious misconduct. It also notes that in certain countries, legislation provides that workers generally can be dismissed without restriction, implying that migrant workers who have been dismissed must return to their home country if they have not secured new employment within a certain period of time.¹⁹

436. From the preparatory work on the provisions concerning residency and employment in the 1975 instruments, it appears that some flexibility is allowed and that consideration would be given, as far as possible, to exceptional circumstances such as for instance dismissal of the worker on the basis of severe misconduct. A reading of the preparatory work suggests that the purpose of these provisions was “to afford at least a minimum protection to migrant workers”, but not without any limitation whatsoever.²⁰ The provisions do not involve the extension or renewal of residency permits but aim to ensure that, of itself, the loss by a migrant worker of his or her job should not *automatically* imply the withdrawal of the residency permit. The purpose is to take into account situations “in which the employer would seem to have not only the power to dismiss a worker but also the power to decide that a migrant worker can no longer stay in the country of immigration. This is likely to lead to particularly unfair situations such as that where it is possible under national law and practice for dismissal to take place without any valid reason ‘connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service’.”²¹

437. The Committee therefore considers that in the exceptional case where a residence permit is withdrawn because of serious misconduct of the migrant workers it would not

¹⁷ For example, *Norway*.

¹⁸ Section 25 of the Law on Foreigners and Decree No. 2910 of 2000.

¹⁹ In this regard, the Committee also notes the information provided by the Government of the *United States* that migrant workers who have been discharged or left work must return to their home country if they have not secured new employment within 30 days for H-2A non-immigrant workers and within ten days for H-2B non-immigrant workers.

²⁰ ILO: *Migrant workers*, Report VII(2), ILC, 59th Session, Geneva, 1974, p. 79.

²¹ ILO: *Migrant workers*, Report VII(1), ILC, 59th Session, Geneva, 1974, pp. 50–52, and ILO: *Migrant workers*, Report VII(2), ILC, 59th Session, Geneva, 1974, p. 75.

be the loss of employment that would be the reason for loss of residency but the conduct of the workers. However, in this regard it is useful to keep in mind Paragraph 32(1) and (2) of Recommendation No. 151 which provides that a migrant worker who has lodged an appeal against the termination of his or her employment should be allowed sufficient time to obtain a final decision thereon.²² In addition, when the termination of employment was not justified but the worker cannot be reinstated, he or she should be allowed to have sufficient time, within the original limits of the validity of the residency permit, to find alternative employment, at least for the period corresponding to that during which he or she is entitled to unemployment benefit; the authorization of residence should be extended accordingly.

Burden on public funds

438. While the loss of employment does not automatically lead to the loss of residence, a number of countries reported that the right to remain in the country often depends upon the migrant not becoming a “burden upon public funds” or disposing of sufficient resources.²³ The Government of *Niger* reported that the residence permit can be withdrawn when a migrant worker is without employment and without resources for more than three months.

439. The General Labour Federation of *Belgium* (FGTB), the General Confederation of Liberal Trade Unions of *Belgium* (CGSLB) and the Confederation of Christian Trade Unions (CSC) of *Belgium* indicated that EU citizens, upon becoming unemployed or dependent on public funds, were, since 2010, often expelled, without examining the individual circumstances. The IOE suggested putting programmes in place to rehabilitate workers who are injured or fall ill so that they do not become a burden on public funds.

440. *The Committee recalls Paragraph 30 of Recommendation No. 151 providing that member States should refrain as far as possible, from removing regularly admitted migrants on the ground of their lack of means or the state of the employment market. Paragraph 18(1) of Recommendation No. 86 also discourages States from removing regularly admitted migrant workers from the territory for these reasons.*

Alternative employment, retraining and relief work in case of loss of employment

441. Article 8(2) provides that migrant workers who have lost their employment shall enjoy equality of treatment with nationals in respect of guarantees of security of employment, the provision of alternative employment, relief work and retraining. Paragraph 31 of Recommendation No. 151 provides that migrants who lose their employment should be allowed “sufficient time to find alternative employment at least for the time corresponding to that during which he may be entitled to employment benefit; the authorization of residence should be extended accordingly”. The Committee recalls that Article 8(2) is conceived, not as an end in itself but as a means of achieving the objective of paragraph 1 of this Article which is to facilitate the restoration of the previous position of the migrant worker, who has lost his or her employment.

442. A number of Governments, such as the *Republic of Moldova*, *Panama* and *Peru* indicated that the migrant worker who has lost his or her employment can seek new

²² The Governments of the *Seychelles* and *South Africa* reported that a migrant worker who has a pending dispute with an employer can remain in the country.

²³ For example, *Luxembourg*, *Morocco* (Law No. 02-03 relating to the entry and stay of foreigners, to emigration and irregular immigration. In case of withdrawal or non-renewal, the migrant worker has 15 days to leave the country, with the possibility to appeal the decision.

employment or keep their residence until the end of the permit or its renewal. The Governments of the *Netherlands* and *Senegal* reported that migrant workers who had lost their employment involuntarily maintain the right to stay for another three months to look for other employment. The Government of *Sweden* reported that migrant workers whose permit was tied to an employer or type of work had three to four months to find a new job. A number of other governments indicated that highly skilled workers, when becoming unemployed, were given a certain period of time to seek alternative employment, varying from 30 days,²⁴ to three months such as for EU Blue Card holders.²⁵

443. The Committee has noted in the context of its supervision of Convention No. 143, the statement by the Government of *San Marino* that seasonal workers whose labour relationship is interrupted before the end of their permit of stay have the right to find employment in the same sector for the duration of the remainder of their permit. After this period, the seasonal worker has to leave the country.²⁶

444. However, a number of countries reported that the provision of alternative employment, relief work and training to temporary migrant workers, is an issue.²⁷ The Government of *Singapore*, for example, reported that due to the small size and high population density, non-residents (whether temporary or permanent) are only able to stay and/or work in Singapore for the duration of their respective work pass.²⁸ The Government of *Austria* stated that for migrants who lost their job before the end of the first year of employment, the provision of alternative employment – as with the initial authorization – is also dependent on certain admission requirements being met. The Government of the *Netherlands* indicated that the requirement of Article 8(2) was contrary to the Dutch policy which provided that migrant workers who have lost their employment and who had less than three years of residence, were required to have a work permit. The Government of *Mauritius* indicated that the Convention could not be ratified since, presently, upon cancellation of a permit, the holder shall be considered a prohibited immigrant, and migrant workers did not enjoy equality of treatment with nationals in respect to guarantees of security of employment, alternative employment and retraining.

445. *The Committee recalls that Article 8(2) of Part I of the Convention does not require a State to extend a migrant worker’s residence permit in case of loss of employment, but refers only to equality of treatment with national workers for the remaining period of that permit. The right to equal treatment which the migrant worker should enjoy in case of loss of employment remains subject to the duration of*

²⁴ For example, *Russian Federation*.

²⁵ *Bulgaria*, section 74e of the Employment Encouragement Act; the Government of *Romania* reported that the residence permit of the Blue Card holder remained valid upon expiry of the Blue Card but no longer than the period for which the person benefitted from unemployment benefits, or no more than 60 days from day of termination if the person had no entitlement to unemployment benefits.

²⁶ *San Marino* – CEACR, Convention No. 143, direct request, 2015.

²⁷ For example, *Austria, Bosnia and Herzegovina, Netherlands, Mauritius and United Kingdom*.

²⁸ In this regard, the National Trade Union Congress of *Singapore* indicated that it would be advocating for the Ministry of Manpower to consider allowing “suitable” migrant workers to transfer to new employers, rather than be sent home, under the Change of Employer Scheme. The *Netherlands* Trade Union Confederation (FNV) considered that migrant workers, who had been residing in the country, who lose their employment before expiration of the work permit for reasons that could not be attributed to them, should be able to search for a new job.

his or her residence permit. ²⁹ *The safeguards which a migrant worker should enjoy in case of loss of employment may be subject to such conditions and limitations as are specified in his or her work permit.*

446. The Committee observes that Article 8(1) and (2) of Convention No. 143 and the related provisions in Recommendations Nos 86 and 151 continue to raise issues of application. *Nonetheless, these are important protections for migrant workers and member States are reminded of the need to ensure that the mere fact of the loss of employment should not in itself be a reason for regarding a migrant worker as in an irregular situation.*

Cost of return

Costs of return of regular migrants

Article 9 of Annex II of Convention No. 97 provides that:

If a migrant for employment introduced in the territory of a member in accordance with the provisions of Article 3 of this Annex fails, for a reason for which he is not responsible, to secure the employment for which he has been recruited or other suitable employment, the costs of return and that of members of his family who have been authorized to accompany or join him, including administrative fees, transport and maintenance charges to the final destination, and charges for the transport of household belongings, shall not fall upon the migrant.

447. At the end of their residence, migrants and their families enjoy certain rights pertaining to the process of returning to the home country. Annex II to Convention No. 97, which only applies to government-sponsored arrangements, provides that in certain conditions migrant workers should not have to pay the costs of their return and that of the members of their family. ³⁰ This is notably when they, for a reason for which they are not responsible, fail to secure the employment for which they have been recruited or other suitable employment.

448. Certain governments ³¹ reported that employers assume the workers' repatriation costs, either after ending the employment relationship or on the expiry or annulment of the work permit. Other countries reported on measures taken in advance of a migrant workers' entry to prevent the cost of repatriation falling upon public funds. ³²

²⁹ Training for new employment that would continue beyond the duration of the residence or work permit would not be covered by the equal treatment provision of Article 8(2).

³⁰ Article 9.

³¹ For example, *Bahrain* and *Turkey* (including accommodation expenses and travel costs for their spouse and children).

³² For example, *China* and *the former Yugoslav Republic of Macedonia* require an entity or individual to guarantee the costs of an immigrant during his stay and if the migrant or his employer cannot pay, the guarantor will be asked to cover the costs of the expulsion. The Government of *Suriname* indicated that a fee is paid on the application of a permit and is used in case of expulsion.

Rights of residence in the event of incapacity to work

Right of residence in the event of incapacity to work

Article 8 of Convention No. 97:

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

2. When migrants for employment are admitted on a permanent basis upon arrival in the country of immigration the competent authority of that country may determine that the provisions of paragraph 1 of this Article shall take effect only after a reasonable period which shall in no case exceed five years from the date of admission of such migrants.

449. The Committee recalls that Article 8(1) of Convention No. 97 applies to all migrants who have obtained permanent residence status, while paragraph 2 specifically addresses those migrants who are admitted on a permanent basis at the time of arrival. Should a member have no migrants for permanent settlement in the country, the provisions of this Article do not apply.

450. From a review of the reports, the Committee notes that a number of countries such as *Benin*, *Burkina Faso* and *Togo* stated in general terms that migrant workers and members of their families maintain their rights of residence in the event of incapacity of work, while the Governments of *Brazil*, *Denmark*, *Germany*, *Finland*, *Japan*, *Luxembourg*, *Netherlands*, *Panama*, *Seychelles*, *South Africa* and *Uganda* specifically referred to the rights of migrant workers admitted on a permanent basis. Other countries such as *Australia*, *Chile*, *Lithuania*, *Mexico* and *Suriname*, reported that incapacity for work was not included in the list of reasons provided for in the migration legislation for which a permanent residence permit can be revoked, cancelled or withdrawn, or may be a cause to lose migration status.

451. The Committee welcomes that in some countries, such as for example *Albania* the legislation provides protection in case of illness or disability of foreigners with temporary residence permits.³³

452. The Committee notes that in some countries³⁴ residency or work permits whether permanent or temporary, issued on the basis of employment, are subject to review with the possibility of being revoked in the event of incapacity for work or loss of employment. The General Directory for Migration of *Costa Rica* for example, considers that work permits are valid as long as the conditions upon which they were granted subsist, and that incapacity, as long as it is covered by social protection, does not put an end to the residence permit.

453. In some cases, governments have reported that the legislation provides that the residence permit can be refused on the ground that the migrant worker is not able to sustain himself or herself, without specifying whether this also applies to migrant workers who have obtained permanent residence status.³⁵ The Government of *Suriname*,

³³ Section 36(2) of Law No. 9959.

³⁴ For example, *Zimbabwe*: The Government also indicated that in such cases procedures will ensure that the affected person is not unfairly treated and an appeal can be lodged against the decision.

³⁵ For example, *Kyrgyzstan* – CEACR, Convention No. 97, direct request, 2014.

however, reported that while being “without sufficient means to maintain himself or herself” was a ground for withdrawal of a residence permit, this was not the case for a migrant worker who had a permanent residence permit.

454. However, the Committee notes the information provided by certain countries that a previous residency permit can be cancelled if the foreign national does not have a certificate confirming that he or she is not HIV positive.³⁶ The Committee recalls in this regard Paragraphs 24–28 of the HIV and AIDS Recommendation, 2010 (No. 200), referring to HIV screening and testing, and providing that workers, including migrant workers, should not be required to undergo HIV testing or screening, or to disclose HIV-related information. Migrant workers, and potential migrant workers should not be excluded from migration on the basis of their real or perceived HIV status.

455. *The Committee emphasizes that security of residence for permanent migrants and members of their families in case of ill health or injury constitutes one of the most important provisions of Convention No. 97, and is concerned that in cases where this is not effectively applied, permanently residing migrants may find themselves living under constant threat of repatriation. The Committee also points out that repatriating migrant workers on the grounds of ill health or injury is a practice that the instruments explicitly prohibit, unless it falls in the exception of Article 8(2) of the Convention.*

Employment and remittances

Savings and earnings

Article 9 of Convention No. 97 provides that:

Each Member for which this Convention is in force undertakes to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire.

456. The Committee recalls that Article 9 applies to all migrants for employment regardless of the length of their stay. Remittances play a significant role in transferring resources from countries of destination to countries of origin, and already at the time of drafting of Convention No. 97 the relationship was highlighted between residence and important sums of earnings being sent to the country of origin. Today, the Committee notes that according to recent World Bank figures, migrants’ remittances to developing countries reached US\$427 billion in 2014, of which more than half were to developing countries in Asia and the Pacific.³⁷ The Government of *New Zealand* referred to the need for more effective management of remittance flows.

457. Some governments³⁸ who provided information on this subject reported that migrant workers were free to transfer any amount and savings to their home country. Other countries reported that they provided certain facilities to ensure the safe transfer of earnings or provide incentives to nationals to participate in official remittance

³⁶ See *Russian Federation* (section 9 of the Act on the Legal Status of Foreign Nationals (Federal Act No. 115-FZ of 25 July 2002)).

³⁷ The World Bank: *Migration and Development Brief 25: Migration and Remittances: Recent Developments and Outlook*, October 2015, p. 4, table 1. In 2014, migrant remittances to developing countries amounted to US\$120 billion in East Asia and the Pacific, \$44 billion in Europe and Central Asia, \$64 billion in Latin America, \$51 billion in the Middle East and North Africa, \$116 billion in South Asia, and \$32 in sub-Saharan Africa.

³⁸ For example *Jamaica, Nepal* and *Pakistan*.

schemes.³⁹ The Committee also noted that legislation in certain countries required migrant workers to remit a portion of their foreign exchange earnings to their family members and dependents at home.⁴⁰

458. The Committee has noted in the past that some countries require nationals working abroad to transfer a certain percentage of their earnings or savings to the Government. For example, the Committee has considered that requiring migrant workers participating in a bilateral farm labour programme to remit 25 per cent of their earnings to the Government directly as mandatory savings, 5 per cent of which was retained to pay the administrative costs of the programme, could be contrary to the spirit of Article 9 of the Convention.⁴¹

459. In this context, the Committee notes the importance of reducing remittance costs in the context of the debate on effective governance of international labour migration. Sustainable Development Goal 10.c of the 2030 Sustainable Development Agenda aims “by 2030, reduce to less than 3 per cent the transaction costs of migrant remittances and eliminate remittance corridors with costs higher than 5 per cent”.

³⁹ For example, *Jamaica*.

⁴⁰ See *Philippines* – CEACR, Convention No. 97, direct request, 2013.

⁴¹ See *Barbados* – CEACR, Convention No. 97, observation, 2014.

Chapter 8

Monitoring, enforcement and access to justice

460. Monitoring and enforcement of legislation and policy in practice is a vital concomitant of measures taken by member States to address irregular migration and to guarantee a minimum level of protection to all migrant workers, as well as equality of opportunity and treatment to migrant workers in a regular situation. Without full enforcement, a member State cannot be said to be ensuring effective implementation of international labour standards. The Committee reiterates the importance of dissuasive sanctions and effective enforcement of relevant laws in preventing abuses and ensuring equal treatment between foreign workers and nationals.¹

Monitoring, enforcement and migrant workers' access to justice

The instruments contain a number of provisions relating to monitoring, enforcement and access to justice.

Article 6(1)(d) of Convention No. 97 states that migrant workers with a regular status should enjoy no less favourable treatment than nationals in relation to legal proceedings relating to the matters referred to in the Convention.

Article 5(3) of Annex I and Article 6(3) of Annex II to Convention No. 97 provide that the competent authority shall take the necessary measures to ensure that the provisions relating to the supervision of contracts of employment and written information to be provided to migrants before departure, are “enforced and that appropriate penalties are applied in respect of violations thereof”.

Article 9(2) of Convention No. 143 provides that migrant workers should be able to present their case to a competent body, either themselves or through a representative, in relation to disputes about rights arising out of past employment.

Particular challenges in monitoring and enforcing the rights of migrant workers

461. The enforcement of legal rights is often acutely difficult for migrant workers. Especially vulnerable to abusive conditions, migrant workers may, in practice, lack the ability to raise concerns about their working and living conditions. This is particularly clear with regard to the perception that enforcing rights may affect residence rights.

¹ For example, *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, observation, 2015; *Israel* – CEACR, Convention No. 97, observation, 2012; *Malaysia (Sabah)* – CEACR, Convention No. 97, direct request, 2009 and observation, 2015.

Enforcement of legal rights by migrant workers

Pursuant to Paragraph 5 of Recommendation No. 151:

Each Member should ensure that national laws and regulations concerning residence in its territory are so applied that the lawful exercise of rights enjoyed in pursuance of these principles cannot be the reason for non-renewal of a residence permit or for expulsion and is not inhibited by the threat of such measures.

462. In relation to access to justice, and the benefits of enforcement of the law, migrant workers in a regular situation should enjoy treatment no less favourable than that applied to national workers in the country.²

463. In all cases, equality and anti-discrimination legislation is only effective if the fear of reprisals or negative consequences does not deter its use by workers.³ The Committee is aware that this is particularly relevant for migrant workers, who may fear that lodging a complaint about their employer will lead to the termination of their employment which, in turn, could lead to a revocation of their right to reside in the country of destination.⁴ The Committee has, for example, noted the low number of complaints submitted to a specialized equality body by foreigners relative to the number of foreigners in the country, and the possible difficulties for them in claiming their rights in the field of employment.⁵ Such fear is often exacerbated in the case of migrants in irregular situations, who may be especially concerned that any involvement with the authorities would result in deportation without rights.⁶

464. The vulnerability of migrant workers in general means that “migrant workers may not always be in a position to take the initiative to secure respect for the relevant legislation due to lack of awareness or fear of reprisals”.⁷ Accordingly, mechanisms under which independent and institutionalized entities may take the initiative in investigating violations and enforcing the application of the legislation, or which are designed with explicit regard to the specificities of the situation of migrant workers, may usefully supplement normal procedures; fees should not be so high as to dissuade complaints being brought.⁸ Equally, the effective enforcement of legislative guarantees of equality to migrant workers may be assisted by the availability of targeted advice and assistance to migrant workers,⁹ or machinery such as conciliation, mediation, or codes

² Article 6(1)(d) of Convention No. 97.

³ See further ILO: *General Survey on the fundamental Conventions*, 2012, para. 886.

⁴ See for example, *Germany* – CEACR, Convention No. 97, direct requests, 2008 and 2012. The Committee commented on sections 39(2) and 41 of the Residence Act, pursuant to which migrant workers risk losing their residence permit as a result of their employer applying terms of conditions less favourable than those applying to comparable German workers. The Committee considered that this could be an important disincentive for migrant workers to seek redress in cases of unequal treatment, and that for equal treatment to be enjoyed in practice, it was important that migrant workers can effectively seek redress for non-respect of this right by their employer without jeopardizing their residence permit and hence their employment.

⁵ *Cyprus* – CEACR, Convention No. 143, direct request, 2014 (comment from Equality Authority); *Slovenia* – CEACR, Convention No. 143, direct request, 2014 (comment from Advocate of the Principle of Equality).

⁶ See ILO: *General Survey on migrant workers*, 1999, para. 302; *Cameroon* – CEACR, Convention No. 143, observation, 2009; see also, for example, *Dominican Republic* – CEACR, Convention No. 29, direct request, 2015.

⁷ *Italy* – CEACR, Convention No. 97, direct request, 2009, and Convention No. 143, observation, 2014. In the latter, the Committee also emphasized the importance of adequate legal defence for migrant workers in an irregular situation and their access to assistance and advice.

⁸ *United Kingdom* – CEACR, Convention No. 97, direct request, 2015.

⁹ See paras 489–496 *infra*.

of conduct. Additionally, legislation could include provisions specifically intended to protect victims and witnesses from potential reprisals.

465. The Committee notes that by preventing or limiting the ability of migrant workers to change employment, certain systems for the employment of foreign workers, in particular those tying the employment permit to one employer or workplace,¹⁰ might create a significant dependency on the employer, and accordingly indirectly prevent migrant workers from feeling able to enforce their rights. The Committee recalls that it has, in the context of its supervision of various Conventions, examined the impact of employment permit systems,¹¹ sponsorship systems operating in a number of Gulf States,¹² and rules and regulations concerning the employment of live-in workers, domestic workers and caregivers,¹³ which cause practical challenges to the enforcement of migrant workers' equality rights.

466. The Committee further noted concerns in relation to some countries regarding the limited time period given to migrant domestic workers to seek new employment after expiration or premature termination of their employment contract,¹⁴ as well as concerns raised by trade unions about the effect of the length of proceedings, language barriers, and the live-in requirement on migrant workers' ability to enforce legislative rights.¹⁵

467. The Committee notes that a number of governments have taken steps to review the employment system of temporary migrant workers¹⁶ – including the sponsorship system¹⁷ – so as to improve the ability of migrant workers, in particular migrant domestic workers, to enforce their rights. This may be through increasing their flexibility

¹⁰ See also the examples regarding restrictions on employment, paras 357–358, 364–365 *supra*.

¹¹ *Republic of Korea* – CEACR, Convention No. 111, observation, 2015.

¹² For example, *Bahrain* – CEACR, Convention No. 111, observation, 2013; *Kuwait* – CEACR, Convention No. 111, observation, 2015; *Qatar* – CEACR, Convention No. 111, observation, 2015; and *Qatar* – CEACR, Convention No. 29, observations 2015 and 2016; *Saudi Arabia* – CEACR, Conventions Nos 29 and 111, observations, 2015; and *United Arab Emirates* – CEACR, Convention No. 111, direct request, 2012.

¹³ *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, observation, 2013; *Israel* – CEACR, Convention No. 97, observations, 2008, 2011 and 2012.

¹⁴ *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, observation, 2013 (regarding concerns that the rule requiring foreign domestic workers to leave the territory within two weeks of the expiration or premature termination of their employment contract “drove workers to remain in or to access new employment in abusive conditions”).

¹⁵ *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, observation, 2015 (regarding the need to ensure that migrant workers who had applied for an extension of their stay due to legal proceedings had access to effective and speedy dispute resolution, and were able to complete the legal proceedings and obtain redress).

¹⁶ For example, *Israel* – CEACR, Convention No. 97, observations, 2008, 2011 and 2012: Following a discussion in the Conference Committee on the Application of Standards in June 2009, the Committee welcomed the measures that the Government had taken, following a decision of the High Court of Justice in the case of *Kav LaOved Workers Hotline and others v. Government of Israel* (HCJ 4542/02) of 30 March 2006, to increase the protection of migrant workers employed in the caregiving and agricultural sectors, and simplify the process of changing employers; *Republic of Korea* – CEACR, Convention No. 111, observation, 2015 (with respect to the efforts made to allow for appropriate flexibility for migrant workers hired under the Employment Permit System, to change employers in cases of unfair treatment; *Slovenia* – CEACR, Convention No. 143, observation, 2012 (the Government indicated that due to observance of increased dependency of migrant workers on individual employers, the Act on Employment and Work of Aliens had been amended with a view to allowing greater flexibility to obtain a personal employment permit with three-year validity, giving free access to the labour market); see also *Saudi Arabia* – CEACR, Conventions Nos 29 and 111, observations, 2015.

¹⁷ For example, *Qatar* – CEACR, Convention No 111, observation, 2016 and *Saudi Arabia* – CEACR, Convention Nos 29 and 111, observations, 2015.

to change workplaces, or by strengthening mechanisms through which migrant workers can effectively lodge complaints against their sponsor or employer.

468. With respect to sponsorship systems, the Committee reiterated that limitations on the possibility for migrant workers to change workplaces, and particularly the requirement in some countries to obtain the permission of the sponsor or the employer, resulted in migrant workers facing increased vulnerability to discrimination and abusive practices and working conditions that may amount to forced labour, as they may refrain from bringing complaints out of fear of retaliation.¹⁸ The Committee further considered it important that foreign employment systems, including sponsorship systems, should be kept under regular review with a view to assessing whether appropriate flexibility to change workplaces is being provided in practice for all migrant workers in cases of abuse and discrimination, including allowing migrant workers the possibility to change employers when a judgment is pending.¹⁹

469. The Committee recalls the importance of taking effective action to ensure that systems governing the employment of migrant workers, especially migrant domestic workers, do not place the workers concerned in a situation of increased vulnerability, particularly when they are subjected to abusive employer practices, such as retention of passports, non-payment of wages, deprivation of liberty, and physical and sexual abuse.²⁰ The Committee considers that reducing migrant workers' dependency on individual employers, and thus limiting the power exercised by employers over their foreign workers, is an important aspect in ensuring that equal treatment is applied to migrant workers in practice, along with dissuasive sanctions and effective enforcement of relevant laws.²¹ Legal protection for migrant workers, and adequate and effective dispute resolution mechanisms are essential in this context.

470. The Committee further considers that, particularly in countries where migrant workers constitute a large proportion, and sometimes the majority of the working population, or in a particular economic sector, consistent efforts may be required to ensure that migrant workers are able, in practice, to change workplaces when subject to violations of applicable labour legislation, and to ensure that the legislation is fully implemented and enforced.²²

471. Further, the Committee is mindful of the observations of a number of employers' and workers' organizations, which pointed to numerous problems with the enforcement of legislation protecting migrants workers' rights. The *Austrian* Federal Chamber of

¹⁸ *Qatar* – CEACR, Conventions Nos 29 and 111, observations, 2015 and 2016 (relating to Law No. 4 of 2009 regulating the sponsorship system, which was replaced by Act No. 21 of 27 October 2015 regulating the entry, exit and residence of expatriates, which will enter into force on 27 October 2016); and ILO: *Report of the committee set up to examine the representation alleging non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), made under article 24 of the ILO Constitution by the International Trade Union Confederation and the Building and Woodworkers International* (GB.317/INS/13/5, Mar. 2013), which requested the Government to review without delay the functioning of the sponsorship system so that the system did not place migrant workers in a situation of increased vulnerability to the imposition of exploitative work from which they could not leave.

¹⁹ *Saudi Arabia* – CEACR, Convention No. 111, observation, 2015.

²⁰ For example, *Saudi Arabia* – CEACR, Convention No. 29, observation, 2015; and *United Arab Emirates* – CEACR, Convention No. 29, direct request, 2014; *Qatar* – CEACR, Convention No. 29, observation, 2016.

²¹ *Israel* – CEACR, Convention No. 97, observations, 2008, 2011 and 2012. See also *Kuwait* – CEACR, Convention No. 111, observation, 2015, in relation to the sponsorship system and the risk of increased vulnerability of migrant workers to discrimination and abuse as a result of disproportionate power exercised by the employer over the worker.

²² See, for example, *Republic of Korea* – CEACR, Convention No. 111, observation, 2015.

Labour (BAK), for example, stated that legal costs for proceedings were a significant hurdle to the enforcement of rights. The *Malaysian Trade Unions Congress (MTUC)* indicated that migrant workers tended to accept lower settlements or abandon their cases as they feared arrest if they should continue to seek justice. Only documented workers could file a case against their employer for violations of the labour legislation. The American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) of the *United States* indicated that the courts and compensation commissions often required workers to be present, which implied that workers who had left the country would need to obtain a tourist or humanitarian visa in order to re-enter the United States for a deposition, trial, hearing or medical examination.

Monitoring and enforcement mechanisms

472. Member States have reported a variety of mechanisms, acknowledging that legislation must be supplemented by effective and practical measures to ensure its implementation in practice. Monitoring and enforcement should be ensured through mechanisms recognized by the parties as authoritative, effective and impartial such as labour inspection authorities, industrial relations bodies and the courts, as well as specialized bodies with advisory roles or with responsibility for examining complaints lodged by migrant workers. Such mechanisms: provide the means for detecting abusive employment relations in breach of the instruments; enable the submission and consideration of complaints; and allow for the application of sanctions against those found to be in breach.

Bilateral mechanisms

473. A number of the bilateral agreements discussed in Chapter 3 provide for monitoring and enforcement mechanisms designed to ensure their full implementation in practice.

474. In particular, many bilateral agreements refer to the establishment of joint committees through which authorities from countries of origin and destination cooperate to ensure effectiveness of the agreements. For example, the bilateral Recognized Seasonal Employer policy inter-agency agreements between *New Zealand* and a number of Pacific Island States, set out criteria against which their success can be assessed and provide for the biannual review of the agreement.

475. In addition, some member States referred to mechanisms providing a channel through which migrant workers can obtain the assistance of the authorities of their country of origin in investigating breaches of bilateral agreements requiring equality of treatment. The Government of *Sri Lanka*, for example, indicated that its Bureau of Foreign Employment Act is empowered to inquire into complaints made by migrant workers.

National mechanisms

476. At the national level, there are several measures which have an effect on migrant workers. While the labour ministries and related authorities are closely linked with law and policy on labour migration, cross-border cases are closely monitored by immigration authorities as well as the national defence authorities. In addition, national human rights commissions, ombudsperson and prosecutors, and courts, exist in a variety of countries and are interlinked with the rights of migrant workers.

Labour inspection

477. In most member States, labour inspection is the primary mechanism to secure the application in relation to enforcement of legislation concerning conditions of work and the protection of workers. The importance of the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), has been reaffirmed by assigning these Conventions the status of governance Conventions. In its supervision of the application of these Conventions by member States, the Committee has stressed that the primary duty of labour inspectors is to protect workers and not to enforce immigration law.²³ It has further emphasized that duties additional to enforcing laws on working conditions and the protection of workers, such as enforcement of immigration laws, may be assigned to labour inspectors only in so far as they do not interfere with their primary duties.²⁴

478. Many member States highlighted the role of labour inspectorates in monitoring and enforcing labour migration legislation and policy in their countries. Some governments referred to the general supervision of working conditions of all workers by labour inspectorates in the course of regular inspection visits.²⁵ The Governments of *El Salvador*, *Ethiopia* and *Sweden*, for example, indicated that the rights of all workers, irrespective of nationality, were ensured through regular labour inspection services at the enterprise level, and the Governments of *Costa Rica*, *Mexico* and *Sudan* stated that no category of workers, regardless of migration situation, was excluded. The Government of *Colombia* stated that the labour inspectorate did not verify migration status, but ensured that migrant workers' rights were guaranteed. The *Latvian* Free Trade Union Confederation (LBAS) indicated that it had concluded a cooperation agreement with the labour inspectorate to exchange information and prevent and investigate violations of labour rights, including violations of migrant workers' labour rights, thereby helping the labour inspectorate to ensure the protection of workers.

479. A number of governments reported that their labour inspectorate services were specifically mandated to monitor the employment of migrant workers or aspects of immigration law.²⁶ The Government of *Finland*, for example, indicated that its labour inspectorate included inspectors specializing in migrant workers and non-discrimination. The Government of the *Republic of Korea* referred to annual guidance and inspection of enterprises employing foreign workers. The Government of *Nicaragua* indicated that, pursuant to a bilateral agreement with *Costa Rica*, joint labour inspections had been carried out on Costa Rican companies employing Nicaraguan workers. At the same time, the Committee notes the information provided by the ITUC stating that migrant workers are typically employed in sectors that generally lack effective labour inspection, such as

²³ For example, see *Belgium* – CEACR, Convention No. 81, observation, 2012; *Romania* – CEACR, Convention No. 81, observation, 2012; *Saudi Arabia* – CEACR, Convention No. 81, observation, 2014; and *Singapore* – CEACR, Convention No. 81, observation, 2014. See further, ILO: *Labour inspection, General Survey of the reports concerning the Labour Inspection Convention, 1947 (No. 81)*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B), ILC, 95th Session, Geneva, 2006 (hereinafter *General Survey on labour inspection*, 2006) paras 75–78.

²⁴ See Article 3(2) of Convention No. 81 and Article 6(3) of Convention No. 129; for example, *Spain* – CEACR, Convention No. 81, observation, 2014.

²⁵ For example, *Antigua and Barbuda*, *Bahrain*, *Brunei Darussalam*, *Cuba*, *Eritrea*, *Estonia*, *Gabon*, *Honduras*, *Kenya*, *Luxembourg*, *Mauritania*, *Romania*, *Russian Federation*, *Senegal*, *Slovakia*, *Sri Lanka* and *Bolivarian Republic of Venezuela*.

²⁶ For example, *Algeria*, *Belgium*, *Benin*, *Cabo Verde*, *Czech Republic*, *Ecuador*, *Greece*, *Madagascar*, *Mali*, *Mauritius*, *Morocco*, *Niger*, *Peru*, *Spain*, *Slovenia* and *Togo*.

agriculture, construction, domestic work, the informal economy and sectors of “irregular” employment, which leads to exploitation and abuse.

480. Other member States highlighted collaboration between labour inspectorate services and immigration enforcement agencies or other entities,²⁷ often referring to the significant role of immigration authorities in enforcing legislation concerning migrant workers.²⁸ The Government of *Australia*, for example, indicated that when Fair Work inspectors identified non-compliance with visa sponsorship obligations, matters were referred to immigration authorities for investigation and enforcement; the Government of *Namibia* indicated that both labour inspectors under labour legislation, and immigration officers under immigration laws, carried out workplace inspections. In this context, the Committee notes that the ITUC refers to the need to establish “a firewall” between labour and immigration law enforcement to ensure access to remedy, including compensation for abuses of rights of migrant workers. In this regard, the General Workers’ Union (UGT) of *Portugal* highlighted the substantial role of the labour inspection in the enforcement of legislation, in the effective implementation of equality in the labour market and in the prevention of xenophobia and racism.

481. The Committee has previously noted that the fact that labour inspection in general has the power to enter establishments without prior authorization may allow it to put an end to abusive working conditions to which foreign workers in an irregular situation are often subjected, and to ensure that workers benefit from recognized rights. The objective of labour inspection can only be met, however, if the workers concerned are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and protection of workers.²⁹

482. *In this regard, the Committee recalls its 2006 General Survey on labour inspection in which it pointed out that cooperation between the labour inspectorate and immigration authorities should be carried out cautiously keeping in mind that the main objective of the labour inspection system is to protect the rights and interests of all workers, and to improve their working conditions, rather than the enforcement of immigration law. Where a large proportion of inspection activities relate to verifying the immigration status of migrant workers, this may mobilize considerable resources in terms of staff, time and material resources, to the detriment of those allocated to the inspection of conditions of work³⁰ and deter them from making complaints.*

Specialized bodies and mechanisms

483. Member States reported various administrative mechanisms intended to consider complaints by migrant workers of breach of their equality rights, or to provide advice or assistance to migrant workers in enforcing their rights. Such bodies varied in form, including equality and human rights bodies, labour rights bodies, labour migration bodies, and specialized units in government departments or ministries. Some mechanisms were located in countries of origin and others were located in countries of destination.

²⁷ For example, *Cyprus, Indonesia, Lebanon, the former Yugoslav Republic of Macedonia, New Zealand and Poland.*

²⁸ For example, *Azerbaijan and Bosnia and Herzegovina.*

²⁹ ILO: *General Survey on labour inspection*, 2006, para. 78.

³⁰ ILO: *General Survey on labour inspection*, 2006, paras 78 and 161; and ILO: *General Survey on the fundamental Conventions*, 2012, para. 968.

484. A number of governments indicated that migrant workers could present complaints of discrimination or human rights violations to equality or human rights' bodies.³¹ Other member States indicated that migrant workers, like other workers, were able to present complaints to mechanisms established to protect labour rights.³²

485. Certain governments reported national specialized institutions concerned with migrant workers, a number of which were administrative units of the relevant government department.³³ Other countries indicated the existence of a number of agencies or mechanisms, with interlinked objectives and functions contributing to the monitoring and enforcement of migrant workers' equality rights. In the course of its supervision of the observance by the *Philippines* of Convention No. 97, for example, the Committee noted with interest the multitude of programmes for overseas Filipino workers covering all stages of the migration process, as well as the support structures for Filipino migrant workers addressing migrant workers' issues.³⁴ Some member States indicated initiatives to ensure inter-institutional cooperation, such as an inter-institutional steering committee.³⁵

486. The Committee reiterates that the exclusion of specific groups of migrant workers – such as live-in domestic workers, care workers, or agricultural workers – from the protection of specialized institutions for migrant workers' rights may impact negatively on the ability of those categories of migrant workers to fully enforce their rights. In this regard, the Committee has previously stated that excluding one group of foreign workers from the protection of a special mechanism established for migrant workers, while leaving monitoring of the employment relationship between those workers and their employers to licensed recruitment agencies, raised concerns as to whether foreign caregivers were able, on an equal footing with nationals, to enjoy and claim effectively their rights, as provided for by Article 6(1)(d) of the Convention.³⁶

Courts, tribunals and dispute prevention and resolution mechanisms

487. Many member States referred to the availability of courts, tribunals and other dispute prevention and resolution bodies as mechanisms to ensure the enforcement of migrant workers' rights.³⁷ These are discussed in further detail below.

³¹ For example: the *Australian* Human Rights Commission; the National Human Rights Commission in the *Republic of Korea*; the Human Rights Commissioner (Ombudsman) in *Azerbaijan*; the *Cyprus* Equality Body; the Board of Equal Treatment of *Denmark*; Gender Equality and Equal Treatment Commissioner of *Estonia*; *Kenya* National Human Rights and Equality Commission; the Advocate for the Principle of Equality in *Slovenia*; the National Human Rights Commission of *Bangladesh*; and the Equality and Human Rights Commission and the Equality Advisory and Support Service of the *United Kingdom*.

³² For example, *Bahrain* (Unit on Arbitration and Workers' Complaints); *Belarus* (labour dispute commissions); *Belgium* (Focal Point of the Division for Inspection of the Department of Employment and Social Economy); *Benin* (Labour Inspectorate); *Mauritius* (Commission for Conciliation and Mediation); *Plurinational State of Bolivia* (Ministry of Labour, Employment and Social Security); *Saudi Arabia* (dispute settlement bodies and units regulated by relevant ministerial orders); *South Africa* (Commission for Conciliation, Mediation and Arbitration).

³³ For example, the Bureau of Manpower and Employment of *Bangladesh*; the Department for Labour Migration of *Costa Rica*; the Special Migrant Workers' Unit of *Mauritius*; the Foreign Manpower Management Division of *Singapore*; and the Agency for External Migration of *Uzbekistan*.

³⁴ *Philippines* – CEACR, Convention No. 97, observation, 2013.

³⁵ Pursuant to the Foreign Employment Act of *Nepal*.

³⁶ *Israel* – CEACR, Convention No. 97, observation, 2012.

³⁷ For example, *Algeria*, *Azerbaijan*, *Bangladesh*, *Burkina Faso*, *Colombia*, *Estonia*, *Republic of Korea* and *New Zealand*.

Access to justice and judicial remedies

488. Migrant workers, like all other workers, should enjoy the right to access justice and judicial remedies against abusive conditions, by having complaints considered by independent mechanisms. In practice, as set out above, the specificities of the situation in which migrant workers work and live may impact negatively on their right to access justice.³⁸ Migrant workers should be given *locus standi* to pursue claims in court. The Committee notes that certain countries have introduced fees as a condition of commencing and continuing legal proceedings that may act as an obstacle for migrant workers accessing justice.³⁹

489. While reminding that granting access to justice is a primary duty of the State, the Committee recalls the information provided by a number of trade unions stating that it is unreasonable to expect migrant workers to enforce their rights through the court system without provision of specific assistance. For example, the ITUC referred to practical challenges migrant workers may face, such as limited language skills, inability to meet legal fees and lack of understanding of the country's legal system. The Committee welcomes the information provided by the ITUC referring to the trade union Ver.di of Germany which offered legal advice and assistance to migrant workers in an irregular situation and the Austrian Confederation of Trade Unions (OGB), which had opened a centre for migrant workers in an irregular situation, including victims of trafficking in persons. The Single Confederation of Workers of Colombia (CUT) indicated to have helped to establish a specialized migration platform to defend the rights of migrant workers and the German Confederation of Trade Unions (DGB) referred to its legal aid offices like the project *Faire Mobilität*.

Disputes

490. Both countries of origin and countries of destination indicated the existence of specific procedures to support or assist migrant workers in accessing justice in the case of disputes concerning abusive labour conditions. A significant number of member States reported that migrant workers, like other workers, had the right to access legal proceedings in their countries.⁴⁰ Some member States mentioned that the requirement of due process applied to migrant workers.⁴¹ Many member States allowed migrant workers to choose to be represented by representatives,⁴² particularly trade unions.⁴³ For example, the General Federation of Labour of Belgium (FGTB), the General Confederation of Liberal Trade Unions of Belgium (CGSLB) and the Confederation of Christian Trade Unions (CSC) of Belgium, referred to a case brought by a trade union before the Court of Appeal of Brussels, which ordered an employment agency to pay damages for discrimination in the recruitment process. Other member States referred to

³⁸ Target 16.3 of Goal 16 of the 2030 Agenda for Sustainable Development aims to promote the rule of law at the national and international levels and ensure equal access to justice for all.

³⁹ See *United Kingdom* – CEACR, Conventions Nos 97 and 111, direct requests, 2015.

⁴⁰ For example, *Austria, Azerbaijan, Bahrain, Belarus, Plurinational State of Bolivia, Bulgaria, Chile, Colombia, Ethiopia, Eritrea, Gabon, Georgia, Guatemala, Jamaica, Japan, Kenya, Lebanon, Luxembourg, Morocco, Nicaragua, Niger, Senegal, Seychelles, Slovenia, Sudan, Suriname, Sweden, Switzerland, Togo, United Kingdom, Uzbekistan, Viet Nam* and *Zimbabwe*.

⁴¹ For example, *Colombia, Eritrea, Mexico* and *Uruguay*.

⁴² For example, *Cabo Verde, Côte d'Ivoire, Ecuador, Greece, Panama, Senegal* and *Uzbekistan*.

⁴³ For example, *Romania, France, Germany* and *Jamaica*. The Confederation of Independent Trade Unions in *Bulgaria* (KNSB/CITUB) indicated that, according to article 406 of the Labour Code, trade unions have the right to seek administrative redress in case labour and social security rights of migrant workers are violated.

assistance such as legal aid,⁴⁴ and interpretation,⁴⁵ and certain member States referred to the availability of judicial assistance for the execution of judgments.⁴⁶

491. Some countries specified that this right to access the courts or labour protection mechanisms applied equally to migrant workers in irregular situations.⁴⁷ The Government of *Jordan*, for example, indicated that all workers may lodge a complaint for violation of their rights, irrespective of their legal status, as irregular status was considered to be an infringement by the employer, and did not affect any of the worker's rights. The Government of the *Seychelles* indicated that migrant workers in an irregular situation could have their case presented by a representative. The Government of the *United States* referred to the case of *Lucas v. Jerusalem Café*, which recognized the right of migrant workers in an irregular situation to receive a minimum wage and overtime pay under the Fair Labor Standards Act for work performed, stating that “employers who unlawfully hire unauthorized aliens must otherwise comply with federal employment laws”.⁴⁸ In *Ireland*, the Employment Permits (Amendment) Act 2014⁴⁹ provides foreign nationals without an employment permit with the possibility to institute civil proceedings to be recompensed for work performed. In *France*, representative trade unions can seek legal redress on behalf of a migrant worker in an irregular situation without the need for a mandate from the said migrant, as long as he has not declared being opposed to it.⁵⁰

492. The Government of *New Zealand* referred to a decision of the New Zealand Employment Relations Authority, in a case brought by a labour inspector concerning three employees who had been deported in 2007.⁵¹ The Authority stated that the employer could not rely on an argument that, because the employees were working without authorization in New Zealand, the provisions of the Illegal Contracts Act 1970 applied and so their employment contracts could not be enforced; and found that “the employees were vulnerable and grossly exploited by the respondent, most probably in full knowledge that they were unlikely to complain due to their immigration status”.⁵² The employer was ordered to pay substantial arrears of wages and holiday pay in relation to the six years of employment.

493. At the same time, the Committee notes that the ITUC stated that access to remedy and compensation for abuses is often well beyond the reach of migrant workers in an irregular situation. Moreover, the ITUC and the Confederation of Labour of *Russia* (KTR) referred to the difficulty of migrant workers in an irregular situation to prove a work relationship, usually exacerbated by the lack of a written employment contract and a chain of subcontractors. The AFL–CIO of the *United States* indicated that, while most labour and employment laws covered undocumented workers, their immigration status

⁴⁴ For example, *Bangladesh, El Salvador, Republic of Korea, Latvia, Netherlands and Slovenia*.

⁴⁵ For example, *Plurinational State of Bolivia, Jamaica* (for criminal offences and human trafficking), *Latvia and Mexico* (for human trafficking).

⁴⁶ *Burkina Faso and Niger*.

⁴⁷ For example, *Brazil, Costa Rica, Cabo Verde, Chile, Côte d'Ivoire, Czech Republic, Ecuador, El Salvador, Greece, Madagascar, Mali, Mexico, New Zealand, Panama and Sudan*.

⁴⁸ *Lucas v. Jerusalem Café, LLC*, 721 F. 3d 927 – Court of Appeals, 8th Circuit 2013.

⁴⁹ By inserting sections 2(B) and (C) in the Employment Permits Act 2003.

⁵⁰ Article L.8255 of the Labour Code.

⁵¹ *Keightley (Labour Inspector) v. Ly t/a Taumaruni Bakery* [2011] NZERA Auckland 77.

⁵² *ibid.*, p. 8.

and fear of detection by enforcement agencies made it difficult for them to enforce their rights. Certain workers' organizations indicated that access to justice was severely restricted in the case of migrant workers in an irregular situation.⁵³

494. Other member States indicated particular procedures to assist migrant workers wishing to resolve disputes, including non-binding mediation followed, if necessary, by court proceedings. The Government of *Bahrain*, for example, indicated that migrant workers could submit a complaint to the Workers Complaints Unit at the Ministry of Labour and, if efforts to reconcile a worker and employer through settlement failed, resort to the court handling urgent cases. The Governments of *Burkina Faso*, *Madagascar*, *Mozambique* and *Sudan* stated that a migrant worker should first attempt conciliation before submitting a case to a labour court, and the Government of *Honduras* indicated that the migrant worker should first approach the labour inspectorate and, if the violation continued, could proceed to conciliation and, as a last resort, file a claim with a court.

495. Some member States reported the establishment of mechanisms allowing for their nationals working abroad to submit complaints to government representatives in countries of destination. For example, the *Philippines* Migrant Workers Act establishes a number of mechanisms to enable Filipinos working abroad to access justice. Notably, the Department of Foreign Affairs, pursuant to section 22 of the Act, is mandated to assess the "rights and avenues of redress under international and regional human rights systems that are available to Filipino migrant workers who are victims of abuse and violation and, as far as practicable and through the Legal Assistant for Migrant Workers Affairs created under this Act, pursue the same on behalf of the victim if it is legally impossible to file individual complaints". The Department should apprise Filipino migrant workers of the existence and effectiveness of complaints machinery available under international or regional systems.

496. Some member States, such as the Governments of *Indonesia* and *Sri Lanka*, reported that migrant workers could present complaints directly to consular authorities in countries of destination. The Government of *Viet Nam* indicated the existence of labour management units and representative offices in countries with large numbers of Vietnamese migrant workers. The Government of *Myanmar* indicated that migrant workers could present their case to competent authorities either directly or through a representative in collaboration with the labour attaché, the sending agency or civil society organizations in countries of destination.

*Right to appeal expulsion orders*⁵⁴

Right to appeal expulsion orders

Paragraph 33 of Recommendation No. 151 states that:

A migrant worker who is the object of an expulsion order should have a right of appeal before an administrative or judicial instance, according to conditions laid down in national laws or regulations. This appeal should stay the execution of the expulsion order, subject to the duly substantiated requirements of national security or public order. The migrant worker should have the same right to legal assistance as national workers and have the possibility of being assisted by an interpreter.

⁵³ For example, the FGTB, the GCSLB and the CSC of *Belgium*; and the Confederation of Workers (CTC) and the (CUT) of *Colombia*.

⁵⁴ See paras 315–320 *supra*.

497. The revocation of a residence permit can have serious repercussions on the ability of migrant workers to access justice. In particular, without the right to remain in the country of destination, migrant workers may find it difficult in practice to appeal the expulsion order itself. Additionally, an expulsion order may indirectly prevent migrant workers from being able to enforce their labour rights and basic human rights in general.

498. In this regard, the Committee recalls that it has previously expressed its concern that a legislative requirement for public officials to report criminal offences may prevent migrant workers in an irregular situation from requesting assistance from essential public services, filing complaints of violations of basic human rights and claiming rights from past employment; such rights may “remain merely theoretical if migrant workers in an irregular situation who report violations of these rights are immediately expelled”.⁵⁵ The Committee has requested governments to ensure that migrant workers in an irregular situation can claim their rights in practice and have access to the courts, in the context of expulsion orders;⁵⁶ and has encouraged governments to examine obstacles faced by migrant workers in submitting claims in relation to rights derived from past employment, in the context of a declaration from a government that it had no knowledge of cases of expulsion of migrant workers in an irregular situation.⁵⁷

499. *The Committee reiterates that expulsion orders, in general, should not have the effect of denying migrant workers the right to appeal those orders nor should they have the effect in practice of denying migrant workers the right to file complaints with regard to violations of other rights.*⁵⁸

500. In recognition of the potential difficulties in this regard, Paragraph 33 of Recommendation No. 151 establishes that migrant workers should be able to appeal expulsion orders, that such appeals should have the effect of staying the effect of any order, and that migrant workers should be able to access legal and interpretation assistance. In the first place, many member States indicated that migrant workers benefited from the right to appeal an expulsion order.⁵⁹ Further, a number of member States indicated that appeals had the effect of staying the expulsion order’s effect.⁶⁰ The Governments of *Luxembourg* and *Senegal* indicated that a suspension of execution of the removal order could be sought under certain conditions and the Government of *Brazil* indicated that it was common practice to obtain a judicial stay in deportation proceedings and publicly appointed lawyers defended the rights of migrants, including of irregular migrants. Noting, however, that other governments indicated that an appeal against an order for expulsion did not stay the execution of the order,⁶¹ the Committee recalls that it has previously requested governments to consider amending legislation so as to permit

⁵⁵ *Italy* – CEACR, Convention No. 143, observation, 2010.

⁵⁶ *Albania* – CEACR, Convention No. 143, direct request, 2014.

⁵⁷ *Togo* – CEACR, Convention No. 143, direct request, 2013.

⁵⁸ In this regard, see also Article 22 of the UN Convention on Migrant Workers which prohibits collective expulsion of migrant workers and members of their families.

⁵⁹ For example, *Argentina, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Chile, Cyprus, El Salvador, Estonia, Finland, Georgia, Greece, Japan, Republic of Korea, Latvia, Luxembourg, Mali, Mexico, Morocco, Namibia, New Zealand, Poland, Romania, Serbia, Singapore, South Africa, Spain, Suriname, Sweden, Turkey, Uganda, Uruguay, United States, Uzbekistan, Bolivarian Republic of Venezuela* and *Viet Nam*.

⁶⁰ For example, *Austria, Belarus, Bosnia and Herzegovina, Chile, Estonia, Greece, Republic of Korea, New Zealand, Poland, Spain, Suriname, Turkey, United States* and *Uruguay*.

⁶¹ For example, *Azerbaijan, Bulgaria, Latvia, Serbia* and *Singapore*. The FGTB, the CGSLB and the CSC of *Belgium* noted that, in practice, migrant workers are often removed before their case is dealt with.

migrant workers contesting an expulsion order to reside in the country for the duration of the case, in light of Paragraph 33 of Recommendation No. 151.⁶²

501. In addition, other member States referred to the right of migrant workers to access legal assistance⁶³ or assistance with interpretation⁶⁴ in the context of the appeal of an expulsion order. The Government of *the former Yugoslav Republic of Macedonia* indicated that migrant workers subject to deportation proceedings were notified of their right to contact the representative of their country in the former Yugoslav Republic of Macedonia.⁶⁵ The CUT of *Colombia* and the Confederation of Workers of *Colombia* (CTC) indicated that even though the right to a translator or interpreter was guaranteed by the Constitution, in practice, migrants do not benefit of an interpreter during administrative or penal procedures.

502. In order to make access to justice for migrant workers a reality, it is equally important to ensure the existence of effective resources, including programmes to strengthen the capacity of the judiciary, the labour inspectorate and other law enforcement authorities to effectively implement the relevant legislation and the Convention relating to labour migration and the rights of migrant workers.

Sanctions against labour migration in abusive conditions

503. Sanctioning labour migration in abusive conditions involves both steps to prevent irregular migration and steps to ensure that appropriate sanctions are applied against those responsible.

Sanctions in respect of labour migration in abusive conditions

Convention No. 143 contains a number of provisions concerning labour migration in abusive conditions and, in particular, requires member States to take measures in this regard to prevent irregular migration and to ensure that sanctions are applied:

Article 2

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

2. The representative organisations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject.

⁶² *Italy* – CEACR, Convention No. 143, direct request, 2010; *the former Yugoslav Republic of Macedonia* – CEACR, Convention No. 143, direct request, 2013.

⁶³ For example, *Estonia, Greece, New Zealand, Spain* and *the former Yugoslav Republic of Macedonia*.

⁶⁴ For example, *Cyprus, Latvia, Slovenia* and *Spain*.

⁶⁵ Articles 141 and 142 of the Law on Employment and Work of Foreigners No. 35 of 2006 (as amended).

Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members:

- (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and
- (b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions, in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

Article 4

In particular, Members shall take such measures as are necessary, at the national and the international level, for systematic contact and exchange of information on the subject with other States, in consultation with representative organisations of employers and workers.

Article 5

One of the purposes of the measures taken under Articles 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

Article 6

1. Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.

2. Where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith.

504. Pursuant to Article 2(1) of Convention No. 143, migration in abusive conditions includes situations in which migrants are subjected during their journey, on arrival, or during their period of residence and employment to “conditions contravening relevant international multilateral or bilateral instruments or agreements, or national laws or regulations”. The Convention, accordingly, aims to prevent all forms of irregular migration that takes place in abusive conditions. The Committee is aware, however, that to effectively prevent irregular migration, member States must address all forms of irregular labour migration and not only that which is abusive under the terms of the Convention.

505. Articles 2(1) and 3 of Convention No. 143 require member States to “systematically seek to determine” whether migrant workers departing from, passing through or arriving in its territory are subjected to abusive conditions. In addition, member States should “adopt all necessary and appropriate measures” both to prevent irregular labour migration and against the organizers of such irregular migration, so as to prevent and eliminate abuses.

506. To achieve these objectives, member States should systematically exchange information with other States (Articles 3 and 4); consult representative organizations of employers and workers (Articles 2, 4 and 7); prosecute authors of trafficking in persons (Article 5); and apply administrative, civil and penal sanctions for organizing or assisting

labour migration in abusive conditions (Article 6).⁶⁶ The Committee has, in this regard, recently emphasized the need to take all necessary measures to promote national (through cooperation with workers' and employers' organizations), bilateral, regional and multilateral cooperation to address irregular migration with full respect of migrant workers' human rights and to prosecute and punish those organizing and assisting in clandestine movements of migrants.⁶⁷

507. A number of countries and certain workers' organizations indicated various measures taken to prevent and address irregular labour migration,⁶⁸ including setting out information about the risks of irregular migration on governmental websites.⁶⁹ The Governments of *El Salvador, Mali, Morocco, Myanmar, Peru, Poland, Senegal, Serbia, Turkmenistan* and *United States*, for example, described information campaigns, awareness raising, and training aiming to prevent irregular migration. The Government of *France* indicated that it had adopted several measures to address the unauthorized employment of migrant workers including the establishment of bodies to combat irregular migration and the employment of migrants in an irregular situation; further, employers, before employing migrant workers, must check the validity of their work permits. The Government of *Niger* referred to a regional initiative to prevent or reduce irregular migration;⁷⁰ the Government of *Mauritania* indicated that agreements with European countries aimed to combat trafficking of migrants; and the Government of *Qatar* referred to collaboration with the Arab Gulf Cooperation Council to eliminate irregular employment of migrant workers and sanction employers of migrant workers in irregular situations.

508. Certain employers' organizations referred to measures to help reduce irregular migration. For example, the IOE highlighted that exchanging information between States could help develop trust and create efficient systems to aid in the movement of regular migrant workers and reduce the reliance of some employers on the services of migrant workers in an irregular situation. The *Korea* Employers' Federation (KEF) stated that more efforts were required to prevent irregular migration, such as flexibility in implementing the Employment Permit System (EPS) permitting more migrant workers to come in through regular channels.

509. Some countries provided information concerning detection of migration in irregular conditions, often through labour inspection.⁷¹ The Government of *Mauritius*, for example, indicated that surprise labour inspection checks were carried out to ensure compliance with the law and work permits. The Government of *Turkey* noted shortcomings in the monitoring system for detecting migrant workers who had entered the country without authorization and who were undeclared; it considered that an enhanced monitoring system would allow better detection of violations without having to rely on informants and complaints.

⁶⁶ In this regard, the Committee recalls that Article 8 of Annex I and Article 13 of Annex II of Convention No. 97 already required that "any person who promotes clandestine or illegal migration shall be subject to appropriate penalties".

⁶⁷ *Italy* – CEACR, Convention No. 143, observation, 2014.

⁶⁸ For example, *Austria, Belarus, Guatemala* and the *Italian* Union of Labour (UIL).

⁶⁹ For example, *Bulgaria*.

⁷⁰ The Supplementary Protocol No. A/SP1/7/85 on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment of ECOWAS.

⁷¹ For example, *Cyprus, France, Greece, Latvia, Poland, Portugal, Romania* and *Uruguay*. See also paras 479–482 *supra*.

510. Many countries indicated that national legislation addressed the issue of irregular migration and trafficking.⁷² A number of member States reported on the existence of administrative and criminal sanctions against employers of migrant workers in irregular situations,⁷³ or in violation of labour laws.⁷⁴ The nature of the sanctions varied, including fines and punishment by imprisonment. The Government of the *Netherlands*, for example, indicated that the costs of expulsion were integrated in the administrative fine imposed on employers as a sanction for unauthorized employment. The Government of *Eritrea* stated in general terms that criminal law contained penalties to be imposed by judicial bodies for irregular labour migration; and the Government of *Ukraine* indicated that employers of migrant workers in an irregular situation were prosecuted under administrative law. The Government of *Cameroon* indicated that the organizers of irregular movements were apprehended and punished.

511. The Confederation of Workers of *Argentina* (CTA Workers) referred to article 16 of the Migration Law 25.871, which states that the imposition of employers' sanctions does not prejudice migrant workers' rights vis-à-vis the employer. At the same time, the Committee notes the information provided by the ITUC, which referred to the *Nea Manolada* case from Greece, which, inter alia, did not impose sanctions on the employer for employing migrant workers in an irregular situation.

512. The IOE, drawing attention to paragraph 2 of Article 6 of Convention No. 143 – according to which employers who are being prosecuted for illegal employment have the right to furnish proof of their good faith – indicated that employers should not be penalized for failure to detect “illegal workers” using fraudulent documents if they had no specific knowledge thereof. The IOE called upon governments to provide employers with the appropriate tools to assist them in carrying out the duty to verify that all migrant workers employed by them are authorized to work.

The EU Employers Sanctions Directive

The EU Employer Sanctions Directive¹ prohibits the hiring of “illegally staying third country nationals” (Article 1) and imposes financial sanctions on employers (Article 5). Furthermore, recognizing that the possibility to obtain employment without a regular situation is a major pull factor, the Directive requires Member States to ensure that employers are liable to pay any outstanding remuneration, an amount equal to any taxes and social security contributions that would have been paid had the irregular immigrant been legally employed and, if applicable, any cost arising from repatriation (Article 6(1)(a)–(c)). Finally, States are obliged to ensure that immigrants in an irregular situation can bring a claim against their employer and enforce a judgment (Article 6(2)(a)) and to facilitate complaints (Article 13).

However, the right to outstanding remuneration seems only to apply in cases where the migrant in an irregular situation has been detected and is either subject to deportation proceedings or has already been repatriated (see the obligation in Article 6(2) to inform migrants in an irregular situation about their rights merely before the enforcement of any return decision).

¹ The Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

513. The Committee is, however, obliged to note that some countries indicated that migrant workers in irregular situations may be subjected to the imposition of sanctions,

⁷² For example, *Mozambique*, *Pakistan* and *Philippines*.

⁷³ For example, *Bulgaria*, *Chile*, *El Salvador*, *Israel*, *Senegal*, *Uruguay* and *Bolivarian Republic of Venezuela*.

⁷⁴ For example, *Belgium*, *Burkina Faso*, *Republic of Korea* and *Seychelles*.

instead of or in addition to their employer. The Government of *Azerbaijan*, for example, stated that liability attached to foreigners and stateless persons employed without a work permit, as well as to employers who employed them without a permit contrary to the law.⁷⁵ The Government of *Djibouti* reported that migrants who entered Djibouti irregularly or overstayed their visa were subject to imprisonment or a fine; and the Government of *Spain* indicated that both workers and employers were sanctioned in cases of violation of legislation on foreigners and migration, with only employers held responsible for very serious violations. The *Italian* Confederation of Workers' Trade Unions (CISL) and the Italian General Confederation of Labour (CGIL) indicated that migrant workers in an irregular situation could be fined and imprisoned for irregular stay in *Italy*. In this regard, the Committee has pointed out that the penalization of unlawful migration increases the vulnerability of migrant workers in an irregular situation still further.⁷⁶ In this context, it should be recalled that the measures called for in Part I of Convention No. 143 to combat irregular migration are primarily targeted at the demand for clandestine labour rather than the supply, and that the instruments do not address the question of sanctions against migrant workers in an irregular situation. ***The Committee is bound to reiterate that a multiplication of repressive laws and practices is not sufficient to efficiently control migration flows and that abusive practices to which migrant workers can be victim often continue to occur on a similar scale.***⁷⁷

Specific groups requiring particular attention

514. Certain groups of migrant workers may find it especially challenging to claim their rights. In particular, women migrant workers, migrant workers who are from indigenous populations, migrants with a disability and young migrant workers may feel less able to raise disputes with employers and may not perceive judicial and quasi-judicial bodies as amenable to them. Migrant workers in certain occupations or sectors, such as domestic work, agriculture or construction, may also face additional difficulties in this respect.

515. In this regard, some member States reported measures to assist particular groups of migrant workers to enforce their rights. The Government of *Romania*, for example, stated that the labour inspectorate had responsibility to monitor the observance of the specific rules on working conditions for young people, women and disadvantaged categories.⁷⁸ The Government of *Ecuador* indicated that it was strengthening judicial cooperation at a bilateral and regional level to promote access to justice and due process for Ecuadorian migrant workers, with special priority given to cases involving children, youth, female victims of gender-based violence, and victims of trafficking in persons.

516. The Government of *Costa Rica* reported that a bilateral agreement with *Panama* envisaged strengthening capacity to monitor the working conditions of the indigenous *Ngöbe* *Bulge* peoples; in addition, the Government of *Costa Rica* indicated that particular inspections were undertaken to monitor the situation of pregnant women, young workers, and women who were victims of sexual harassment. The Committee

⁷⁵ Article 72(2) of the Migration Code of 2013.

⁷⁶ See also *Italy* – CEACR, Convention No. 143, observation, 2009 and 2012; and *Italy* – CEACR, Convention No. 29, direct request, 2010, Act No. 94 of 15 July 2009 issuing provisions respecting public security amended the Act of 1998 regulating immigration and the status of foreign nationals by inserting section 10bis, under the terms of which illegal entry and residence of migrants constitute a criminal offence.

⁷⁷ ILO: *General Survey on migrant workers*, 1999, paras 338 and 360. See also para. 255 and paras 286–302 *supra*.

⁷⁸ Article 6 of Law No. 108/1999 regarding the establishment and functioning of the Labour Inspection Authority (republished).

notes the information provided by the CUT and the CTC indicating that the Government of *Colombia* failed to adequately protect the rights of indigenous peoples from Ecuador migrating to Colombia. The Committee observes that the rights of migrant workers from indigenous communities should be respected.

* * *

517. *The Committee emphasizes that monitoring and enforcement measures are very important for the effective implementation in practice of the principles contained in the instruments. In this regard, the Committee considers that member States may wish to take all necessary measures to ensure that the rights and guarantees afforded to migrant workers are implemented in practice and, where they are not, that appropriate remedies and sanctions are available and applied. Given the particular challenges of monitoring and enforcement of migrant workers' rights that the specificities of their situation create, the Committee considers that the creation of competent bodies specific to migrant workers to which these workers can present complaints or access particular advice or guidance may be particularly useful.*

518. *Recognizing the indisputable value of the judicial and quasi-judicial system, including institutions such as mediation and conciliation, to all workers, including migrant workers, the Committee emphasizes that member States should take steps to ensure that mechanisms exist so that the judicial and quasi-judicial system is, in practice, accessible to everyone. Migrant workers should have effective access to legal aid, assistance and services, and to courts, where appropriate, without having to pay fees at a rate which impedes access to justice. They should also be given sufficient time to remain in the host country to pursue complaints and disputes brought to the attention of the competent authorities and obtain redress. The right to bring legal proceedings, including the right to appeal, should not be illusory because of a fear on the part of migrant workers – founded or not – of expulsion from the country.*

519. *The Committee further recalls that, pursuant to the instruments, member States should aim to methodically detect abusive working and living conditions for migrant workers as the first step towards prevention and elimination of migration in abusive conditions. In this regard, the Committee emphasizes that the primary duty of labour inspectors is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers.*

520. *Effective and proportionate sanctions should be brought against employers in breach of the labour rights of migrant workers, as well as against any persons found to have organized or contributed to irregular migration, with the aim of preventing irregular labour migration. Noting the increasing criminalization of the irregular entry or stay of migrants in some countries, and the sanctions against migrant workers in an irregular situation, the Committee recalls that sanctions against migrant workers in an irregular situation often preclude them from enjoying their rights provided for in the instruments and claiming redress for any violations. Member States should adopt the necessary measures to protect migrant workers from violations of their basic human rights, regardless of their legal status.*

Part II. Difficulties and prospects for ratification

Chapter 9

Difficulties in implementing the instruments

521. Having reviewed the reports from member States and social partners, the Committee notes certain obstacles that create difficulties in the effective implementation of the instruments. Crucially, the requirements of the instruments and, in particular, their great flexibility, are not always fully appreciated. In addition, a number of legislative and practical obstacles impede the application of the instruments in member States.

Need for full understanding of the instruments

522. The Committee notes certain common misconceptions about the requirements of the instruments that, in some cases, led to governments feeling unable to ratify the Conventions. Some governments, for instance, indicated uncertainty about the value of applying the principles set out in Conventions Nos 97 and 143 to countries of origin as well as countries of destination, whereas the instruments are premised on cooperation on this essentially international phenomenon, with measures to be taken by countries of origin, transit and destination.¹

523. A number of other governments overestimated what was required in legislation and policy by the instruments. For example, with regard to Convention No. 143, some governments mistakenly considered that the Convention would affect the principle of autonomy of workers' and employers' organizations by obliging them to cooperate with the government.² Other governments considered the fact that their law or practice only permitted certain migrant workers to be accompanied by members of their families, including mothers or fathers, to be an obstacle to ratification.³ The Committee recalls, however, that no obligation to guarantee family reunification stems from the Convention. A misunderstanding also appears to exist that the provisions on protection against redundancy of migrant workers in a regular situation no longer allow the Government to

¹ See paras 94–96 supra; Article 1(a) of Convention No. 97 also requires that all ratifying States must submit information to the Office and other members on national policies, laws and regulations relating to both emigration and immigration

² For example, *Germany*. See also paras 135–140 supra; Article 12(a) of Convention No. 143 only requires governments to seek their cooperation on the national equality policy and implies no obligation from the employers' and workers' organizations to cooperate.

³ For example, *Japan* and *Mauritius*. Article 13(1) of Convention No. 143 does not impose an obligation on but rather encourages member States to take the necessary measures to facilitate family reunification.

insist upon the return of the worker at the completion of their time-bound contract.⁴ Again other governments believed that the costs of expulsion, which should not be borne by the irregular migrant worker, also included travel costs.⁵ Some governments⁶ mistakenly believed that Article 9(1) of Convention No. 143 included the obligation to grant migrant workers in an irregular situation access to social insurance. The Committee recalls that the purpose of this provision is to ensure that migrant workers who have been unlawfully employed and who have contributed or affiliated to social security, in spite of the fact that they were in an irregular situation, enjoy their rights of past employment in this respect.⁷

524. Regarding Convention No. 97, the Committee noted misunderstandings regarding the requirement to organize medical services upon departure and arrival of the migrant worker and his or her family.⁸

525. In addition, the Committee notes that the flexibility of the instruments may not have been fully appreciated by governments and employers' and workers' organizations. As was set out in Chapter 1, the flexibility of both the structure and requirements of the instruments is a notable feature of Conventions Nos 97 and 143. Such flexibility allows member States to choose to selectively ratify certain provisions of the Conventions, as well as to choose how to design the measures taken pursuant to the instruments to fully take account of national circumstances. Accordingly, the Committee has previously considered a range of different approaches to be in conformity with the principles set out in the instruments, including with regard to the provision of information and free services to migrant workers and their families,⁹ measures adopted against misleading information relating to migration,¹⁰ and varied measures reported by member States to promote the integration of migrant workers in the labour market and to address xenophobia and discrimination against them.¹¹

⁴ See para. 424 supra.

⁵ See paras 310–312 supra.

⁶ Such as *Japan* and the *Netherlands*.

⁷ See paras 307–314 supra.

⁸ The Government of *Japan* considered the fact that the employer was not obliged to check the health condition of the migrant worker upon departure and arrival, an obstacle to ratification. See also para. 235 supra; Article 5(a) only requires the State to ensure that appropriate medical services exist to ascertain the fitness for work of the migrant worker. The Committee reiterates the view already expressed in its two previous general surveys on these instruments that due to developments in means of transportation, a single medical examination (preferably on departure) would be sufficient to ensure the application of the provisions of the Convention. See ILO: *General Survey on migrant workers*, 1999), para. 257.

⁹ For example, *Albania* – CEACR, Convention No. 97, direct request, 2014; and *Armenia* – CEACR, Convention No. 97, direct request, 2014 (migration desks or resources centres in employment offices for outgoing migrants); *Brazil* – CEACR, Convention No. 97, direct request, 2014; and *China (Hong Kong Special Administrative Region)* – CEACR, Convention No. 97, direct request, 2014; *Cyprus* – CEACR, Convention No. 97, direct request, 2014 (practical guides, manuals and brochures in several languages, and websites); *Malaysia (Sabah)* – CEACR, Convention No. 97, direct request, 2015 (inspections to educate workers about their rights and obligation); and *Portugal* – CEACR, Convention No. 97, direct request, 2014 (one-stop shops).

¹⁰ For example, *Brazil* – CEACR, Convention No. 97, direct request, 2014 (legislation criminalizing recruitment through fraud); *Cyprus* – CEACR, Convention No. 97, direct request, 2014 (legislation prohibiting private employment agencies from providing false information).

¹¹ For example, *Italy* – CEACR, Convention No. 143, observation, 2014 (integration programmes and one-stop shops); *Spain* – CEACR, Convention No. 97, direct request, 2014 (labour inspection tasked with monitoring of racial discrimination and xenophobia); and *Slovenia* – CEACR, Convention No. 143, observation, 2014 (programmes and workshops). See also paras 342–346 supra.

526. In this regard, the Committee notes that certain governments¹² indicated that Article 12(f) of Convention No. 143 requiring member States to promote the integration of migrant workers in the labour market and to assist and encourage migrant workers to preserve their national and ethnic identity and cultural ties with their country of origin, would be contrary to their civic integration policies. *Mindful of the evolving and sometimes complex debate on multiculturalism, the Committee considers that policies of inclusiveness aimed at integrating migrants in the labour market may not be incompatible with observing the rights of migrants. The Committee emphasizes the fundamental values of diversity, equality and non-discrimination, and universality of human rights. It considers that, in principle, such policies may be compatible with measures aimed at assisting migrants in preserving their national and ethnic identity and cultural ties, as provided for in Article 12(f). In this regard, the Committee notes the range of social policy and other initiatives reported by member States, in the context of this General Survey but also within its supervision of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).*¹³

527. *In this context, the Committee reiterates that member States may avail themselves of ILO technical assistance and it encourages the Office to follow up with member States to overcome these misunderstandings regarding the scope and requirements of certain provisions of the instruments.*

Legal obstacles

528. The Committee notes that the legislation in some member States imposes restrictions on the ability of migrant workers to enjoy their rights to equality of opportunity and treatment. That is, in certain cases legislation explicitly excludes migrant workers from coverage or from full coverage of protection.

529. For example, there are certain legal obstacles in relation to the guarantee of equal opportunity and treatment between migrant workers in a regular situation and nationals, such as restrictions on access to employment for certain categories of migrant workers (in particular temporary migrant workers from outside regional frameworks), exclusions from minimum wage or wages protection legislation, and exclusions from social security protection.¹⁴ The Committee observes that some restrictions on occupational mobility for foreign workers may result from employment priorities in favour of nationals,¹⁵ or from permits for temporary migrant workers being issued to a given post, a given employer or enterprise or a specific occupation beyond the period of two years authorized by Article 14(a) of Convention No. 143.¹⁶ Some member States also impose blanket restrictions on the employment of foreign workers in the public service.¹⁷

¹² *Netherlands.*

¹³ For example, *Ecuador, Republic of Korea and Singapore*. See also, *Denmark* – CEACR, Convention No. 111, direct request, 2013; *Ireland* – CEACR, Convention No. 111, observation, 2013; and *Italy* – CEACR, Convention No. 143, observation, 2014.

¹⁴ See also paras 400–402 *supra*. Regarding unequal treatment with respect to social security, see also *Israel* – CEACR, Convention No. 97, observations, 2011 and 2013; *Malaysia (Sabah)* – CEACR, Convention No. 97, observation, 2011; and *New Zealand* – CEACR, Convention No. 97, observation, 2014. The Government of *Australia* indicated that conferring social security rights on temporary visa holders would be incompatible with national legislation.

¹⁵ For example, *Armenia* and *Cameroon*.

¹⁶ For example, *Australia, Austria* and *Uganda*; see also paras 356–365 *supra*.

¹⁷ For example, *Benin*.

530. Furthermore, the Committee has previously commented on wage differences for domestic workers,¹⁸ and has noted decisions excluding foreign workers from the increase in the minimum wage and the absence of a minimum wage in the agricultural sector, which mainly employed migrants.¹⁹

531. In addition, there remain restrictions for migrant workers in their rights relating to freedom of association and collective bargaining, including restrictions on trade union membership and the establishment of trade unions. Migrant workers' eligibility for trade union office is often subject to residency and citizenship requirements.²⁰ In countries where a large number of rural workers are migrants, for example, restrictions on the right of migrant or foreign workers to form or join trade unions may disproportionately affect rural migrant workers and prevent them from playing an active role in the defence of their interests.²¹

532. The Government of *Sweden* indicated that the application of Convention No. 97 to posted workers might be an obstacle to ratification, since following the Decision of the Court of Justice of the European Communities (CJEC) in *Laval*, it was not permitted for Swedish trade unions to take industrial action to regulate employment conditions which go beyond minimum requirements of the Posting of Workers Directive (96/71/EC).

533. Legal difficulties persist for a number of member States relating to the maintenance of residency rights of permanently admitted migrants in the case of incapacity for work; or with regard to the protection of temporary migrant workers in case of redundancy. For example, in certain countries the residence permit for temporary migrant workers can be revoked or cancelled due to loss of employment,²² and the migrant worker is obliged to leave the country.²³ Some governments²⁴ considered the requirement in Article 8(2) of Convention No. 143 to provide for equal treatment with regard to alternative employment, relief work and training an obstacle to ratification.

534. Finally, the Committee notes that a number of member States have experienced particular difficulties in implementing certain specific provisions of the instruments. For example, the Committee has observed the lack of clarity in legislation regarding the application of fundamental rights at work to migrant workers in an irregular situation. Difficulties also persist in particular with respect to Article 9(1) of Convention No. 143 regarding the rights of migrants in an irregular situation arising out of past employment relating to remuneration and particularly social security.²⁵ For example, legislation in some member States provides that when a contract is void, irregular migrants have no

¹⁸ For example *China (Hong Kong SAR)* – CEACR, Convention No. 97, observation, published between 2013 and 2015.

¹⁹ See paras 376–380 *supra*; for example in *Cyprus* and *Jordan*.

²⁰ See paras 409–413 *supra* regarding restrictions in trade union membership and nationality and residence requirements to be elected as trade union officials.

²¹ See ILO: *General Survey on giving a voice to rural workers*, 2015, para. 130.

²² See paras 429–430 *supra*.

²³ See paras 431–432 *supra*. The Government of the *United States*, for example, reported that workers can be discharged without restriction, and that migrant workers who have been discharged or left work must return to their home country if they have not secured new employment.

²⁴ *Austria, Mauritius* and *Netherlands*.

²⁵ See paras 311–312 *supra*. *Mauritius* considered this provision an obstacle to ratification.

rights. In addition, a number of countries require migrant workers to pay the costs of expulsion.²⁶

535. Further, in many countries general legislative exclusions relate to certain categories of workers (or sectors), among whom migrant workers are a large proportion. The Committee observes that the categories of workers and types of occupations or activities most frequently excluded from the scope of the labour legislation are domestic workers and workers in agriculture, or particular categories of agricultural workers, and sometimes casual and temporary workers.²⁷ In some countries, temporary, seasonal and casual workers in the rural sector – many of whom are migrant workers – are excluded from labour law.²⁸ Such exclusions can constitute an important legal obstacle to the effective implementation of the instruments.

Practical obstacles

536. In many countries, challenges especially exist in the implementation of the law in practice. These challenges are compounded by the fact that, as an international phenomenon, labour migration is especially complicated to govern. A number of countries, for example, suggested that attention should be paid to challenges faced in striving for fully effective collaboration with other member States through, for example, bilateral cooperation or multilateral mechanisms.²⁹

Complex and sensitive nature of the debate

537. Importantly, the multifaceted, complex and often fraught, nature of debates concerning migration imposes additional challenges for implementation of the labour migration Conventions. In this regard, the Committee notes that member States broadly referred to challenges and complexities in managing economic, social and political elements of migration in general.³⁰ The Government of *Saudi Arabia*, for example, referred to the numerous obstacles and hurdles posed by the nature of its labour market; and other countries of destination referred to high unemployment rates³¹ and the need to protect vulnerable citizens against competition for scarce employment opportunities.³² The governance of labour migration was often seen as a complex act of balancing competing needs and interests.

Particular groups of migrant workers

538. The Committee is aware that migrant workers from racial, ethnic, religious and linguistic minorities, indigenous migrant workers and young migrant workers, and workers from rural areas, may experience further obstacles in relation to the implementation in practice of the instruments. Women migrants among these groups, and in general, may face additional obstacles. These categories of migrant workers risk

²⁶ The *Republic of Korea* and *Japan*, for example; see also paras 316–317 *supra*.

²⁷ See paras 328–330 *supra*.

²⁸ See ILO: *General Survey on giving a voice to rural workers*, 2015, para. 128. According to the *Turkish* Legal Workers' Trade Union Confederation (HAK-İŞ) migrants in an irregular situation employed in the informal economy enjoy virtually no trade union rights nor are they protected from discrimination.

²⁹ For example, *Ethiopia*, *Nepal* and *New Zealand*.

³⁰ For example, *Singapore* and *Turkey*.

³¹ For example, *Bosnia and Herzegovina* and *Ethiopia*.

³² For example, *South Africa*.

especially abusive conditions, including in relation to their labour rights, when compared to other workers.

539. The Committee notes the increased vulnerability of migrant workers in certain sectors. In many countries, the electronics industry, for example, is characterized by a high incidence of temporary and other forms of employment, and women and migrant workers are often the more vulnerable among workers under temporary contracts. Challenges encountered include lack of employment security and protection of a work–life balance, less favourable working conditions and difficulties to exercise their rights at work.³³ The Committee has also previously noted the situation of migrant workers who are victims of trafficking in the textiles and clothing sector and the large number of unauthorized workshops in certain countries.³⁴ It also notes the vulnerable situation of migrant workers in the fisheries sector, many of whom are in an irregular situation, which contributes to their willingness to accept poorer conditions and increasing their vulnerability to exploitation.³⁵

540. Migrant workers in irregular situations are acutely exposed to abusive conditions in practice. The Committee is aware that the extent of such irregular migratory movements, as well as mixed migratory flows including refugees and displaced persons, pose a tremendous challenge for many member States. The Government of *Lebanon*, for example, stated that the country was undergoing “a crisis”, referring to the large numbers of refugees and displaced persons in the country.

541. In relation to the question of women migrant workers, for example, the Committee welcomes the information submitted by some governments that their legislation provided for the principle of equality and prohibits gender discrimination, or included some special measures of assistance and support with respect to certain groups of migrant workers.³⁶ However, the Committee further notes that these same laws allowed exceptions to this principle, for example, in the case where an employer made a demand for either men or women workers³⁷ or for restrictions in the public or state interest.³⁸

542. In the context of its supervision of the fundamental ILO Conventions, the Committee has previously noted the serious violations and abuse to which many migrant women, in particular migrant domestic workers, are exposed. Such violations have led certain countries to impose, often temporarily, a ban on women migration for employment or have imposed certain age limits with respect to certain professions. For

³³ ILO: *Ups and downs in the electronics industry: Fluctuating production and the use of temporary and other forms of employment*, Issues paper for discussion at the Global Dialogue Forum on the Adaptability of Companies to Deal with Fluctuating Demands and the Incidence of Temporary and Other Forms of Employment in Electronics, 9–11 December 2014, Geneva (GDFACE/2014), and Final report of the discussion: The Forum reached consensus that all workers, including temporary workers, should have full access to fundamental principles and rights at work ((GDFACE/2014/9), paras 130, 133 and 138).

³⁴ See for example, *Argentina* – CEACR, Convention No. 29, observation, 2012.

³⁵ See for example, *Thailand* – CEACR, Convention No. 29, observation, 2012. For further information on good practices in Asian countries of origin and destination, see ILO, *Work in fishing in the ASEAN region: protecting the rights of migrant fishers*, Regional Office for Asia and the Pacific, Bangkok, 2014.

³⁶ For example, the Foreign Employment Act 2007 of *Nepal* and The Overseas Employment Migrants Act 2013 of *Bangladesh*.

³⁷ *Nepal* (section 8 of the Foreign Employment Act 2007).

³⁸ *Bangladesh* (sections 8(1) and (2) of the Overseas Employment Migrants Act 2013): provide that the Government, “when it considers that the migration of its citizens to a particular country shall be against the public or state interest or that their health and safety may be jeopardized in that country, may, by order, restrict the migration to a country”. It may also, in the public interest or for human resources reasons, temporarily restrict migration of a citizen or a category of citizens.

example, the Migrant Workers Act of the *Philippines*³⁹ provides that the Government, in pursuit of the national interest or when public welfare so requires, may, at any time, terminate or impose a ban on the deployment of migrant workers. The Household Service Workers Reform package, which aimed to ensure better protection of the rights of household service workers through various measures, included a minimum age limit of 23 years of age for deployment.

543. *While aware that these measures to address structural abuse against women migrants are well intended, the Committee considers that imposing a ban on women migrating for employment runs counter to the principle of equality and restricts women's rights instead of protecting them. The Committee considers that measures such as investing in decent work opportunities at home and strengthening the protection of the rights of women migrants, including through international cooperation, may allow women who choose to migrate to do so safely and in an informed manner.*⁴⁰

Administrative challenges

544. The complexity of dealing with irregular migration, and the economic and social pressures imposed by large numbers of migrants in an irregular situation, asylum seekers and refugees impose a particular burden on governmental authorities. A number of member States indicated administrative challenges with regard to capacity to enforce legislation concerning labour migration, including resource constraints and limitations on the feasibility of labour inspection.⁴¹ The Government of *Singapore*, for example, indicated that its high population density posed infrastructural demands presenting an ongoing challenge; and the Government of *Kenya* referred to obstacles relating to the lack of an enabling legal infrastructure to fully ensure implementation, including necessary technical capabilities for the management of labour migration.

545. Such administrative challenges particularly impact upon the enforcement of migrant workers' rights.⁴² Addressing the difficulties in enforcement in practice, which can be due to the specificities of the experience of migrant workers, is fundamental to ensuring that migrant workers are able to enjoy their rights at work.

Lack of awareness among migrant workers

546. Many member States commented on a lack of awareness among migrant workers of the protections set out in the instruments, which accordingly created an additional challenge to their implementation in practice. The Committee is further aware that low rates of trade union membership among migrant workers, itself often a result of a lack of awareness among migrant workers of their rights, pose a challenge for countries in terms of implementing the instruments. The Government of *Turkey* stated that there was not enough cooperation with employers' and workers' organizations with regard to migrant workers and that it considered that the organization of migrant workers in trade unions could have a positive effect.

³⁹ Section 5 of the Migrant Workers and Overseas Filipino Act of 1995 (Republic Act No. 8042).

⁴⁰ See further for the impact of migration bans on women and alternatives to such bans: ILO: *No easy exit: Migration bans affecting women from Nepal*, ILO, Geneva, 2015.

⁴¹ For example, *Benin, Brunei Darussalam, Eritrea, Lao People's Democratic Republic, Morocco, Myanmar, Togo and Uganda*.

⁴² See also paras 493, 497–498 *supra*.

Difficulties observed by employers' organizations

547. Some employers' organizations observed difficulties in the implementation of the instruments. In this regard, the Committee is mindful of information provided by the IOE concerning the need for governments to respond to perceptions that migrant workers pose health risks, threaten national security, undercut wages and job opportunities for national workers, and that labour migration is closely associated with unacceptable labour conditions and abuses. The Committee further notes that the IOE considers that difficulties in the implementation of certain provisions may be linked with questions of their continued applicability given changes in the phenomenon of labour migration since the adoption of the instruments.

548. The *Turkish* Confederation of Employers' Associations (TİSK) referred to the dynamic nature of migration, and the implications of this in their country, stating that migration was profoundly affecting *Turkey's* economic, sociocultural and demographic structure as well as public order and security. In addition, the Committee notes that the *Iranian* Confederation of Employers' Associations (ICEA) indicated that due to limitations in national legislation relating to the employment and social security, and the lack of administrative capacity, certain migrant workers were facing violations of the right to work. The *Korean* Employers' Federation (KEF) indicated the need for more efforts to prevent irregular migration through increasing the number of permits for foreign workers, as restrictions on using foreign workers might incite small and medium-sized enterprises to employ migrants in an irregular situation. The KEF further indicated that an increase in the number of immigrants in an irregular situation led to a decrease in jobs for Korean citizens, an increase in crimes committed by foreigners, and possibly social conflicts and stereotypes about foreign workers.

549. Some employers' organizations, such as the Confederation of Employers of the *Mexican* Republic (COPARMEX) and the Confederation of the Industrial Chambers of United States of Mexico (CONCAMIN), as well as the Confederation of *Finnish* Industries (EK), were of the opinion that costs may be associated with the instruments.

Difficulties observed by workers' organizations

550. A number of workers' organizations reflected on difficulties in implementing the instruments in their countries, often commenting on the complexity of the context to labour migration. For example, the General Confederation of Labour–Force Ouvrière (CGT–FO) of *France* emphasized the urgency of the situation; the *Netherlands* Trade Union Confederation (FNV) stated that the economic crisis, high unemployment and the increasing use of flexible contracts lead to uncertainty among the Dutch working population; and the Confederation of *Turkish* Trade Unions (TÜRK-İŞ) indicated that migrant workers were vulnerable, trying to survive in environments of arduous work and exploitation, and often targets of discrimination as a result of an unfavourable economic situation. The *Italian* Confederation of Workers' Trade Unions (CISL) and the *Italian* General Confederation of Labour (CGIL) referred to the emergency situation in North Africa.

551. The ITUC noted that migrant workers were frequently subjected to unequal treatment in employment and occupation, fuelled by stereotyped perceptions, xenophobic attitudes and unbalanced and inaccurate media reporting. The CGT–FO of *France*, referring to the situation of migrants in the Mediterranean region, noted xenophobic tendencies in the discussions surrounding the social effects of the economic crisis. The American Federation of Labor and Congress of Industrial Organizations

(AFL–CIO) of the *United States* stated that foreign labour recruiters routinely sorted workers into jobs and visa categories based on racial and gendered notions of work, with particular discrimination faced by women migrant workers.

552. Some workers' organizations, including the General Confederation of Labour (CGT) of *Colombia*, noted the vulnerability of migrant workers to breach violations of their rights and pointed to the large numbers of migrant workers in the informal economy. The General Confederation of Labour of the *Argentine Republic* (CGT RA), the *German Confederation of Trade Unions* (DGB) and the General Federation of *Iraqi Trade Unions* stressed the importance of actions against labour informality. The General Federation of *Tunisian Workers* (UGTT) stated that breaches of equality provisions in labour legislation were particularly common for migrant workers in an irregular situation and the Confederation of *Turkish Real Trade Unions* (HAK-İŞ) indicated that migrant workers in an irregular situation working in the informal economy enjoyed virtually no trade union rights.

553. The *Austrian Federal Chamber of Labour* (BAK) referred to groups of migrant workers experiencing “multiple forms of discrimination” and the ITUC emphasized the particular vulnerability of women migrant workers. The Single Confederation of Workers of *Colombia* (CUT) and the Confederation of Workers of *Colombia* (CTC) pointed to what it believed was a network of trafficking of indigenous persons from *Ecuador* to *Colombia*, whose rights were not protected by the authorities.

554. The Confederation of Christian Trade Unions (CSC) of *Belgium*, the General Confederation of Liberal Trade Unions of *Belgium* (CGSLB) and the General Labour Federation of *Belgium* (FGTB) noted that persons of migrant origin were over-represented in the low-paid, employment, part-time, temporary and care work jobs. The *New Zealand Council of Trade Unions* (NZCTU) pointed to the temporary nature and precariousness of much of migrant workers' employment, systems increasing reliance on employers (including employer-provided accommodation and work visas tied to a specific employer) and concentrations of migrant workers in sectors, such as hospitality and agriculture, with little or no union coverage. Travail.Suisse pointed to the lack of protection of low-wage and low-skilled migrant workers against ethnic discrimination with respect to access to employment, recognition of diplomas and remuneration. Migrant workers also encountered difficulties in accessing vocational training due to lack of information on training courses available to them.

555. The legal difficulties observed by workers' organizations varied between countries.⁴³ The CUT and the CTC of *Colombia*, for example, indicated that legislation was insufficient and inadequate to protect migrant workers. The *Malaysian Trade Unions Congress* (MTUC) highlighted that the legal framework failed to recognize several discriminatory practices faced by women migrant workers and especially domestic workers who were not recognized as workers under the Employment Act. The AFL–CIO of the *United States* referred to the fact that certain key pieces of labour legislation⁴⁴ explicitly excluded categories of workers which disproportionately

⁴³ For example, the *Austrian Federal Chamber of Labour* (BAK) raised questions concerning the ability of the maximum compensation provided for in the Equal Treatment Act to be an effective and deterrent penalty; the time limit for bringing actions for a declaration of discriminatory dismissal; and the appropriateness of the burden of proof in discrimination cases.

⁴⁴ For example, the National Labor Relations Act of 1935 (domestic workers and farmworkers), the Occupational Safety and Health Act of 1970 (domestic work; most protections do not apply to agricultural workplaces), the Fair Labor Standards Act of 1938 (farmworkers and domestic workers) and the Family and Medical Leave Act of 1993 (workers at worksites with fewer than 50 employees).

included migrant workers such as farmworkers, domestic workers/direct care providers, day labourers, tipped minimum-wage workers such as restaurant workers, guest workers, temporary workers and workers improperly classified as independent contractors.

556. In relation to situations in which legislation protected the rights of migrant workers, a number of trade union organizations referred to challenges in its implementation. The ITUC observed that national laws worldwide denied the guarantee of fundamental rights to migrant workers in an irregular situation and, in those cases in which rights were technically available in law, the lack of an effective remedy vitiated the rights in practice. The Committee notes further that many workers' organizations commented on difficulties in the enforcement of legislation for migrant workers, including those in an irregular situation.⁴⁵

557. The NZCTU indicated that migrant workers were exploited more than *New Zealand*-born workers, despite nominally equal application of the law. The Trade Union Confederation of Workers' Commissions (CCOO) of *Spain* indicated that, while in theory migrant workers enjoyed the same rights as national workers, in practice migrant workers experienced higher levels of temporary contracts, precariousness and vulnerability, particularly those that were in an irregular situation. This had, the CCOO stated, increased exponentially in the context of economic crisis and rising unemployment.

558. Many workers' organizations referred to administrative challenges to the implementation and enforcement of legislation protecting migrant workers' rights. In this regard, the Committee notes that the ITUC observed that it was not enough to simply enact laws to protect migrant workers, but that those laws needed to be implemented through effective labour inspection and enforcement. The ITUC observed that migrant workers were typically employed in sectors lacking effective labour inspection.⁴⁶

559. The CUT and the CTC of *Colombia* stated, for example, that in practice the extreme vulnerability of migrant workers, and especially those in an irregular situation, meant that they had a very limited access to justice. The General Union of Workers of *Côte d'Ivoire* (UGTCI) indicated that there was no mechanism by which unions could support migrant workers in an irregular situation to access justice. The NZCTU of *New Zealand* and All-Poland Trade Unions Alliance (OPZZ) referred to concerns with the capacity of the labour inspectorate to control legislation. The General Confederation of *Portuguese Workers*–National Trade Unions (CGTP–IN) indicated that although the legislation provide for measures to combat and sanction the recruitment of migrants in irregular situation, it did not adequately protect vulnerable workers from exploitation. Finally, the HAK-İŞ of *Turkey* considered there to be a lack of monitoring machinery.

560. Some workers' organizations indicated that a lack of awareness among migrant workers impacted upon the implementation of the Conventions. The CUT and the CTC of *Colombia* observed a lack of knowledge among the public and among migrant workers in the country. The General Workers' Union (UGT) of *Portugal* referred to the increased vulnerability of migrant workers due to the lack of education and language skills, inadequate training and precariousness and highlighted the need to increase social dialogue in relation to migration in order to better respond to its challenges. The *Swedish* Trade Union Confederation (LO), the *Swedish* Confederation for Professional

⁴⁵ See paras 479–480, 493 supra.

⁴⁶ Further, the Confederation of labour of *Russia* (KTR) commented on the fact that labour inspection focused on verifying documents instead of resolving labour disputes.

Employees (TCO), and the *Swedish Confederation of Professional Associations (SACO)* stated that the significant lack of awareness among migrant workers with regard to their rights and responsibilities, relevant agencies, and the Swedish labour market prevented migrant workers from enjoying their rights or availing themselves of the support that is available to them. Many workers' organizations, including the UGTT of *Tunisia*, referred to the "insignificant" level of unionization among migrant workers.

561. The KTR of the *Russian Federation* commented on the impact of legislation,⁴⁷ adopted in June 2013, relating to the 2018 Football World Cup and the 2017 Football Confederations Cup, suspending the requirement for an authorization to recruit and employ foreign workers for this purpose, as well as some minimum guarantees set out in Russian labour law, which applies to both Russians and foreigners. According to the KTR, the Act is likely to increase the recruitment of foreign workers through private intermediaries, and migrant workers are likely to be the majority of the workers affected by the legislation.

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562. The Committee notes the numerous interlinked legal and practical obstacles to the implementation of the instruments. Mindful of the potential of the instruments to contribute to improved governance of international labour migration and protection of migrant workers' rights, the Committee encourages governments to eliminate all legal and practical obstacles impeding their implementation and reminds governments that they can avail themselves of the technical assistance of the Office in this regard.

563. In particular, the Committee recalls from the 1999 General Survey on these instruments that the main legal difficulties in application related to the most important underlying principles of the instruments: equality of treatment between migrant workers in a regular situation and nationals;⁴⁸ maintenance of residence rights in the event of incapacity for work;⁴⁹ protection in case of redundancy;⁵⁰ and occupational mobility.⁵¹ Observing that, while important progress has been made in respect of some areas and with respect to some categories of migrant workers, many of the difficulties of application persist today. The Committee reiterates the continuing need for member States to actively commit to the implementation of their obligations under the Conventions and the effective resolution of issues related to the underlying principles of the instruments, including through exchange of good practice, social dialogue and international cooperation.

⁴⁷ Federal Act 108-FZ of 2013 on the Preparation for and Hosting of the 2018 FIFA World Cup and 2017 FIFA Confederations Cup.

⁴⁸ Article 6 of Convention No. 97 and Article 10 of Convention No. 143; in particular its application to all migrant workers in a regular situation coming from countries outside regional frameworks.

⁴⁹ Article 8 of Convention No. 97.

⁵⁰ Article 8 of Convention No. 143.

⁵¹ Article 14(a) of Convention No. 143.

Chapter 10

Prospects for ratification

564. The report form for this General Survey asked governments to provide information on the impact of the ILO instruments. In particular, governments were asked to report on any modifications in national legislation or practice, or any intention to adopt measures, including ratification, to give effect to the provisions of the instruments; and any difficulties that may prevent or delay ratification.

Measures to give further effect to the instruments

565. Having reviewed the reports provided by member States for the purposes of this General Survey, the Committee notes that one government reported steps towards ratification. The Government of *Morocco* stated that the ratification procedure for Convention No. 97 had been under way since September 2013 and that a study on the compliance of national legislation with Convention No. 143 would be undertaken.

566. Some governments reported their intention to consider the ratification of the instruments. The Governments of *Sudan* and *Viet Nam* reported that they were currently considering ratification of the two Conventions, and the Government of *Sri Lanka* reported that it had sought ILO technical assistance to undertake a study regarding the possibility of their ratification. The Government of *Benin* indicated that ratification of Convention No. 97 would be included in the annual workplan for 2016 of the General Labour Directorate, and ILO technical support would be appreciated in this regard.

567. The Government of *Nepal* reported that the Ministry of Labour and Employment was considering incorporation of the provisions of the instruments into legislation currently being drafted and would duly consider ratification following adoption of those laws. The Government of *Greece* reported that it intended to re-examine the possibility of ratification of the two Conventions as part of the promotion of an integrated proposal for a regulatory intervention on migration and the Government of *Israel* reported that it would examine the possibility of ratifying Convention No. 143.¹ The Governments of *Uganda* (in relation to Convention No. 97)² and *Poland* (in relation to both Conventions) indicated that the instruments were among those identified to be considered for ratification. The Governments of *France* (in relation to Convention No. 143)³ and *Senegal* (in relation to both Conventions) stated that the possibility of ratification was being studied.

¹ *Israel* ratified Convention No. 97 in 1953.

² *Uganda* ratified Convention No. 143 in 1978.

³ *France* ratified Convention No. 97 in 1954.

568. The Government of *Jordan* reported that, together with the social partners, civil society organizations, relevant government bodies, the ILO and the National Centre for Human Rights, it would review provisions of the Labour Code in order to agree on necessary amendments bringing Jordan closer to ratification of the instruments. The Government of *Algeria* stated that, with respect to the ratification of Convention No. 143, the issue required reflection in order to harmonize the labour migration governance scheme.⁴ The Government of *Chile* indicated that, during the term of the current administration, it would undertake consultations on ratification of both Conventions and seek to apply the corresponding Recommendations. The Government of *Ecuador* indicated that, having ratified Convention No. 97, it was considering the possibility of ratifying Convention No. 143 and the annexes to Convention No. 97.

569. A number of member States stated that they had adopted measures to incorporate the provisions of the instruments within national legislation, despite not having ratified either of the Conventions. For example, the Government of *Cambodia* indicated that it had made efforts to implement national provisions in compliance with the Conventions, and the Government of *Indonesia* reported that it was trying to harmonize national legislation with the instruments, including through recent legislative amendments. The Governments of *Bangladesh*, *Costa Rica* and *Slovakia* reported that the principles derived from Conventions Nos 97 and 143 guided the formulation of legislation, despite not having ratified either Convention. The Government of *Cuba* stated that, as it had ratified and given effect to Convention No. 97, there were no obstacles to ratification of Convention No. 143.

570. The Governments of *Côte d'Ivoire*, *Gambia*, *Latvia*, *Mexico* and *Mozambique* indicated that, while they had not ratified either Convention and did not intend to ratify them, they considered that national law or practice were already largely in conformity with some or all of the provisions of the instruments. The Government of *Eritrea* reported that it would not ratify either of the migrant worker Conventions as that would place an international obligation on the country, but would incorporate various provisions into upcoming legislation.

Difficulties preventing or delaying ratification

571. Many member States reported, however, that ratification was not currently foreseen or intended for one or more of the instruments. These included the Governments of *Antigua and Barbuda* (Conventions Nos 97 and 143), *Australia* (Conventions Nos 97 and 143), *Côte d'Ivoire* (Conventions Nos 97 and 143), *Czech Republic* (Conventions Nos 97 and 143), *Denmark* (Conventions Nos 97 and 143), *Eritrea* (Conventions Nos 97 and 143), *Estonia* (Conventions Nos 97 and 143), *Ethiopia* (Conventions Nos 97 and 143), *Finland* (Conventions Nos 97 and 143), *Georgia* (Conventions Nos 97 and 143), *Jamaica* (Convention No. 143), *Lao People's Democratic Republic* (Conventions Nos 97 and 143), *Lebanon* (Conventions Nos 97 and 143), *Mali* (Conventions Nos 97 and 143), *New Zealand* (Convention No. 143), *Niger* (Conventions Nos 97 and 143), *Pakistan* (Conventions Nos 97 and 143), *Saudi Arabia* (Conventions Nos 97 and 143), *Seychelles* (Conventions Nos 97 and 143), *Singapore* (Conventions Nos 97 and 143), *Switzerland* (Conventions Nos 97 and 143), *United Kingdom* (Convention No. 143), and *Zimbabwe* (Conventions Nos 97 and 143).

⁴ *Algeria* ratified Convention No. 97 in 1962.

572. The Governments of *Austria*, *Germany*,⁵ *Japan*, *Republic of Korea*, *Mauritius*,⁶ *Netherlands*,⁷ *Slovakia* and *Sweden*⁸ indicated that ratification of either one or both of the Conventions was not intended or foreseen as they considered that aspects of their legislation was not in conformity with various provisions of the instruments.⁹

573. Other governments reported that ratification was not feasible due to practical difficulties related to the national labour market, or was delayed due to limited administrative and legal capacity. The Government of *Ethiopia*, for example, stated that, as it was mainly a country of origin, it would need to examine national law and practice for conformity with the instruments; and, in any case, the prevalence of high unemployment rates in the country prompted it to give preference to nationals over foreign labour. The Government of *Lebanon* referred to the presence of more than 2 million refugees in the country, equal to half of its population, which made undertaking the necessary legislative amendments not at all an easy task; and the Government of *Uganda* reported that the main obstacle to ratification was financial. The Government of *Mali* stated that a lack of resources of the public administration with respect to labour inspection, collection of data, and dissemination of information, meant that it would not be able to fulfil all the obligations arising from the two Conventions.

574. The Governments of *Benin*¹⁰ and *Panama* stated that they needed to carry out comparative studies between national legislation and the instruments to determine whether ratification was possible. The Government of *Cabo Verde* referred to a need for in-depth studies, including statistical data, on migrant workers and technical assistance for the preparation of reports concerning the ratification of the instruments.

575. Certain governments questioned the relevance or value of ratification of the instruments. The Government of *Finland*, for example, reported concerns that the Conventions were outdated because of questions of compatibility with current Finnish legislation. The Government of *Estonia* considered that their ratification would not improve the conditions of migrant workers and their families, and the Government of the *Czech Republic* indicated that it was of the opinion that the rights of migrant workers regarding working conditions and benefits were already sufficiently secured by the current national or European Union legislation, or by Conventions on human rights.

576. The Government of *Pakistan* considered that the instruments were more applicable to countries of destination for migrant workers. The Government of *Singapore* stated that the instruments appeared to place greater emphasis on the rights and privileges of migrant workers, whether documented or undocumented, which was an important distinction given its impact on border control; in the Government's opinion, it was important to balance the rights and responsibilities of countries of origin, countries of destination, and the migrant workers themselves.

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577. *The Committee invites governments to consider adopting measures to give effect to the provisions of the instruments, in particular by engaging in tripartite dialogue on*

⁵ *Germany* ratified Convention No. 97 in 1959.

⁶ *Mauritius* ratified Convention No. 97 in 1969.

⁷ *Netherlands* ratified Convention No. 97 in 1952.

⁸ *Sweden* ratified Convention No. 143 in 1982.

⁹ See para. 444 supra and paras 524, 526, 533 supra.

¹⁰ *Benin* ratified Convention No. 143 in 1980.

possible ratification of Conventions Nos 97 and 143. The Committee emphasizes that, by giving effect to the provisions of these Conventions, member States will benefit from improved regulation of labour migration, a phenomenon that is, by its nature, complex and constantly changing. Even where States have not ratified the relevant Conventions, the Committee urges them to ensure respect for the rights of all migrant workers in keeping with international standards.

578. Noting that a number of member States have reported that they do not intend to ratify the instruments at present, and that in certain cases this is due to a perceived lack of conformity between the instruments and national law and policy, the Committee wishes to emphasize that due to the flexibility and breadth of the Conventions, such national legislation and policy would, in fact, often be in conformity with Conventions Nos 97 and 143. The Committee reminds member States that ILO technical assistance would be available in this regard.

Part III. Achieving the potential of the instruments

Chapter 11

Proposals for ILO action

579. A number of governments, employers' organizations and workers' organizations provided comments concerning possible standards-related action, policy support and technical cooperation that the ILO could provide to member States and constituents to improve the implementation of Conventions Nos 97 and 143 in law and in practice.

Policy support and technical cooperation needs

Comments from governments

580. Having examined the reports provided by member States, the Committee notes that the ILO currently provides a significant amount of policy support and technical cooperation in the area of labour migration, including in relation to the matters covered by the instruments. The Governments of *Brazil, Chile, Colombia, Mali, Mexico, Philippines, Sri Lanka, Togo, Viet Nam* and *Zimbabwe* noted a variety of projects, technical advice and training currently under way or recently provided by the ILO. The Governments of *Romania* (which has ratified neither Convention) and *Trinidad and Tobago* (which has ratified Convention No. 97) indicated that ILO technical support will be provided in the near future for legislative and policy reform relating to labour migration.

581. Certain governments requested ILO technical support for consideration of ratification of the Conventions. The Government of *Cabo Verde* requested technical support for the development of studies preparatory to ratification of the instruments and the Government of *Palau* sought technical assistance for a better understanding of the instruments and an assessment of the compliance of its national legislation. The Governments of *the former Yugoslav Republic of Macedonia* (which has ratified both Conventions) and *Jordan, Lithuania, Myanmar* and *Viet Nam* (none of which have ratified either Convention) referred to the need to learn about the practice and experiences of other countries, and to exchange useful information and good practices in relation to the effective implementation of the instruments.

582. In this context, a number of governments highlighted the need for capacity building and awareness raising in relation to the implementation of various aspects of the instruments, including initiatives directed at the social partners, migrant workers and the wider community, and governmental institutions and officials.

583. The Governments of *Eritrea, Indonesia, Kenya, Myanmar, Nepal, Suriname* and *Uganda* referred to a need to raise awareness among the tripartite constituents, migrant

workers and the wider community, through promotional campaigns. The Governments of *Benin*, *Eritrea*, *Lao People's Democratic Republic*, *Nicaragua* and *Viet Nam* referred in particular to the need to enhance the capacity and role of workers' and employers' organizations. The Government of *Togo* (which has ratified Convention No. 143) requested training for actors in public employment services and private placement agencies, as well as the social partners. The Government of *Nepal* indicated that such awareness-raising campaigns should cover all districts in the country. The Government of the *United Republic of Tanzania* indicated that technical assistance to strengthen the capacity of constituents for the effective implementation of the instruments would be beneficial.

584. The Government of *El Salvador* suggested the broad dissemination of national labour law and ILO standards on labour migration and the Government of *Viet Nam* emphasized the need for advocacy and dissemination of law and policy to the workforce that tended to look for employment abroad. The Government of *Uruguay* suggested the dissemination of information, training and job placement taking into account the rights of migrant workers in the informal economy.

585. Many governments, including *Egypt*, *Eritrea*, *Lao People's Democratic Republic*, *Niger*, *Senegal*, *Seychelles* and *Suriname*, indicated that technical advice and capacity building for governmental institutions and officials, including on labour migration governance, would be beneficial. The Government of *Sudan* indicated that it required technical advice to ensure national legislation could be enforced at local and provincial level.

586. Notably, many member States indicated that they would welcome support for the development and implementation of national policies and legislative reform. The Government of *Cambodia*, for example, indicated that the ILO could provide technical and financial assistance to implement labour migration policy; and the Government of *Nepal* requested support to implement its national and foreign employment policy. The Governments of *Gambia*, *Georgia*, *Namibia*, *Senegal*, *Seychelles* (none of which has ratified either Convention), as well as *Trinidad and Tobago* and *Uruguay* (which have ratified Convention No. 97) and *Benin* and *Uganda* (which have ratified Convention No. 143) requested support for the development of a national labour migration policy. The Governments of *Myanmar*, *Slovakia*, *Togo* and *Viet Nam* indicated that they would welcome technical support in relation to their legislative frameworks concerning labour migration. The Government of *Latvia* indicated that assistance could be provided to understand the correct application of the instruments.

587. The Governments of *Georgia*, *Morocco*, *Togo* and *Trinidad and Tobago* referred to the desirability of support to ensure the effective functioning of the labour inspectorate; the Government of *Colombia* requested capacity building for labour inspectors on labour migration, with a focus on gender and pointed to the need for inspection of frontier workers. The Government of *Benin* referred to the need to strengthen the capacity of labour inspectors so as to provide better protection for migrant workers and, in particular, the large number in the informal economy.

588. The Governments of *Colombia*, *Egypt*, *Lao People's Democratic Republic*, *Mali*, *Myanmar*, *Senegal*, *Seychelles*, *Togo* and *Uganda* stated that the ILO could provide technical support, including capacity building for staff and enhancing cooperation, in relation to labour market information systems or data collection, management and sharing; the Government of *Colombia* suggested a focus on gender in this regard. The Government of *Morocco* sought ILO technical and financial support for a strategic plan on labour migration, including the creation of a platform to exchange information on the

employment of foreigners in *Morocco*, and the employment of Moroccan nationals resident abroad.

589. The Governments of *Cabo Verde*, *Ethiopia*, *Myanmar*, *Viet Nam* and *Zimbabwe* referred to the need for future research. The Government of *Colombia* pointed to the need for policies to link migration with development. The Government of *Algeria* indicated that institutional support would assist in the development of public policies in relation to labour force planning.

590. Some member States referred to the need for the ILO to facilitate further international, including bilateral, cooperation. The Government of *Uganda* suggested that the ILO could cooperate with the International Organization for Migration (IOM), as well as national tripartite constituents, in raising awareness of the instruments, and the Governments of *Honduras* and *Kenya* considered that the ILO could assist in multilateral regional agreements concerning the governance of labour migration. The Governments of *Bangladesh* and *Nepal* considered that the ILO could assist in enforcing the instruments in countries of destination for their migrant workers, and the Government of *Ethiopia* proposed the creation of a forum for dialogue between countries of origin and destination towards protecting the rights of migrant workers and their families.

591. The Governments of *Algeria*, *Cambodia*, *Ethiopia*, *Kenya*, *Nepal* and *Togo* referred to the need for assistance in promoting, developing and implementing bilateral agreements and cooperation, with the Government of *Nepal* indicating that it would like the ILO to “raise its voice” in relation to these instruments so that the standards were incorporated into bilateral agreements. The Government of *Cambodia* indicated that the ILO could take a role in engaging both parties to bilateral agreements to comply with the instruments.

592. Some member States considered that attention should be paid to particular technical issues. The Government of *Gambia* referred to a need for awareness raising on irregular migration; and the Governments of *Ethiopia* and the *Philippines* referred to support to combat forced labour and the labour dimensions of human trafficking. The Government of *China* referred to the need for ILO support in relation to the application of the standards in practice to migrant workers in disguised informal employment or in irregular situations. The Government of *New Zealand* considered that there should be greater technical cooperation on the issues of recruitment, remittances, integration and support services in countries of destination, and monitoring of working conditions of migrant workers; the Government further proposed the development of codes of practice, good practice guidelines and minimum standards, in partnership with industry groups and employers.

593. The Government of *Uganda* indicated that the ILO could develop guidelines on how migrant workers can effectively attain their rights in practice in countries of destination. The Government of *Zimbabwe* emphasized the need for action-oriented migration programmes focused on both countries of origin and of destination.

Observations from employers’ organizations

594. The Committee notes observations from some employers’ organizations concerning possible ILO policy support and technical assistance. The National Employers Association of *Colombia* (ANDI) considered that there was a need for an analysis of the views of the tripartite constituents on labour migration; ILO technical support to strengthen administrative capacity and to strengthen capacity in relation to the social security Conventions would be desirable. The *Iranian* Confederation of Employers’ Associations (ICEA) referred to the need for ILO expertise and technical

cooperation in order to resolve recent challenges in a practical manner, applicable to the economic and development capacity of the country.

595. The Confederation of Employers of the *Mexican Republic* (COPARMEX) indicated that policy advice and technical cooperation should concern various elements, including the protection of migrant workers in an irregular situation, preventive steps against informality, access to justice for migrant workers and in particular those in an irregular situation, integration of returned migrant workers into the national labour market, enhanced cooperation between relevant institutions, and cooperation between countries of origin and of destination.

Observations from workers' organizations

596. A number of workers' organizations set out possible ILO action in this regard, aiming to improve the implementation of the provisions of the instruments in practice.

597. Some workers' organizations, including the General Confederation of Labour (CGT) of *Colombia*, referred to the need for training and normative action in their countries. The General Union of Workers of *Côte d'Ivoire* (UGTCI) requested ILO support to allow it to better represent migrant workers. The CGT of *Colombia* and the *Malaysian* Trade Unions Congress (MTUC) indicated the desirability of a focus on gender. The Confederation of Workers of *Argentina* (CTA Workers) and the *Latvian* Free Trade Union Confederation (LBAS) considered that a focus on improving the capacity of labour inspections with respect to migrant workers would be helpful.

598. The Single Confederation of Workers (CUT) and the Confederation of Workers of *Colombia* (CTC), the *German* Confederation of Trade Unions (DGB), the General Federation of *Iraqi* Trade Unions and the Trade Union Confederation of Workers' Commissions (CCOO) of *Spain* considered that fair recruitment could be the subject of a discussion aimed at strengthening the protection of migrant workers.

599. A number of workers' organizations indicated the need for enhanced international cooperation. The CGT of *Colombia*, for example, referred to an international cooperation agreement on social security for migrant workers. The MTUC referred to the need for cooperation between trade unions in countries of origin and countries of destination, for the creation of a space for dialogue and consultation including migrant workers in the process, and assist in providing direct services to migrant workers.

Proposals for standards-related action

Comments from governments

600. Certain governments indicated possible standards-related action that could be undertaken by the ILO and its members.

601. Some member States considered that there were certain topics touching upon labour migration that could usefully be considered in the context of standards-setting initiatives. The Government of *Bangladesh*, for example, mentioned an internationally recognized monitoring of conditions and occupational safety and health standards of migrant workers; the Government of *New Zealand* referred to better regulation of recruitment processes to prevent the exploitation of migrant workers, and the development of internationally recognized vocational training and education schemes for migrant workers; and the Government of *Suriname* referred to the possibility of a standard comparable to the Domestic Workers Convention, 2011 (No. 189), to reiterate the rights of migrant workers to decent work. The Governments of *Algeria*, *Myanmar*

and *Philippines* pointed to the need to consider the social protection aspects of labour migration and the Government of *El Salvador* indicated that regional and international mechanisms and instruments could be implemented to regularize migrant workers and their families.

602. Other member States considered revision of Conventions Nos 97 and 143 and their associated Recommendations. The Governments of *Chile*, *Slovakia* and *Zimbabwe* suggested examining the possibility of revising the instruments to ensure they were up to date. The Government of the *Islamic Republic of Iran* suggested a review of the instruments in the context of the Standards Review Mechanism (SRM). The Government of *Finland* suggested that, if the Conventions were revised, regional integration schemes should be taken into account. The Government of *Morocco* suggested that allowing more flexibility would enhance the promotion of the labour migration Conventions.

603. The Government of *Nicaragua* proposed the unification of the two Conventions and two Recommendations on labour migration, into one Convention and one Recommendation. The Government of *Senegal* likewise invited the ILO to consider revising the Conventions, or adopting a new consolidated and up-to-date standard that was equally relevant for countries of origin, transit and destination, and that aimed to promote regular migration and the rights of migrant workers, their social protection, safety and health, the fundamental principles and rights at work, and the principles of decent work.

604. Yet other member States considered that a ratification campaign for the Conventions may be desirable. For example, the Government of *Ethiopia* referred to technical support and cooperation with member States towards ratification of the labour migration instruments, the Government of *Uzbekistan* emphasized that countries of destination should be called on to ratify the instruments, and the Government of the *Bolivarian Republic of Venezuela* proposed a promotional campaign for the two instruments.

Observations from employers' organizations

605. The IOE referred to the possibility of an ILO standard-setting initiative in relation to Conventions Nos 97 and 143 and Recommendations Nos 86 and 151, in light of its view that the instruments no longer corresponded to the current realities of labour migration. The IOE considered that the ILO Standards Review Mechanism (SRM) could examine the continued relevance or lack thereof of Conventions Nos 97 and 143 and that a possible revision and merger of the instruments should have as an objective the creation of flexible, long-lasting and tripartite-owned instruments containing basic principles regarding international labour migration.

606. Business *New Zealand* referred to the possibility of standards-related action considering cross-border requirements similar to those in the Domestic Workers Convention, 2011 (No. 189).

Observations from workers' organizations

607. The ITUC called for a fully-fledged ILO campaign to promote the ratification of Conventions Nos 97 and 143, including support and technical cooperation to this effect. The ITUC considered that such a campaign should focus on certain elements of the instruments, including ensuring a firewall between labour inspectorates and immigration law enforcement, that temporary programmes were not used to address permanent labour shortages, the accessibility of grievance mechanisms, regularization, monitoring of

private cross-border employment agencies, charging of recruitment fees, and rights-based assessments of bilateral agreements and memoranda of understanding.

608. A number of national workers' organizations likewise proposed standards-related actions. The CGT RA of *Argentina*, the CGT, the CUT and the CTC of *Colombia*, the DGB of *Germany*, the *Italian Union of Labour (UIL)*, the General Federation of *Iraqi Trade Unions (GFTU)* and the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) of the *United States* indicated the necessity for a ratification campaign for Conventions Nos 97 and 143, including appropriate support and technical cooperation.

609. Other workers' organizations, including the CGT of *Colombia* and the General Federation of *Tunisian Workers (UGTT)*, commented on the need for ILO support for national studies and campaigns to accelerate the process of ratification of the instruments and adoption of a national rights-based policy on labour migration. The Confederation of Independent Trade Unions in *Bulgaria (KNSB/CITUB)* mentioned the desirability of ILO support to translate Conventions Nos 97 and 143 into Bulgarian, so that they may be disseminated throughout the country.

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610. The Committee welcomes the requests for policy support and technical assistance from governments, employers' organizations and workers' organizations as steps towards ratification and full implementation of Conventions Nos 97 and 143. Noting the importance of the Fair Migration Agenda to the ILO and its constituents, the Committee encourages the Office to provide the assistance requested, including the provision of technical support for the development of national equality policies incorporating the provisions of the instruments and for the development of measures aimed at integrating returned migrant workers. The Committee further draws the attention of the Office to the comments made regarding future standards-related action.

Chapter 12

The way forward: Protecting migrant workers' rights through social dialogue, human rights and enhanced cooperation

Common commitments concerning equality for migrant workers

611. The Committee observes a number of important common commitments shared by the tripartite constituents in relation to the topics covered by the migrant workers Conventions.

612. In the first place, the Committee notes that the reports provided by member States and the social partners illustrate an almost universal acceptance of the value to the community of the generally applicable principles of equality and non-discrimination. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) is among the most ratified of ILO Conventions and the principles of equality and non-discrimination have been recognized in a number of other international and regional instruments to which member States are parties,¹ as well as guaranteed in most national constitutions.²

613. Second, it is equally clear that governments and the social partners share a common awareness of the critical importance of international labour migration. While mindful of the “urgency” of the ongoing situation in the context of the current, worldwide, “migration crisis”,³ the constituents often emphasized the link between migration and development. The Government of *Chile* emphasized the significance of migrant workers in the development of its country, and the Government of *Pakistan* pointed to the considerable economic and social benefits of migration to both countries of origin and of destination. The International Organisation of Employers (IOE), for example, emphasized that international migration was increasingly important in the global

¹ The Universal Declaration of Human Rights (UDHR), article 2(1); the International Covenant on Civil and Political Rights (ICCPR), articles 2(1) and 26; the International Covenant on Economic, Social and Cultural Rights (ICESCR), article 2(2); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), article 1; the Committee on the Elimination of Racial Discrimination (CERD), article 1(1) and the International Covenant on the Protection of the Rights of all Migrant Workers and Members of their Families (ICRMW), article 25(1); regarding regional instruments, see ILO: *General Survey on the fundamental Conventions*, 2012, paras 40–41.

² Significantly, the ILO Declaration on Social Justice for a Fair Globalization, unanimously adopted by the International Labour Conference in 2008, reaffirms the role of the fundamental principles and rights at work as both rights and enabling conditions. In particular, “[G]ender equality and non-discrimination must be considered to be cross-cutting issues”.

³ For example, workers’ organizations from *France* and *Italy*.

economy and that nearly all countries were today affected by international migration; the employers regarded migration as a positive phenomenon.

614. Within the context of current developments, the essential need for measures to ensure that migrant workers' rights were protected in practice was also commonly accepted. The IOE, for example, referred to the perception that migration was closely associated with unacceptable labour conditions and abuses, and the ITUC discussed the social marginalization and poverty of migrant workers, in a "continuum of exploitation".

615. Moreover, while recognizing the critical importance of the principle of state sovereignty in this area, the Committee is aware of a general belief among the ILO's constituents in the desirability of international cooperation – a "global approach", as described by the Government of *France* – in this regard. The Committee was made acutely aware of the intense complexity of the governance of labour migration and the difficulty in effectively improving the situation for migrant workers, and notes that the constituents were astute to the need to balance competing needs and values in this sphere.

616. The Committee notes significant common commitments and concerns shared by the tripartite constituents in relation to labour migration. In this context, the Committee is mindful of the potential of the instruments to provide a useful framework for member States to address the challenges in relation to the governance of labour migration and, in particular, to promote and guarantee the rights of migrant workers. The Committee especially wishes to emphasize the importance of effective international and national cooperation between governments and the social partners.

Protecting migrant workers' rights through social dialogue

617. The Committee believes that an effective framework based on the instruments would take into account, as a cross-cutting issue, the integral role of the social partners. In addition, such a framework would address the need for effective measures to eliminate discrimination against migrant workers in law and in practice and multifaceted national policies promoting equality for migrant workers, impactful international and bilateral cooperation, fair recruitment services for migrant workers, effective guarantees of basic human rights and minimum standards, adequate enforcement of rights and access to justice, and special measures for migrant workers who are particularly at risk. The Committee is also aware of the importance and potential of the gathering of appropriate data, disaggregated by sex, and depending on migration patterns in the country or region, other factors such as origin and age, on the development of an effective framework for labour migration.

Integral role of social partners

618. The Committee recalls that Convention No. 143 and Recommendations Nos 86 and 151 require member States to take specific steps to ensure the involvement of the social partners, including in relation to the provision of services for migrant workers, as well as consultation on matters concerning international labour migration. The contribution of the social partners is an unequivocally valuable component of the instruments, essential to ensuring their successful implementation in practice.⁴

⁴ See paras 132–140 and 189 *supra*.

619. The Committee is aware of a number of initiatives taking place around the world, whereby the social partners are intrinsically involved in the provision of services to migrant workers, potentially having a reach that is broader than what could be achieved by governments. The ITUC, for example, commented that trade unions had established organizing programmes or assistance centres; and that partnerships between workers' organizations in countries of origin and countries of destination were being built.⁵

620. Further, the Government of *Sri Lanka* reported that trade unions worked with foreign trade unions to provide programmes for migrant workers when they reached the country of destination; and the Government of *Slovenia* indicated initiatives whereby trade unions had created brochures, and employers had developed a manual for employers of migrant workers. The Confederation of Independent Trade Unions in *Bulgaria* (KNSB/CITUB) indicated that it had organized forums (trainings, round tables and conferences) to overcome various forms of discrimination against migrant workers with the participation of union members, employers and representatives of various institutions. The General Confederation of Labour (CGT) and the National Employers' Association (ANDI) of *Colombia* referred to training on labour migration carried out through a tripartite commission on labour migration.

621. The Committee notes, nevertheless, that the IOE highlighted the need for comprehensive and effective dialogue between governments and business as a prerequisite to the governance of effective migration policy, stating that in many countries the private sector had often been absent from consultation on migration policy. The Committee also recalls that governments and workers' organizations referred to the low rate of unionization among migrant workers, and corresponding limitations on the ability of workers' organizations to effectively protect the rights of those workers and represent them in negotiations and consultations.

622. *Recognizing the pivotal role of the social partners in ensuring fair and effective governance of labour migration, the Committee emphasizes that employers' organizations and workers' organizations should be enabled to fulfil their role pursuant to the instruments.*

Multifaceted national policies promoting equality for migrant workers

623. Member States should take active steps to eliminate discrimination in employment and in the living and working conditions of migrant workers. The Committee recalls that the purpose of Convention No. 97 is to proscribe inequality of treatment including that arising out of the action by public authorities. Pursuant to Article 10 of Convention No. 143, member States should pursue national policies to promote and ensure equality of opportunity and treatment for migrant workers "by methods appropriate to national conditions and practice",⁶ and to eliminate discrimination in practice. Active and effective steps should be taken to implement the national equality policy and, in accordance with Article 12 of Convention No. 143, measures may be implemented progressively and continuously adapted to respond to changing national circumstances.

624. In this regard, the Committee welcomes the increasing number of countries with national equality policies as envisaged by the instruments, as well as the significant

⁵ The *Viet Nam* General Confederation of Labour (VGCL) referred to the Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the Association of Southeast Asian Nations (ASEAN) Region – an ILO project, which involves social partners in tripartite mechanisms to protect migrant workers.

⁶ See paras 166–168, and paras 342–347 *supra*.

number of countries expressing an interest in receiving ILO technical assistance to formulate, or implement, national policies. The Committee further notes that it has previously considered a range of varied measures to pursue and implement a national equality policy to be in conformity with the principles set out in the instruments. These have included legislative provisions preventing discrimination or promoting equal opportunity and treatment;⁷ actions plans and strategies;⁸ one stop-shops for immigration and campaigns on integration;⁹ free-of-charge language instruction programmes and the development of guides, information and training and compilation of statistics in cooperation with the social partners;¹⁰ an immigrant entrepreneurship promotion project;¹¹ and awareness raising.¹² The Committee recalls that several of the legislative and practical measures aimed at eliminating discrimination based on race, ethnicity, colour and national extraction, considered in its General Survey on the fundamental Conventions, including Convention and Recommendation No. 111, may be useful means in seeking to address discrimination against migrant workers.¹³

625. While noting that the requirement for national equality policies largely relates to immigrant workers in countries of destination, the Committee further notes the important role to be played by countries of origin, in contributing to the promotion of migrant workers' equality rights. *Noting the increasing relevance of bilateral agreements, in particular those covering specific categories of (low-skilled) migrant workers, the Committee emphasizes the importance of ensuring that the protection and rights as guaranteed in such agreements are at least equivalent to guarantees in national legislation, or do not undermine in any way the protection provided by international standards. It is also important that these agreements are transparent and adequately monitored and enforced.*

626. *The Committee emphasizes that, in accordance with national conditions and practice, member States should actively develop and pursue a national equality policy for migrant workers, in collaboration with employers' and workers' organizations. Such national equality policies should be composed of varied measures designed with the objective of effectively protecting and promoting the rights of migrant workers in a regular situation to equality of opportunity and treatment, taking into account national circumstances. Member States should ensure that national equality policies are coherent with other national policies, including employment policies.¹⁴ The Committee believes that the existence of effective national policies in this regard would contribute to an improvement in the global governance of labour migration.*

⁷ For example, *Kenya* – CEACR, Convention No. 143, observation, 2013 and *Serbia* – CEACR, Convention No. 143, direct request, 2014.

⁸ For example, *Cyprus* – CEACR, Convention No. 143, direct request, 2014.

⁹ For example, *Italy* – CEACR, Convention No. 143, observation, 2014.

¹⁰ For example, *Norway* – CEACR, Convention No. 143, direct request, 2014.

¹¹ For example, *Portugal* – CEACR, Convention No. 143, direct request, 2014.

¹² For example, *Slovenia* – CEACR, Convention No. 143, direct request, 2014.

¹³ See ILO: *General Survey on the fundamental Conventions*, 2012, paras 762–765 and 776–781, 820–823 and 852–867.

¹⁴ The Committee draw attention to Paragraph 15(e) of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which provides that Members should promote the implementation of a comprehensive employment policy framework that may include “labour migration policies that take into account labour market needs and promote decent work and the rights of migrant workers”.

627. *The Committee recalls the particular vulnerability of migrant workers to various forms of discrimination and prejudices in the labour market on grounds of nationality often intersecting with other grounds such as race, ethnicity, colour, religion and gender, and emphasizes that the instruments require member States to repeal or modify, in certain areas, discriminatory legislative measures, administrative instructions or practices. Mindful of the impact of increased migration flows on society as a whole, the Committee considers that member States should undertake public awareness-raising programmes aimed at combating stereotypes and prejudice against immigrants resulting in rising tensions, racial and ethnic discrimination, xenophobia and intolerance. Such crucially important public information and education programmes should not only cover non-discrimination policies, but also raise awareness of the advantages of social policies respecting migrants' national and cultural identity, and ensure that the national population accepts migrant workers and their families into society.*

Impactful international and bilateral cooperation

628. The Committee recalls the centrality of international and regional cooperation, including in particular bilateral agreements, in the instruments.¹⁵ In particular, Recommendation No. 86 provides that member States should “supplement” the instrument by bilateral agreements and includes a model bilateral agreement.¹⁶ The importance of international collaboration and bilateral agreements has, if anything, been reinforced in the current global migration context, as is illustrated by the high number of reports submitted for this General Survey as well as the many comments in those reports stressing this need. Further, regional governance arrangements are of increasing influence and impact.

629. In this regard, the Committee is mindful of the potential of interregional dialogues on labour migration, as have been implemented within an ILO project in the North Africa region. The Committee further notes that the ILO has provided some important technical assistance through a number of projects, including training in the *Philippines* in 2014 on bilateral and multilateral arrangements for health worker treaties under the “Decent Work Across Borders” project. It also notes important initiatives such as the Tripartite Action for the Protection and Promotion of the Rights of Migrant Workers in the Association of Southeast Asian Nations (ASEAN) Region (ASEAN TRIANGLE project) that promote bilateral and regional approaches to deal with shared concerns and enhance the capacity of institutions in ASEAN. Further, the Committee also notes that some workers' organizations indicated that they had concluded agreements with trade unions in destination countries to protect migrant workers, and that regional networks of workers' organizations on labour migration had been established, such as the Trade Union Network on Mediterranean and Sub-Saharan Migration.

630. *The Committee considers that collaborative initiatives between governments, in the form of bilateral agreements, intra-regional and interregional dialogues, and dialogues between workers' organizations and employers' organizations from different countries, will make important contributions to ensuring the implementation of the instruments in practice.*

¹⁵ See paras 141–163 supra.

¹⁶ Paragraph 21 and Annex to Recommendation No. 86.

Fair recruitment for migrant workers

631. The Committee is aware that the question of fair recruitment is a core issue in relation to labour migration in general and may be an effective way in which to address much abuse and exploitation of migrant workers.¹⁷ The Committee notes in particular that a number of workers' organizations raised serious concerns about the question of recruitment of migrant workers, pointing to various instances of exploitation. The ITUC highlighted that migration which took place outside regular channels, including through employment agencies, left the workers concerned vulnerable to abuse and exploitation; major concerns related to the charging of excessive recruitment costs and the practice of contract substitution.

632. The Committee notes many initiatives in this regard. In the first place, the Committee is mindful of the cooperation among ILO member States in relation to the development and implementation of the ILO Fair Migration Agenda; as well as the number of ILO tools available to member States to provide technical assistance in relation to fair recruitment. Further, some member States reported taking measures through bilateral arrangements to promote fair recruitment, recognizing the need to ensure cross-border impact. In this context, the General Confederation of Labour of the *Argentine Republic* (CGT RA) referred to the Plan to Facilitate the Free Movement of Workers within the Southern Cone Common Market (MERCOSUR), which prioritized the establishment of a system of public employment services to prevent the abuse of migrant workers. Further, the Committee, in the context of its supervision of the instruments, has welcomed initiatives at the national level such as the action taken by the Gangmasters Licensing Authority (GLA) of the *United Kingdom* to enforce the Gangmasters (Licensing) Act of 2004 and to provide information to workers and employers as well as labour providers.¹⁸

633. *The Committee encourages member States to continue efforts to address fair recruitment of migrant workers as a key means to improving the protection of their rights to equality of opportunity and treatment and, in particular, invites the Office to make efforts to ensure the wide availability of existing tools and lessons learnt from past projects. The Committee further encourages the constituents to take full advantage of the fair recruitment training provided by the ILO and available to all constituents.*

Effective protection of basic human rights and minimum standards

634. Part I of Convention No. 143 guarantees basic human rights to all migrant workers, including those in an irregular situation. The Committee recalls that the intention of Articles 1 and 9 of the Convention is to ensure, without challenging the right of States to regulate migration flows, that migrant workers, even if they are in an irregular situation, enjoy a basic level of protection and are not devoid of rights.¹⁹ Article 9 aims to ensure that migrant workers whose situation cannot be regularized and who are expelled enjoy equal treatment with regular migrant workers in respect of certain rights arising out of

¹⁷ See paras 255–258, 271–272 *supra*.

¹⁸ See *United Kingdom – CEACR*, Convention No. 97, direct request, 2013. The Committee noted in particular the information on the Gangmaster Licensing Act's (GLA's) website regarding its prosecution policy, complaints procedures, the list of registered providers that have a licence, and information for workers, such as the Guide on "Workers' Rights. Protecting Workers through Licensing", available in 18 languages, and the codes of practice on compliance and enforcement, as well as several guides for labour users.

¹⁹ See paras 274–275, 303 *supra*.

past employment, in particular remuneration and social security rights; they should also not bear the costs of their expulsion.

635. The Committee welcomes that most legislation providing basic human rights guarantees, including fundamental rights at work, appears to cover migrant workers. Most member States reported constitutional or legislative provisions guaranteeing basic human rights to all workers, and indicated that migrant workers were included within their scope. The Committee notes, however, that such guarantees may not, in practice (and sometimes also in law), apply equally to migrant workers in an irregular situation.

636. In this regard, the Committee is obliged to note the prevalence of migration in irregular conditions, and the dismal conditions that often exist for migrant workers in an irregular situation. A number of workers' organizations indicated that such migrant workers often were unable to take advantage of their rights, and suffered from extreme forms of abuse and exploitation.²⁰ The Confederation of Industry and Transport (SP ČR) of the *Czech Republic* referred to its cooperation with relevant public authorities to address the unlawful employment of migrant workers and the *Korea* Employers' Federation (KEF) stated that more efforts were required to prevent irregular migration, such as flexibly implementing the Employment Permit System (EPS) permitting more migrant workers to come in through regular channels.

637. *The Committee emphasizes that member States should ensure that migrant workers in an irregular situation effectively enjoy their basic human rights. This could include legislative amendments where necessary, as well as additional initiatives to ensure that all migrant workers are enabled to exercise the rights in practice. Member States should, additionally, ensure that migrant workers in an irregular situation are able to claim their rights arising from past employment.*

638. *In this context, and taking account of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), the Committee considers that member States should take comprehensive steps against irregular migration, including paying special attention to those migrant workers, including migrant domestic workers, who are particularly vulnerable to serious decent work deficits in the informal economy.*²¹

Effective enforcement of rights and access to justice

639. The Committee recalls that the instruments contain a number of provisions relating to monitoring, enforcement and access to justice.²² Migrant workers should be able to access legal proceedings and enjoy the enforcement of their rights;²³ and adequate sanctions should be available and implemented in respect of labour migration in abusive conditions.²⁴

²⁰ For example, CGT of *Colombia*; the Trade Union Confederation of Workers' Commissions (CCOO) of *Spain*; and the AFL-CIO of the *United States*.

²¹ See Paragraph 7(i) of Recommendation No. 204 calling upon member States to pay special attention to those who are particularly vulnerable to the most serious decent work deficits in the informal economy, including migrants and domestic workers.

²² See para. 460 *supra*.

²³ Article 6(1)(d) of Convention No. 97 and Article 9(2) of Convention No. 143; Paragraphs 8(4), 32(1), 33 and 34(2) of Recommendation No. 151.

²⁴ Articles 5(3) and 8 of Annex I and Article 6(3) and 13 of Annex II to Convention No. 97; and Articles 5 and 6 of Convention No. 143.

640. The Committee is mindful of the considerable amount of information provided by the constituents concerning the need for a focus on the adequate enforcement of rights and access to justice. For example, some workers' organizations referred to: (i) the fact that certain categories of migrant workers, especially migrant workers in an irregular situation, were unable to access justice; (ii) practical challenges faced by migrant workers; and (iii) the need for assistance to enable migrant workers to enforce their rights.²⁵

641. The Committee recalls that it has, over the past years, noted certain improvements in relation to employment systems whereby migrant workers were prevented or limited from changing employment, thus creating a significant dependency on the employer and accordingly indirectly preventing migrant workers from feeling able to enforce their rights.²⁶ The Committee further notes innovative initiatives in some countries aiming to improve the situation with regard to the ability of migrant workers, including those in an irregular situation, to enforce their rights and access justice.²⁷ For example, the Government of *Belgium* reported on the collaboration between the police, the Office for Foreigners and a non-governmental organization working with undocumented migrant workers, to postpone the delivery of an expulsion order to a migrant worker in an irregular situation for a period of 30 days, in order to allow him or her to claim, in full or in part, the remuneration due. Other innovative initiatives may focus on ensuring that mechanisms guaranteeing workers' rights are enforceable. For example, the Committee notes the establishment of specialized bodies in human rights,²⁸ dispute and complaints,²⁹ and those concerned with migration issues,³⁰ which are especially effective for migrant workers. Further, the Bilateral Recognized Seasonal Employer policy inter-agency agreements between *New Zealand* and a number of Pacific Island States set out criteria against which their success can be assessed and provide for the biannual review of the agreement.

642. In this regard, the Committee welcomes information provided by some workers' organizations referring to legal advice and assistance provided to migrant workers, including migrant workers in an irregular situation, such as a specialized migration platform to defend the rights of migrant workers established by the Single Confederation of Workers of *Colombia* (CUT) in cooperation with other organizations, or the legal aid project *Faire Mobilität* implemented by the *German* Confederation of Trade Unions (DGB).

²⁵ See paras 471, 489, 493 and 513 *supra*.

²⁶ See paras 465–470 *supra*.

²⁷ See also paras 473–475, 478–480, 490–492, 495–496 *supra*.

²⁸ For example, the National Institute against Discrimination, Xenophobia and Racism (INADI) in *Argentina*; the Australian Human Rights Commission; the National Human Rights Commission in the *Republic of Korea*; the Human Rights Commissioner (Ombudsman) in *Azerbaijan*; the *Cyprus* Equality Body; the Board of Equal Treatment of *Denmark*; Gender Equality and Equal Treatment Commissioner of *Estonia*; *Kenya* National Human Rights and Equality Commission; the Advocate for the Principle of Equality in *Slovenia*; the National Human Rights Commission of *Bangladesh*; and the Equality and Human Rights Commission and the Equality Advisory and Support Service of the *United Kingdom*.

²⁹ For example, *Bahrain* (Unit on Arbitration and Workers' Complaints); *Belarus* (labour dispute commissions); *Belgium* (Focal Point of the Division for Inspection of the Department of Employment and Social Economy); *Benin* (Labour Inspectorate); *Mauritius* (Commission for Conciliation and Mediation); *Plurinational State of Bolivia* (Ministry of Labour, Employment and Social Security); *Saudi Arabia* (dispute settlement bodies and units regulated by relevant ministerial orders); *South Africa* (Commission for Conciliation, Mediation and Arbitration).

³⁰ For example, the Bureau of Manpower and Employment of *Bangladesh*; the Department for Labour Migration of *Costa Rica*; the Special Migrant Workers' Unit of *Mauritius*; the Foreign Manpower Management Division of *Singapore*; and the Agency for External Migration of *Uzbekistan*.

643. *Emphasizing that rights can only be said to be implemented if the appropriate enforcement and monitoring mechanisms exist, the Committee considers that member States should ensure both the existence of effective enforcement by the competent authorities, and innovative initiatives, including the granting of legal aid, to empower migrant workers to access justice and enforce their own rights, including through workers' organizations representing their interests. This should also include efforts to enhance the capacity of competent authorities, including judges, legal prosecutors and other public officials, to implement and enforce the relevant legislation concerning labour migration and migrant workers' rights.*

Particular measures for certain groups of migrant workers

644. The Committee recalls that certain groups of migrant workers are especially vulnerable to violations of their basic human rights and their right to equality of opportunity and treatment, as well as to abuse and exploitation throughout the labour migration process. A number of workers' organizations and governments commented in this regard on the situation of women migrant workers, as well as migrant workers from certain ethnic groups, indigenous or rural populations.³¹ Likewise, certain categories of migrant workers employed in vulnerable or hazardous occupations or economic sectors, such as domestic work, agriculture, the fisheries sector, construction or manufacturing (textiles or electronics), or entertainment, also face particular difficulties, especially in the context of temporary migration programmes restricting labour mobility and flexibility regarding change of employer or workplace.

645. The Committee notes that female migrants make up almost half of the migrant worker population today. Many women migrants are employed in extremely vulnerable positions often because the sectors in which they are employed are excluded from the scope of protection of labour laws. They often face multiple and intersecting forms of discrimination impacting on their enjoyment of basic human rights. The Committee recalls that pursuant to Article 6(1) of Convention No. 97, member States should apply, without discrimination based on sex, to migrant workers lawfully in the country no less favourable treatment than that applied to nationals. Article 1 of Convention No. 143 calls upon member States to respect the basic human rights of all migrant workers.

646. *While noting that certain member States have reported initiatives taken in relation to these groups of migrant workers, the Committee is obliged to observe that many countries have experienced challenges in developing and implementing innovative initiatives in this regard. The Committee reminds member States that considerable expertise, including practical guides, tools and websites³² exists in the Office in relation to ensuring the rights of women migrant workers and other groups of migrant workers particularly at risk of breach of their rights, including those belonging to certain ethnic minorities, indigenous and tribal peoples and migrants*

³¹ For example, the CGT of Colombia indicated that in 2007 it had established Information and Guidance Centres for Migrants (CIAMI CGT) focusing on women, because of their particular vulnerability during the migration process.

³² See, for example, ILO: *Promoting equity: Ethnic diversity in the work place – A step-by-step guide*, Geneva, 2014; Inter-Parliamentary Union, ILO and UNOHCHR: *Migration, human rights and governance – Handbook for parliamentarians No. 24*, Geneva, 2015; ILO: *Extension of social protection of migrant domestic workers in Europe*, Geneva, 2013; ILO: *Indigenous and tribal peoples' rights in practice*, Geneva, 2009; and UNAIDS: *Denying entry, stay and resident due to HIV status: Advocating for non-discrimination in the freedom of movement of people living with HIV*, Geneva, 2009.

with disabilities, and encourages governments to take advantage of technical assistance in this area to facilitate exchanges of ideas and good practices.

Statistics and sharing of information

647. The Committee recalls the importance given by the instruments to the sharing of migration-related information among member States. Pursuant to Article 1 of Convention No. 97, member States should make available on the request of the ILO Office or other member States, information on national policies, laws and regulations relating to migration, and information on special provisions on migrant workers and their conditions of work and livelihood, as well as on general agreements and special arrangements. Article 4 of Convention No. 143 also provides that member States take measures for systematic contact and exchange of information.

648. In this context, the Committee notes that appropriate data and statistics are crucial in determining the nature of labour migration and inequalities of treatment faced by migrant workers, to set priorities and design measures, and to evaluate their impact and make adaptations where necessary. The Committee has noted in the past the importance given in some countries, including *Albania* and the *United Kingdom*, to the collection of such labour migration data.³³ The Committee further notes that a number of governments requested ILO technical assistance in relation to the collection and sharing of information and data, in their reports submitted for the purposes of this General Survey.³⁴

649. *Acknowledging the important impact of data collection, the Committee calls upon governments to collect and analyse relevant data on labour migration flows, disaggregated by sex, and depending on migration patterns in the country or region, other factors such as origin and age, migrant status, sector of employment and occupation, both from and to their country, so as to allow the effective determination of priorities, measures and accurate assessments of changes over time.*

650. *Noting the ongoing work by the Office on global estimates on labour migration, and recalling the need expressed by a number of member States for capacity building on labour market information systems or data collection, management and sharing of information, the Committee encourages the Office to provide technical assistance to member States concerning the collection and sharing of data, as is considered appropriate and necessary to national circumstances.*

³³ See for example, *Albania* – CEACR, Convention No. 97, direct request, 2014 (the collection of statistics in the field of work-related migration will be an important component of the new National Strategy on Migration 2013–18 and Action Plan) and the *United Kingdom* – CEACR, Convention No. 97, direct request, 2015.

³⁴ See para. 588 *supra*.

Conclusions and final remarks

651. The Committee welcomes the choice by the Governing Body of Conventions Nos 97 and 143 and Recommendations Nos 86 and 151 as the subject of a General Survey, which has allowed the Committee to make a detailed contribution to the crucially important international debate on labour migration. Further, the Committee acknowledges the high response rate and encourages countries to continue to engage in this exercise.

652. Since its inception, the ILO has been concerned with the protection of the rights of migrant workers, including taking steps to prevent migration in irregular conditions, and has been astute to the complex balance of social, economic and political considerations that this involves. The labour migration instruments call, in essence, for international cooperation to promote a rights-based approach to labour migration. The Committee believes that this objective is as relevant now as it was when the instruments were adopted in 1949 and 1975 even if, having not foreseen current migration developments, certain details in the provisions appear somewhat outdated.

653. During the process of preparing this General Survey, the Committee has been aware of the particular enormity of the challenges raised for governments in managing the current experience of migration. The Committee notes with great sadness the many, often distressing, media reports of human suffering as a result of mass mixed migratory movements – encompassing migrant workers in both regular and irregular situations and refugees – in more than one region. While not all these migratory movements would fall within the scope of the instruments, the Committee recalls that the instruments aim to prevent migration in irregular and abusive conditions and, further, apply to “of course, refugees and displaced persons migrating for employment”.¹

654. It is, accordingly, the view of the Committee that the instruments retain their relevance, for all migrant workers, irrespective of gender, origin, skill and status. Migrant workers continue to require specific protection to ensure that their rights are respected; the need to address irregular migration is increasing in importance; and the potential for international cooperation between countries of origin, transit and destination has been stated numerous times by governments and social partners. Moreover, the need for cooperation between governments and social partners, as set out in the instruments, is key to good governance of labour migration as a whole. *The Committee firmly believes that the instruments have the potential to contribute to effective governance of the considerable current migration challenges faced by the ILO’s tripartite constituents.*

655. The Committee notes that a number of member States reported the application in practice of particular provisions of the instruments, despite not having ratified either one of the Conventions. In addition, the Committee notes certain requests by governments

¹ ILO: *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949, p. 285.

for ILO technical support in relation to steps towards an informed consideration of ratification of one or both of the Conventions. Further, a number of reports and comments submitted for the purposes of this General Survey commented on the low levels of awareness of the instruments among the tripartite constituents and the general public; and certain governments and a number of workers' organizations, in particular, considered that an ILO campaign to promote ratification and implementation of the instruments was desirable.

656. Having said that, the Committee however appreciates that the potential of the instruments may not be fully met, particularly in the context of significant current developments in migration and globalization. In fact, the Committee is aware that details of certain provisions in the instruments may be considered to have lost their relevance, not being fully responsive to, or necessary, in the current migration context. The Committee is mindful of the comments of certain governments and employers' organizations in this regard. A few governments proposed consolidation or unification of the Conventions, while others proposed a review of the Conventions, including in the context of the Standards Review Mechanism (SRM). Certain employers' organizations pointed to the possibility of an ILO standards-setting initiative with a possible revision and merger of the instruments.

657. Emphasizing the potential of the instruments to respond to many of the current migration challenges experienced by member States, as well as their inherently flexible nature, the Committee encourages the ILO to undertake a comprehensive campaign to promote the effective implementation and awareness of Conventions Nos 97 and 143, as well as implementation of Recommendations Nos 86 and 151, in the context of its Fair Migration Agenda. The Committee emphasizes, in this regard, measures to address the needs of women, as well as particular groups of migrant workers, such as ethnic and religious minorities, rural and indigenous populations, youth, persons with disabilities, and people living with HIV and AIDS. In this context, the Committee draws attention to the importance of specific measures targeting migrant workers in vulnerable and hazardous occupations, such as domestic work, agriculture and construction and certain industries.

658. Furthermore, the Committee considers that the Office may wish to prepare a background paper identifying elements to be considered to ensure the enhanced relevance of the instruments, in the context of the SRM.

659. Furthermore, the adoption of the 2030 Agenda for Sustainable Development by the world community offers key opportunities to promote labour rights for all, including migrant workers. Action should therefore be designed and implemented in the larger framework of the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goals (SDGs) Nos 8 and 10.² The Committee notes that under SDG No. 8, which calls for the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, target 8.8 requires the protection of labour rights and the promotion of safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment. Furthermore, in the context of SDG No. 10, which calls for the reduction of inequality within and among countries, target 10.7 requires the facilitation of orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies. Further, target 16.3 calls for the promotion of the rule of law at the national and international

² See also para. 28 supra.

levels and for equal access to justice for all to be ensured. Further, Goal 17 provides opportunities to multi-stakeholder cooperation, not only between developing and developed countries, but also between developing countries and other partners.

660. The Committee also recalls that the constituents reported misunderstandings and difficulties with the implementation of the instruments in law and practice. In this regard, the Committee notes that a number of governments expressed a need to learn about the practice and experiences of other countries, and to exchange useful information and good practices in relation to the effective implementation of the instruments. *The Committee encourages the Office to facilitate the governments and social partners in sharing good practices and other experiences in relation to the implementation of the instruments, including within and between regions. The Committee further notes that governments and social partners referred to the desirability of technical support from the Office in relation to labour inspection, recruitment processes, and data collection and management, as well as for the development and implementation of national policies, that it hopes the Office will be able to undertake.*

661. Finally, the Committee acknowledges the urgent need for good governance arrangements for labour migration, mindful once again of both the considerable challenges currently faced by the ILO constituents and the potential of the instruments to contribute in this regard. *The Committee firmly hopes that member States will be effectively supported in their expressed intention to undertake further international cooperation, including through facilitation of cross-border cooperation on fair labour migration frameworks; in this regard, the Committee encourages the ILO to consider “raising its voice” in relation to the instruments, as suggested by the Government of Nepal.*

Appendix I

Texts of the examined instruments

Convention No. 97

Convention concerning Migration for Employment (Revised 1949) ¹

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office, and
having met in its Thirty-second Session on 8 June 1949, and
Having decided upon the adoption of certain proposals with regard to the revision of the
Migration for Employment Convention, 1939, adopted by the Conference at its Twenty-
fifth Session, which is included in the eleventh item on the agenda of the session, and
Considering that these proposals must take the form of an international Convention,
adopts this first day of July of the year one thousand nine hundred and forty-nine the following
Convention, which may be cited as the Migration for Employment Convention (Revised), 1949:

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to make available on request to the International Labour Office and to other Members –

- (a) information on national policies, laws and regulations relating to emigration and immigration;
- (b) information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment;
- (c) information concerning general agreements and special arrangements on these questions concluded by the Member.

Article 2

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

Article 3

1. Each Member for which this Convention is in force undertakes that it will, so far as national laws and regulations permit, take all appropriate steps against misleading propaganda relating to emigration and immigration.

¹ Ed.: This Convention came into force on 22 January 1952.

2. For this purpose, it will where appropriate act in co-operation with other Members concerned.

Article 4

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

Article 5

Each Member for which this Convention is in force undertakes to maintain, within its jurisdiction, appropriate medical services responsible for –

- (a) ascertaining, where necessary, both at the time of departure and on arrival, that migrants for employment and the members of their families authorised to accompany or join them are in reasonable health;
- (b) ensuring that migrants for employment and members of their families enjoy adequate medical attention and good hygienic conditions at the time of departure, during the journey and on arrival in the territory of destination.

Article 6

1. Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

- (a) in so far as such matters are regulated by law or regulations, or are subject to the control of administrative authorities –
 - (i) remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age for employment, apprenticeship and training, women's work and the work of young persons;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) accommodation;
- (b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:
 - (i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
 - (ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension;
- (c) employment taxes, dues or contributions payable in respect of the person employed; and
- (d) legal proceedings relating to the matters referred to in this Convention.

2. In the case of a federal State the provisions of this Article shall apply in so far as the matters dealt with are regulated by federal law or regulations or are subject to the control of federal administrative authorities. The extent to which and manner in which these provisions shall be applied in respect of matters regulated by the law or regulations of the constituent States, provinces or cantons, or subject to the control of the administrative authorities thereof, shall be determined by each Member. The Member shall indicate in its annual report upon the application of the Convention the extent to which the matters dealt with in this Article are regulated by

federal law or regulations or are subject to the control of federal administrative authorities. In respect of matters which are regulated by the law or regulations of the constituent States, provinces or cantons, or are subject to the control of the administrative authorities thereof, the Member shall take the steps provided for in paragraph 7(b) of article 19 of the Constitution of the International Labour Organisation.

Article 7

1. Each Member for which this Convention is in force undertakes that its employment service and other services connected with migration will co-operate in appropriate cases with the corresponding services of other Members.

2. Each Member for which this Convention is in force undertakes to ensure that the services rendered by its public employment service to migrants for employment are rendered free.

Article 8

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

2. When migrants for employment are admitted on a permanent basis upon arrival in the country of immigration the competent authority of that country may determine that the provisions of paragraph 1 of this Article shall take effect only after a reasonable period which shall in no case exceed five years from the date of admission of such migrants.

Article 9

Each Member for which this Convention is in force undertakes to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of the migrant for employment as the migrant may desire.

Article 10

In cases where the number of migrants going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Convention.

Article 11

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

2. This Convention does not apply to –

- (a) frontier workers;
- (b) short-term entry of members of the liberal professions and artistes; and
- (c) seamen.

Article 12

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 13

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 14

1. Each Member ratifying this Convention may, by a declaration appended to its ratification, exclude from its ratification any or all of the Annexes to the Convention.
2. Subject to the terms of any such declaration, the provisions of the Annexes shall have the same effect as the provisions of the Convention.
3. Any Member which makes such a declaration may subsequently by a new declaration notify the Director-General that it accepts any or all of the Annexes mentioned in the declaration; as from the date of the registration of such notification by the Director-General the provisions of such Annexes shall be applicable to the Member in question.
4. While a declaration made under paragraph 1 of this Article remains in force in respect of any Annex, the Member may declare its willingness to accept that Annex as having the force of a Recommendation.

Article 15

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of article 35 of the Constitution of the International Labour Organisation shall indicate –
 - (a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention and any or all of the Annexes shall be applied without modification;
 - (b) the territories in respect of which it undertakes that the provisions of the Convention and any or all of the Annexes shall be applied subject to modifications, together with details of the said modifications;
 - (c) the territories in respect of which the Convention and any or all of the Annexes, are inapplicable and in such cases the grounds on which they are inapplicable; and
 - (d) the territories in respect of which it reserves its decision pending further consideration of the position.
2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.
3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.
4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 17, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 16

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 and 5 of article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of this Convention and any or all of

the Annexes will be applied in the territory concerned without modification or subject to modifications; and if the declaration indicates that the provisions of the Convention and any or all of the Annexes will be applied subject to modifications, it shall give details of the said modifications.

2. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.

3. The Member, Members or international authority concerned may, at any time at which this Convention or any or all of the Annexes are subject to denunciation in accordance with the provisions of Article 17, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

Article 17

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

3. At any time at which this Convention is subject to denunciation in accordance with the provisions of the preceding paragraphs any Member which does not so denounce it may communicate to the Director-General a declaration denouncing separately any Annex to the Convention which is in force for that Member.

4. The denunciation of this Convention or of any or all of the Annexes shall not affect the rights granted thereunder to a migrant or to the members of his family if he immigrated while the Convention or the relevant Annex was in force in respect of the territory where the question of the continued validity of these rights arises.

Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 20

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 21

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –
 - (a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;
 - (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.
2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 22

1. The International Labour Conference may, at any session at which the matter is included in its agenda, adopt by a two-thirds majority a revised text of any one or more of the Annexes to this Convention.
2. Each Member for which this Convention is in force shall, within the period of one year, or, in exceptional circumstances, of eighteen months, from the closing of the session of the Conference, submit any such revised text to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.
3. Any such revised text shall become effective for each Member for which this Convention is in force on communication by that Member to the Director-General of the International Labour Office of a declaration notifying its acceptance of the revised text.
4. As from the date of the adoption of the revised text of the Annex by the Conference, only the revised text shall be open to acceptance by Members.

Article 23

The English and French versions of the text of this Convention are equally authoritative.

ANNEX I

RECRUITMENT, PLACING AND CONDITIONS OF LABOUR OF MIGRANTS
FOR EMPLOYMENT RECRUITED OTHERWISE THAN UNDER GOVERNMENT-SPONSORED
ARRANGEMENTS FOR GROUP TRANSFER

Article 1

This Annex applies to migrants for employment who are recruited otherwise than under government sponsored arrangements for group transfer.

Article 2

For the purpose of this Annex –

- (a) the term “recruitment” means –
 - (i) the engagement of a person in one territory on behalf of an employer in another territory, or
 - (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory,together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;

- (b) the term “introduction” means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of paragraph (a) of this Article; and
- (c) the term “placing” means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of paragraph (b) of this Article.

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.

2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to –

- (a) public employment offices or other public bodies of the territory in which the operations take place;
- (b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by agreement between the Governments concerned;
- (c) any body established in accordance with the terms of an international instrument.

3. In so far as national laws and regulations or a bilateral arrangement permit, the operations of recruitment, introduction and placing may be undertaken by –

- (a) the prospective employer or a person in his service acting on his behalf, subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority;
- (b) a private agency, if given prior authorisation so to do by the competent authority of the territory where the said operations are to take place, in such cases and under such conditions as may be prescribed by –
 - (i) the laws and regulations of that territory, or
 - (ii) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

4. The competent authority of the territory where the operations take place shall supervise the activities of bodies and persons to whom authorisations have been issued in pursuance of paragraph 3(b), other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.

5. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration.

Article 4

Each Member for which this Annex is in force undertakes to ensure that the services rendered by its public employment service in connection with the recruitment, introduction or placing of migrants for employment are rendered free.

Article 5

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require –

- (a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration;
- (b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;
- (c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.

2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

Article 6

The measures taken under Article 4 of the Convention shall, as appropriate, include –

- (a) the simplification of administrative formalities;
- (b) the provision of interpretation services;
- (c) any necessary assistance during an initial period in the settlement of the migrants and members of their families authorised to accompany or join them; and
- (d) the safeguarding of the welfare, during the journey and in particular on board ship, of migrants and members of their families authorised to accompany or join them.

Article 7

1. In cases where the number of migrants for employment going from the territory of one Member to that of another is sufficiently large, the competent authorities of the territories concerned shall, whenever necessary or desirable, enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Annex.

2. Where the Members maintain a system of supervision over contracts of employment, such agreements shall indicate the methods by which the contractual obligations of the employers shall be enforced.

Article 8

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

ANNEX II

RECRUITMENT, PLACING AND CONDITIONS OF LABOUR OF MIGRANTS
FOR EMPLOYMENT RECRUITED UNDER GOVERNMENT-SPONSORED
ARRANGEMENTS FOR GROUP TRANSFER

Article 1

This Annex applies to migrants for employment who are recruited under government-sponsored arrangements for group transfer.

Article 2

For the purpose of this Annex –

- (a) the term “recruitment” means –
 - (i) the engagement of a person in one territory on behalf of an employer in another territory under a government-sponsored arrangement for group transfer, or
 - (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory under a government-sponsored arrangement for group transfer,
 together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;
- (b) the term “introduction” means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited under a government-sponsored arrangement for group transfer within the meaning of subparagraph (a) of this paragraph; and
- (c) the term “placing” means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced under a government-sponsored arrangement for group transfer within the meaning of subparagraph (b) of this paragraph.

Article 3

1. Each Member for which this Annex is in force, the laws and regulations of which permit the operations of recruitment, introduction and placing as defined in Article 2, shall regulate such of the said operations as are permitted by its laws and regulations in accordance with the provisions of this Article.

2. Subject to the provisions of the following paragraph, the right to engage in the operations of recruitment, introduction and placing shall be restricted to –

- (a) public employment offices or other public bodies of the territory in which the operations take place;
- (b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by agreement between the Governments concerned;
- (c) any body established in accordance with the terms of an international instrument.

3. In so far as national laws and regulations or a bilateral arrangement permit, and subject, if necessary in the interest of the migrant, to the approval and supervision of the competent authority, the operations of recruitment, introduction and placing may be undertaken by –

- (a) the prospective employer or a person in his service acting on his behalf;
- (b) private agencies.

4. The right to engage in the operations of recruitment, introduction and placing shall be subject to the prior authorisation of the competent authority of the territory where the said operations are to take place in such cases and under such conditions as may be prescribed by –

- (a) the laws and regulations of that territory, or
- (b) agreement between the competent authority of the territory of emigration or any body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration.

5. The competent authority of the territory where the operations take place shall, in accordance with any agreements made between the competent authorities concerned, supervise the activities of bodies and persons to whom authorisations have been issued in pursuance of the preceding paragraph, other than any body established in accordance with the terms of an international instrument, the position of which shall continue to be governed by the terms of the said instrument or by any agreement made between the body and the competent authority concerned.

6. Before authorising the introduction of migrants for employment the competent authority of the territory of immigration shall ascertain whether there is not a sufficient number of persons already available capable of doing the work in question.

7. Nothing in this Article shall be deemed to permit the acceptance of a migrant for employment for admission to the territory of any Member by any person or body other than the competent authority of the territory of immigration.

Article 4

1. Each Member for which this Annex is in force undertakes to ensure that the services rendered by its public employment service in connection with the recruitment, introduction or placing of migrants for employment are rendered free.

2. The administrative costs of recruitment, introduction and placing shall not be borne by the migrants.

Article 5

In the case of collective transport of migrants from one country to another necessitating passage in transit through a third country, the competent authority of the territory of transit shall take measures for expediting the passage, to avoid delays and administrative difficulties.

Article 6

1. Each Member for which this Annex is in force which maintains a system of supervision of contracts of employment between an employer, or a person acting on his behalf, and a migrant for employment undertakes to require –

- (a) that a copy of the contract of employment shall be delivered to the migrant before departure or, if the Governments concerned so agree, in a reception centre on arrival in the territory of immigration;
- (b) that the contract shall contain provisions indicating the conditions of work and particularly the remuneration offered to the migrant;
- (c) that the migrant shall receive in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, information concerning the general conditions of life and work applicable to him in the territory of immigration.

2. Where a copy of the contract is to be delivered to the migrant on arrival in the territory of immigration, he shall be informed in writing before departure, by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational

category for which he is engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The competent authority shall ensure that the provisions of the preceding paragraphs are enforced and that appropriate penalties are applied in respect of violations thereof.

Article 7

1. The measures taken under Article 4 of this Convention shall, as appropriate, include –

- (a) the simplification of administrative formalities;
- (b) the provision of interpretation services;
- (c) any necessary assistance, during an initial period in the settlement of the migrants and members of their families authorised to accompany or join them;
- (d) the safeguarding of the welfare, during the journey and in particular on board ship, of migrants and members of their families authorised to accompany or join them; and
- (e) permission for the liquidation and transfer of the property of migrants for employment admitted on a permanent basis.

Article 8

Appropriate measures shall be taken by the competent authority to assist migrants for employment, during an initial period, in regard to matters concerning their conditions of employment; where appropriate, such measures may be taken in co-operation with approved voluntary organisations.

Article 9

If a migrant for employment introduced into the territory of a Member in accordance with the provisions of Article 3 of this Annex fails, for a reason for which he is not responsible, to secure the employment for which he has been recruited or other suitable employment, the cost of his return and that of the members of his family who have been authorised to accompany or join him, including administrative fees, transport and maintenance charges to the final destination, and charges for the transport of household belongings, shall not fall upon the migrant.

Article 10

If the competent authority of the territory of immigration considers that the employment for which a migrant for employment was recruited under Article 3 of this Annex has been found to be unsuitable, it shall take appropriate measures to assist him in finding suitable employment which does not prejudice national workers and shall take such steps as will ensure his maintenance pending placing in such employment, or his return to the area of recruitment if the migrant is willing or agreed to such return at the time of his recruitment, or his resettlement elsewhere.

Article 11

If a migrant for employment who is a refugee or a displaced person and who has entered a territory of immigration in accordance with Article 3 of this Annex becomes redundant in any employment in that territory, the competent authority of that territory shall use its best endeavours to enable him to obtain suitable employment which does not prejudice national workers, and shall take such steps as will ensure his maintenance pending placing in suitable employment or his resettlement elsewhere.

Article 12

1. The competent authorities of the territories concerned shall enter into agreements for the purpose of regulating matters of common concern arising in connection with the application of the provisions of this Annex.

2. Where the Members maintain a system of supervision over contracts of employment, such agreements shall indicate the methods by which the contractual obligations of the employer shall be enforced.

3. Such agreements shall provide, where appropriate, for co-operation between the competent authority of the territory of emigration or a body established in accordance with the terms of an international instrument and the competent authority of the territory of immigration, in respect of the assistance to be given to migrants concerning their conditions of employment in virtue of the provisions of Article 8.

Article 13

Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties.

ANNEX III

IMPORTATION OF THE PERSONAL EFFECTS, TOOLS AND EQUIPMENT
OF MIGRANTS FOR EMPLOYMENT

Article 1

1. Personal effects belonging to recruited migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on arrival in the territory of immigration.

2. Portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades belonging to recruited migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on arrival in the territory of immigration if such tools and equipment can be shown at the time of importation to be in their actual ownership or possession, to have been in their possession and use for an appreciable time, and to be intended to be used by them in the course of their occupation.

Article 2

1. Personal effects belonging to migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on the return of the said persons to their country of origin if such persons have retained the nationality of that country at the time of their return there.

2. Portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades belonging to migrants for employment and members of their families who have been authorised to accompany or join them shall be exempt from customs duties on return of the said persons to their country of origin if such persons have retained the nationality of that country at the time of their return there and if such tools and equipment can be shown at the time of importation to be in their actual ownership or possession, to have been in their possession and use for an appreciable time, and to be intended to be used by them in the course of their occupation.

Recommendation No. 86

Recommendation concerning Migration for Employment (Revised 1949)

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals with regard to the revision of the Migration for Employment Recommendation, 1939, and the Migration for Employment (Co-operation between States) Recommendation, 1939, adopted by the Conference at its Twenty-fifth Session, which are included in the eleventh item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this first day of July of the year one thousand nine hundred and forty nine the following Recommendation, which may be cited as the Migration for Employment Recommendation (Revised), 1949:

The Conference,

Having adopted the Migration for Employment Convention (Revised), 1949, and desiring to supplement its provisions by a Recommendation;

Recommends as follows:

I

1. For the purpose of this Recommendation –

- (a) the term “migrant for employment” means a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment;
- (b) the term “recruitment” means –
 - (i) the engagement of a person in one territory on behalf of an employer in another territory, or
 - (ii) the giving of an undertaking to a person in one territory to provide him with employment in another territory, together with the making of any arrangements in connection with the operations mentioned in (i) and (ii) including the seeking for and selection of emigrants and the preparation for departure of the emigrants;
- (c) the term “introduction” means any operations for ensuring or facilitating the arrival in or admission to a territory of persons who have been recruited within the meaning of subparagraph (b);
- (d) the term “placing” means any operations for the purpose of ensuring or facilitating the employment of persons who have been introduced within the meaning of subparagraph (c).

2. For the purpose of this Recommendation, references to the Government or competent authority of a territory of emigration should be interpreted as referring, in the case of migrants who are refugees or displaced persons, to any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government.

3. This Recommendation does not apply to –

- (a) frontier workers;
- (b) short-term entry of members of the liberal professions and artistes; and
- (c) seamen.

II

4. (1) It should be the general policy of Members to develop and utilise all possibilities of employment and for this purpose to facilitate the international distribution of manpower and in particular the movement of manpower from countries which have a surplus of manpower to those countries that have a deficiency.

(2) The measures taken by each Member should have due regard to the manpower situation in the country and the Government should consult the appropriate organisations of employers and workers on all general questions concerning migration for employment.

III

5. (1) The free service provided in each country to assist migrants and their families and in particular to provide them with accurate information should be conducted –

- (a) by public authorities; or
- (b) by one or more voluntary organisations not conducted with a view to profit, approved for the purpose by the public authorities, and subject to the supervision of the said authorities; or
- (c) partly by the public authorities and partly by one or more voluntary organisations fulfilling the conditions stated in subparagraph (b) of this Paragraph.

(2) The service should advise migrants and their families, in their languages or dialects or at least in a language which they can understand, on matters relating to emigration, immigration, employment and living conditions, including health conditions in the place of destination, return to the country of origin or of emigration, and generally speaking any other question which may be of interest to them in their capacity as migrants.

(3) The service should provide facilities for migrants and their families with regard to the fulfilment of administrative formalities and other steps to be taken in connection with the return of the migrants to the country of origin or of emigration, should the case arise.

(4) With a view to facilitating the adaptation of migrants, preparatory courses should, where necessary, be organised to inform the migrants of the general conditions and the methods of work prevailing in the country of immigration, and to instruct them in the language of that country. The countries of emigration and immigration should mutually agree to organise such courses.

6. On request, information should be made available by Members to the International Labour Office and to other Members concerning their emigration laws and regulations, including administrative provisions relating to restrictions on emigration and facilities granted to emigrants, and appropriate details concerning the categories of persons wishing to emigrate.

7. On request, information should be made available by Members to the International Labour Office and to other Members concerning their immigration laws and regulations, including administrative provisions, entry permits where needed, number and occupational qualifications of immigrants desired, laws and regulations affecting admission of migrants to employment, and any special facilities granted to migrants and measures to facilitate their adaptation to the economic and social organisation of the country of immigration.

8. There should, as far as possible, be a reasonable interval between the publication and the coming into force of any measure altering the conditions on which emigration or immigration

or the employment of migrants is permitted in order that these conditions may be notified in good time to persons who are preparing to emigrate.

9. Provision should be made for adequate publicity to be given at appropriate stages to the principal measures referred to in the preceding Paragraph, such publicity to be in the languages most commonly known to the migrants.

10. Migration should be facilitated by such measures as may be appropriate –

- (a) to ensure that migrants for employment are provided in case of necessity with adequate accommodation, food and clothing on arrival in the country of immigration;
- (b) to ensure, where necessary, vocational training so as to enable the migrants for employment to acquire the qualifications required in the country of immigration;
- (c) to permit, taking into account the limits allowed by national laws and regulations concerning export and import of currency, the transfer of such part of the earnings and savings of migrants for employment as the migrants may desire;
- (d) to arrange, in the case of permanent migration, for the transfer, where desired, to the country of immigration, of the capital of migrants for employment, within the limits allowed by national laws and regulations concerning export and import of currency;
- (e) to provide access to schools for migrants and members of their families.

11. Migrants and the members of their families should be assisted in obtaining access to recreation and welfare facilities, and steps should be taken where necessary to ensure that special facilities are made available during the initial period of settlement in the country of immigration.

12. In the case of migrants under government-sponsored arrangements for group transfer, medical assistance should be extended to such migrants in the same manner as provided for nationals.

IV

13. (1) Where necessary in the interest of the migrant, Members should require that any intermediary who undertakes the recruitment, introduction or placing of migrants for employment on behalf of an employer must obtain a written warrant from the employer, or some other document proving that he is acting on the employer's behalf.

(2) This document should be drawn up in, or translated into, the official language of the country of emigration and should set forth all necessary particulars concerning the employer, concerning the nature and scope of the recruitment, introduction or placing which the intermediary is to undertake, and concerning the employment offered, including the remuneration.

14. (1) The technical selection of migrants for employment should be carried out in such a way as to restrict migration as little as possible while ensuring that the migrants are qualified to perform the required work.

(2) Responsibility for such selection should be entrusted –

- (a) to official bodies; or
- (b) where appropriate, to private bodies of the territory of immigration duly authorised and, where necessary in the interest of the migrant, supervised by the competent authority of the territory of emigration.

(3) The right to engage in selection should be subject to the prior authorisation of the competent authority of the territory where the said operation takes place, in such cases under such conditions as may be prescribed by the laws and regulations of that territory, or by agreement between the Government of the territory of emigration and the Government of the territory of immigration.

(4) As far as possible, intending migrants for employment should, before their departure from the territory of emigration, be examined for purposes of occupational and medical selection by a representative of the competent authority of the territory of immigration.

(5) If recruitment takes place on a sufficiently large scale there should be arrangements for close liaison and consultation between the competent authorities of the territories of emigration and immigration concerned.

(6) The operations referred to in the preceding subparagraphs of this Paragraph should be carried out as near as possible to the place where the intending migrant is recruited.

15. (1) Provision should be made by agreement for authorisation to be granted for a migrant for employment introduced on a permanent basis to be accompanied or joined by the members of his family.

(2) The movement of the members of the family of such a migrant authorised to accompany or join him should be specially facilitated by both the country of emigration and the country of immigration.

(3) For the purposes of this Paragraph, the members of the family of a migrant for employment should include his wife and minor children; favourable consideration should be given to requests for the inclusion of other members of the family dependent upon the migrant.

V

16. (1) Migrants for employment authorised to reside in a territory and the members of their families authorised to accompany or join them should as far as possible be admitted to employment in the same conditions as nationals.

(2) In countries in which the employment of migrants is subject to restrictions, these restrictions should as far as possible –

- (a) cease to be applied to migrants who have regularly resided in the country for a period, the length of which should not, as a rule, exceed five years; and
- (b) cease to be applied to the wife and children of an age to work who have been authorised to accompany or join the migrant, at the same time as they cease to be applied to the migrant.

17. In countries where the number of migrants for employment is sufficiently large, the conditions of employment of such workers should be specially supervised, such supervision being undertaken according to circumstances either by a special inspection service or by labour inspectors or other officials specialising in this work.

VI

18. (1) When a migrant for employment has been regularly admitted to the territory of a Member, the said Member should, as far as possible, refrain from removing such person or the members of his family from its territory on account of his lack of means or the state of the employment market, unless an agreement to this effect has been concluded between the competent authorities of the emigration and immigration territories concerned.

(2) Any such agreement should provide –

- (a) that the length of time the said migrant has been in the territory of immigration shall be taken into account and that in principle no migrant shall be removed who has been there for more than five years;
- (b) that the migrant must have exhausted his rights to unemployment insurance benefit;
- (c) that the migrant must have been given reasonable notice so as to give him time, more particularly to dispose of his property;
- (d) that suitable arrangements shall have been made for his transport and that of the members of his family;

- (e) that the necessary arrangements shall have been made to ensure that he and the members of his family are treated in a humane manner; and
- (f) that the costs of the return of the migrant and the members of his family and of the transport of their household belongings to their final destination shall not fall on him.

19. Appropriate steps should be taken by the authorities of the territories concerned to consult the employers' and workers' organisations concerning the operations of recruitment, introduction and placing of migrants for employment.

VII

20. When migrants for employment or members of their families who have retained the nationality of their State of origin return there, that country should admit such persons to the benefit of any measures in force for the granting of poor relief and unemployment relief, and for promoting the re-employment of the unemployed, by exempting them from the obligation to comply with any condition as to previous residence or employment in the country or place.

VIII

21. (1) Members should in appropriate cases supplement the Migration for Employment Convention (Revised), 1949, and the preceding Paragraphs of the present Recommendation by bilateral agreements, which should specify the methods of applying the principles set forth in the Convention and in the Recommendation.

(2) In concluding such agreements, Members should take into account the provisions of the Model Agreement annexed to the present Recommendation in framing appropriate clauses for the organisation of migration for employment and the regulation of the conditions of transfer and employment of migrants, including refugees and displaced persons.

ANNEX

MODEL AGREEMENT ON TEMPORARY AND PERMANENT MIGRATION FOR EMPLOYMENT, INCLUDING MIGRATION OF REFUGEES AND DISPLACED PERSONS ¹

ARTICLE 1. EXCHANGE OF INFORMATION

1. The competent authority of the territory of immigration shall periodically furnish appropriate information to the competent authority of the territory of emigration [or in the case of refugees and displaced persons, to any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] concerning:

- (a) legislative and administrative provisions relating to entry, employment, residence and *settlement of migrants and of their families*;
- (b) the number, the categories and the occupational qualifications of the migrants desired;
- (c) the conditions of life and work for the migrants and, in particular, cost of living and minimum wages according to occupational categories and regions of employment, supplementary allowances, if any, nature of employments available, bonus on engagement, if any, social security systems and medical assistance, provisions concerning transport of migrants and of their tools and belongings, housing conditions and provisions for the supply of food and clothing, measures relating to the transfer of the migrants' savings and other sums due in virtue of this Agreement;

¹ The phrases and passages in italics refer primarily to permanent migration; those enclosed within square brackets refer solely to migration of refugees and displaced persons.

- (d) special facilities, if any, for migrants;
- (e) facilities for general education and vocational training for migrants;
- (f) *measures designed to promote rapid adaptation of migrants;*
- (g) *procedure and formalities required for naturalisation.*

2. The competent authority of the territory of emigration [or in the case of refugees and displaced persons, any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] shall bring this information to the attention of persons or bodies interested.

3. The competent authority of the territory of emigration [or in the case of refugees and displaced persons, any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] shall periodically furnish appropriate information to the competent authority of the territory of immigration concerning –

- (a) legislative and administrative provisions relating to emigration;
- (b) the number and occupational qualifications of intending emigrants, *as well as the composition of their families;*
- (c) the social security system;
- (d) special facilities, if any, for migrants;
- (e) *the environment and living conditions to which migrants are accustomed;*
- (f) *the provisions in force regarding the export of capital.*

4. The competent authority of the territory of immigration shall bring this information to the attention of persons or bodies interested.

5. The information mentioned in paragraphs 1 to 4 above shall also be transmitted by the respective parties to the International Labour Office.

ARTICLE 2. ACTION AGAINST MISLEADING PROPAGANDA

1. The parties agree, with regard to their respective territories, to take all practical steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration.

2. For this purpose the parties will, where appropriate, act in co-operation with the competent authorities of other countries concerned.

ARTICLE 3. ADMINISTRATIVE FORMALITIES

The parties agree to take measures with a view to accelerating and simplifying the carrying out of administrative formalities relating to departure, travel, entry, residence, and settlement of migrants and as far as possible for the members of their families. Such measures shall include the provision of an interpretation service, where necessary.

ARTICLE 4. VALIDITY OF DOCUMENTS

1. The parties shall determine the conditions to be met for purposes of recognition in the territory of immigration of any document issued by the competent authority of the territory of emigration in respect of migrants *and members of their families* [or in the case of refugees and displaced persons, by any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] concerning –

- (a) civil status;

- (b) legal status;
- (c) occupational qualifications;
- (d) general education and vocational training; and
- (e) participation in social security systems.

2. The parties shall also determine the application of such recognition.

[3. In the case of refugees and displaced persons, the competent authority of the territory of immigration shall recognise the validity of any travel document issued in lieu of a national passport by the competent authority of the territory of emigration and, in particular, of travel documents issued in accordance with the terms of an international Agreement (e.g. the travel document established by the Agreement of 15 October 1946, and the Nansen passport).]

ARTICLE 5. CONDITIONS AND CRITERIA OF MIGRATION

1. The parties shall jointly determine –

- (a) the requirements for migrants *and members of their families*, as to age, physical aptitude and health, as well as the occupational qualifications for the various branches of economic activity and for the various occupational categories;
- (b) *the categories of the members of the migrants' families authorised to accompany or to join them.*

2. The parties shall also determine, in accordance with the provisions of Article 28 of this Agreement –

- (a) the numbers and occupational categories of migrants to be recruited in the course of a stated period;
- (b) the areas of recruitment and the areas of placing and settlement [except that in the case of refugees and displaced persons the determination of the areas of recruitment shall be reserved to any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government].

3. In order to recruit migrants required to meet the technical needs of the territory of immigration and who can adapt themselves easily to the conditions in the territory of immigration, the parties shall determine criteria to govern technical selection of the migrants.

4. In drawing up these criteria, the two parties shall take into consideration –

- (a) with respect to medical selection:
 - (i) the nature of the medical examination which migrants shall undergo (general medical examination, X-ray examination, laboratory examination, etc.);
 - (ii) the drawing up of lists of diseases and physical defects which clearly constitute a disability for employment in certain occupations;
 - (iii) minimum health provisions prescribed by international health conventions and relating to movement of population from one country to another;
- (b) with respect to vocational selection:
 - (i) qualifications required of migrants with respect to each occupation or groups of occupations;
 - (ii) enumeration of alternative occupations requiring similar qualifications or capacities on the part of the workers in order to fulfil the needs of specified occupations for which it is difficult to recruit a sufficient number of qualified workers;
 - (iii) development of psycho-technical testing;

- (c) with respect to selection based on the age of migrants, flexibility to be given to the application of age criteria in order to take into consideration on the one hand the requirements of various occupations and, on the other, the varying capacities of different individuals at a given age.

ARTICLE 6. ORGANISATION OF RECRUITMENT, INTRODUCTION AND PLACING

1. The bodies or persons which engage in the operations of recruitment, introduction and placing of migrants and of members of their families shall be named by the competent authorities of the respective territories [or in the case of refugees and displaced persons, by any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government on the one hand and the competent authority of the territory of immigration on the other] subject to the approval of both parties.

2. Subject to the provisions of the following paragraphs, the right to engage in the operations of recruitment, introduction and placing shall be restricted to –

- (a) public employment offices or other public bodies of the territory in which the operations take place;
- (b) public bodies of a territory other than that in which the operations take place which are authorised to operate in that territory by an agreement between the parties;
- (c) any body established in accordance with the terms of an international instrument.

3. In addition, in so far as the national laws and regulations of the parties permit and subject to the approval and supervision of the competent authorities of the parties, the operations of recruitment, introduction and placing may be undertaken by –

- (a) the prospective employer or a person in his service acting on his behalf; and
- (b) private agencies.

4. The administrative costs of recruitment, introduction and placing shall not be borne by the migrants.

ARTICLE 7. SELECTION TESTING

1. An intending migrant shall undergo an appropriate examination in the territory of emigration; any such examination should inconvenience him as little as possible.

2. With respect to the organisation of the selection of migrants, the parties shall agree on –

- (a) recognition and composition of official agencies or private bodies authorised by the competent authority of the territory of immigration to carry out selection operations in the territory of emigration;
- (b) organisation of selection examinations, the centres where they are to be carried out, and allocation of expenses resulting from these examinations;
- (c) co-operation of the competent authorities of the two parties and in particular of their employment services in organising selection.

ARTICLE 8. INFORMATION AND ASSISTANCE OF MIGRANTS

1. The migrant accepted after medical and occupational examination in the assembly or selection centre shall receive, in a language that he understands, all information he may still require as to the nature of the work for which he has been engaged, the region of employment, the undertaking to which he is assigned, travel arrangements and the conditions of life and work including health and related matters in the country and region to which he is going.

2. On arrival in the country of destination, and at a reception centre if such exists, or at the place of residence, migrants and the members of their families shall receive all the documents which they need for their work, their residence and their settlement in the country, as well as information, instruction and advice regarding conditions of life and work, and any other assistance that they may need to adapt themselves to the conditions in the country of immigration.

ARTICLE 9. EDUCATION AND VOCATIONAL TRAINING

The parties shall co-ordinate their activities concerning the organisation of educational courses for migrants, which shall include general information on the country of immigration, instruction in the language of that country, and vocational training.

ARTICLE 10. EXCHANGE OF TRAINEES

The parties agree to further the exchange of trainees, and to determine in a separate agreement the conditions governing such exchanges.

ARTICLE 11. CONDITIONS OF TRANSPORT

1. During the journey from their place of residence to the assembly or selection centre, as well as during their stay in the said centre, migrants and the members of their families shall receive from the competent authority of the territory of immigration [or in the case of refugees and displaced persons, from any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] any assistance which they may require.

2. The competent authorities of the territories of emigration and immigration shall, each within its own jurisdiction, safeguard the health and welfare of, and render assistance to, migrants and the members of their families during the journey from the assembly or selection centre to the place of their employment, as well as during their stay in a reception centre if such exists.

3. Migrants and members of their families shall be transported in a manner appropriate for human beings and in conformity with the laws and regulations in force.

4. The parties shall agree upon the terms and conditions for the application of the provisions of this Article.

ARTICLE 12. TRAVEL AND MAINTENANCE EXPENSES

The parties shall agree upon the methods for meeting the cost of travel of the migrants and the members of their families from the place of their residence to the place of their destination, and the cost of their maintenance while travelling, sick or hospitalised, as well as the cost of transport of their personal belongings.

ARTICLE 13. TRANSFER OF FUNDS

1. The competent authority of the territory of emigration shall, as far as possible and in conformity with national laws and regulations concerning the import and export of foreign currency, authorise and provide facilities for migrants *and for members of their families* to withdraw from their country such sums as they may need for their initial settlement abroad.

2. The competent authority of the territory of immigration shall, as far as possible and in conformity with national laws and regulations concerning the import and export of foreign currency, authorise and provide facilities for the periodical transfer to the territory of emigration of migrants' savings and of any other sums due in virtue of this Agreement.

3. The transfers of funds mentioned in paragraphs 1 and 2 above shall be made at the prevailing official rate of exchange.

4. The parties shall take all measures necessary for the simplification and acceleration of administrative formalities regarding the transfer of funds so that such funds may be available with the least possible delay to those entitled to them.

5. The parties shall determine if and under what conditions a migrant may be required to remit part of his wages for the maintenance of his family remaining in his country or in the territory from which he emigrated.

ARTICLE 14. ADAPTATION AND NATURALISATION

The competent authority of the territory of immigration shall take measures to facilitate adaptation to national climatic, economic and social conditions and facilitate the procedure of naturalisation of migrants and of members of their families.

ARTICLE 15. SUPERVISION OF LIVING AND WORKING CONDITIONS

1. Provision shall be made for the supervision by the competent authority or duly authorised bodies of the territory of immigration of the living and working conditions, including hygienic conditions, to which the migrants are subject.

2. With respect to temporary migrants, the parties shall provide, where appropriate, for authorised representatives of the territory of emigration [or in the case of refugees and displaced persons, of any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] to co-operate with the competent authority or duly authorised bodies of the territory of immigration in carrying out this supervision.

3. During a fixed period, the duration of which shall be determined by the parties, migrants shall receive special assistance in regard to matters concerning their conditions of employment.

4. Assistance with respect to the employment and living conditions of the migrants may be given either through the regular labour inspection service of the territory of immigration or through a special service for migrants, in co-operation where appropriate with approved voluntary organisations.

5. Provision shall be made where appropriate for the co-operation of representatives of the territory of emigration [or in the case of refugees and displaced persons, of any body established in accordance with the terms of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government] with such services.

ARTICLE 16. SETTLEMENT OF DISPUTES

1. In case of a dispute between a migrant and his employer, the migrant shall have access to the appropriate courts or shall otherwise obtain redress for his grievances, in accordance with the laws and regulations of the territory of immigration.

2. The authorities shall establish such other machinery as is necessary to settle disputes arising out of the Agreement.

ARTICLE 17. EQUALITY OF TREATMENT

1. The competent authority of the territory of immigration shall grant to migrants and to members of their families with respect to employment in which they are eligible to engage treatment no less favourable than that applicable to its own nationals in virtue of legal or administrative provisions or collective labour agreements.

2. Such equality of treatment shall apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within the territory of immigration in respect of the following matters:

- (a) in so far as such matters are regulated by laws or regulations or are subject to the control of administrative authorities,
 - (i) remuneration, including family allowances where these form part of remuneration, hours of work, weekly rest days, overtime arrangements, holidays with pay and other regulations concerning employment, including limitations on homework, minimum age provisions, women's work, and the work of young persons;
 - (ii) membership of trade unions and enjoyment of the benefits of collective bargaining;
 - (iii) admission to schools, to apprenticeship and to courses or schools for vocational or technical training, provided that this does not prejudice nationals of the country of immigration;
 - (iv) recreation and welfare measures;
- (b) employment taxes, dues or contributions payable in respect of the persons employed;
- (c) hygiene, safety and medical assistance;
- (d) legal proceedings relating to the matters referred to in this Agreement.

ARTICLE 18. ACCESS TO TRADES AND OCCUPATIONS AND
THE RIGHT TO ACQUIRE PROPERTY

Equality of treatment shall also apply to –

- (a) *access to trades and occupations to the extent permitted under national laws and regulations;*
- (b) *acquisition, possession and transmission of urban or rural property.*

ARTICLE 19. SUPPLY OF FOOD

The treatment applied to migrants and the members of their families shall be the same as that applied to national workers in the same occupation as regards the supply of food.

ARTICLE 20. HOUSING CONDITIONS

The competent authority of the territory of immigration shall ensure that migrants and the members of their families have hygienic and suitable housing, in so far as the necessary housing is available.

ARTICLE 21. SOCIAL SECURITY

1. The two parties shall determine in a separate agreement the methods of applying a system of social security to migrants and their dependants.
2. *Such agreement shall provide that the competent authority of the territory of immigration shall take measures to ensure to the migrants and their dependants treatment not less favourable than that afforded by it to its nationals, except where particular residence qualifications apply to nationals.*
3. *The agreement shall embody appropriate arrangements for the maintenance of migrants' acquired rights and rights in course of acquisition framed with due regard to the principles of the Maintenance of Migrants' Pension Rights Convention, 1935, or of any revision of that Convention.*
4. The agreement shall provide that the competent authority of the territory of immigration shall take measures to grant to temporary migrants and their dependants treatment not less favourable than that afforded by it to its nationals, subject in the case of compulsory pension schemes to appropriate arrangements being made for the maintenance of migrants' acquired rights and rights in course of acquisition.

ARTICLE 22. CONTRACTS OF EMPLOYMENT

1. In countries where a system of model contracts is used, the individual contract of employment for migrants shall be based on a model contract drawn up by the parties for the principal branches of economic activity.

2. The individual contract of employment shall set forth the general conditions of engagement and of employment provided in the relevant model contract and shall be translated into a language which the migrant understands. A copy of the contract shall be delivered to the migrant before departure from the territory of emigration or, if it is agreed between the two parties concerned, in a reception centre on arrival in the territory of immigration. In the latter case before departure the migrant shall be informed in writing by a document which relates either to him individually or to a group of migrants of which he is a member, of the occupational category in which he is to be engaged and the other conditions of work, in particular the minimum wage which is guaranteed to him.

3. The individual contract of employment shall contain necessary information, such as –

- (a) the full name of the worker as well as the date and place of birth, his family status, his place of residence and of recruitment;
- (b) the nature of the work, and the place where it is to be performed;
- (c) the occupational category in which he is placed;
- (d) remuneration for ordinary hours of work, overtime, night work and holidays, and the medium for wage payment;
- (e) bonuses, indemnities and allowances, if any;
- (f) conditions under which and extent to which the employer may be authorised to make any deductions from remuneration;
- (g) conditions regarding food if food is to be provided by the employer;
- (h) the duration of the contract as well as the conditions of renewal and denunciation of the contract;
- (i) the conditions under which entry and residence in the territory of immigration are permitted;
- (j) the method of meeting the expenses of the journey of the migrant *and the members of his family*;
- (k) in case of temporary migration, the method of meeting the expenses of return to the home country or the territory of migration, as appropriate;
- (l) the grounds on which a contract may be prematurely terminated.

ARTICLE 23. CHANGE OF EMPLOYMENT

1. If the competent authority of the territory of immigration considers that the employment for which the migrant has been recruited does not correspond to his physical capacity or occupational qualifications, the said authority shall provide facilities for placing the said migrant in an employment corresponding to his capacity or qualifications, and in which he may be employed in accordance with national laws or regulations.

2. During periods of unemployment, if any, the method of maintaining the migrant and the dependent members of his family authorised to accompany or join him shall be determined by arrangements made under a separate agreement.

ARTICLE 24. EMPLOYMENT STABILITY

1. If before the expiration of the period of his contract the migrant for employment becomes redundant in the undertaking or branch of economic activity for which he was engaged,

the competent authority of the territory of immigration shall, subject to the provisions of the contract, facilitate the placing of the said migrant in other suitable employment in which he may be employed in accordance with national laws or regulations.

2. If the migrant is not entitled to benefits under an unemployment insurance or assistance scheme, his maintenance, as well as that of dependent members of his family, during any period in which he is unemployed shall be determined by a separate agreement in so far as this is not inconsistent with the terms of his contract.

3. The provisions of this Article shall not affect the right of the migrant to benefit from any provisions that may be included in his contract in case it is prematurely terminated by the employer.

ARTICLE 25. PROVISIONS CONCERNING COMPULSORY RETURN

1. The competent authority of the territory of immigration undertakes that a migrant and the members of his family who have been authorised to accompany or join him will not be returned to the territory from which he emigrated unless he so desires if, because of illness or injury, he is unable to follow his occupation.

2. The Government of the territory of immigration undertakes not to send refugees and displaced persons or migrants who do not wish to return to their country of origin for political reasons back to their territory of origin as distinct from the territory from which they were recruited, unless they formally express this desire by a request in writing addressed both to the competent authority of the territory of immigration and the representative of the body set up in accordance with the provisions of an international instrument which may be responsible for the protection of refugees and displaced persons who do not benefit from the protection of any Government.

ARTICLE 26. RETURN JOURNEY

1. The cost of the return journey of a migrant introduced under a plan sponsored by the Government of the territory of immigration, who is obliged to leave his employment for reasons for which he is not responsible, and who cannot, in virtue of national laws and regulations, be placed in an employment for which he is eligible, shall be regulated as follows:

- (a) the cost of the return journey of the migrant, and persons dependent upon him, shall in no case fall on the migrant himself;
- (b) supplementary bilateral agreements shall specify the method of meeting the cost of this return journey;
- (c) in any case, even if no provision to this effect is included in a bilateral agreement, the information given to migrants at the time of their recruitment shall specify what person or agency is responsible for defraying the cost of return in the circumstances mentioned in this Article.

2. In accordance with the methods of co-operation and consultation agreed upon under Article 28 of this Agreement, the two parties shall determine the measures necessary to organise the return home of the said persons and to assure to them in the course of the journey the conditions of health and welfare and the assistance which they enjoyed during the outward journey.

3. The competent authority of the territory of emigration shall exempt from customs duties on their arrival –

- (a) personal effects; and
- (b) portable hand-tools and portable equipment of the kind normally owned by workers for the carrying out of their particular trades, which have been in possession and use of the said persons for an appreciable time and which are intended to be used by them in the course of their occupation.

ARTICLE 27. DOUBLE TAXATION

The two parties shall determine in a separate agreement the measures to be taken to avoid double taxation on the earnings of a migrant for employment.

ARTICLE 28. METHODS OF CO-OPERATION

1. The two parties shall agree on the methods of consultation and co-operation necessary to carry out the terms of the Agreement.
2. When so requested by the representatives of the two parties the International Labour Office shall be associated with such consultation and co-operation.

ARTICLE 29. FINAL PROVISIONS

1. The parties shall determine the duration of the Agreement as well as the period of notice for termination.
2. The parties shall determine those provisions of this Agreement which shall remain in operation after expiration of this Agreement.

Convention No. 143

Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers ¹

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixtieth Session on 4 June 1975, and

Considering that the Preamble of the Constitution of the International Labour Organisation assigns to it the task of protecting “the interests of workers when employed in countries other than their own”, and

Considering that the Declaration of Philadelphia reaffirms, among the principles on which the Organisation is based, that “labour is not a commodity”, and that “poverty anywhere constitutes a danger to prosperity everywhere”, and recognises the solemn obligation of the ILO to further programmes which will achieve in particular full employment through “the transfer of labour, including for employment ...”,

Considering the ILO World Employment Programme and the Employment Policy Convention and Recommendation, 1964, and emphasising the need to avoid the excessive and uncontrolled or unassisted increase of migratory movements because of their negative social and human consequences, and

Considering that in order to overcome underdevelopment and structural and chronic unemployment, the governments of many countries increasingly stress the desirability of encouraging the transfer of capital and technology rather than the transfer of workers in accordance with the needs and requests of these countries in the reciprocal interest of the countries of origin and the countries of employment, and

Considering the right of everyone to leave any country, including his own, and to enter his own country, as set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and

Recalling the provisions contained in the Migration for Employment Convention and Recommendation (Revised), 1949, in the Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955, in the Employment Policy Convention and Recommendation, 1964, in the Employment Service Convention and Recommendation, 1948, and in the Fee-Charging Employment Agencies Convention (Revised), 1949, which deal with such matters as the regulation of the recruitment, introduction and placing of migrant workers, the provision of accurate information relating to migration, the minimum conditions to be enjoyed by migrants in transit and on arrival, the adoption of an active employment policy and international collaboration in these matters, and

Considering that the emigration of workers due to conditions in labour markets should take place under the responsibility of official agencies for employment or in accordance with the relevant bilateral or multilateral agreements, in particular those permitting free circulation of workers, and

Considering that evidence of the existence of illicit and clandestine trafficking in labour calls for further standards specifically aimed at eliminating these abuses, and

Recalling the provisions of the Migration for Employment Convention (Revised), 1949, which require ratifying Members to apply to immigrants lawfully within their territory treatment not less favourable than that which they apply to their nationals in respect of a variety of matters which it enumerates, in so far as these are regulated by laws or regulations or subject to the control of administrative authorities, and

¹ Ed. This Convention came into force on 9 December 1978.

Recalling that the definition of the term “discrimination” in the Discrimination (Employment and Occupation) Convention, 1958, does not mandatorily include distinctions on the basis of nationality, and

Considering that further standards, covering also social security, are desirable in order to promote equality of opportunity and treatment of migrant workers and, with regard to matters regulated by laws or regulations or subject to the control of administrative authorities, ensure treatment at least equal to that of nationals, and

Noting that, for the full success of action regarding the very varied problems of migrant workers, it is essential that there be close co-operation with the United Nations and other specialised agencies, and

Noting that, in the framing of the following standards, account has been taken of the work of the United Nations and of other specialised agencies and that, with a view to avoiding duplication and to ensuring appropriate co-ordination, there will be continuing co-operation in promoting and securing the application of the standards, and

Having decided upon the adoption of certain proposals with regard to migrant workers, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention supplementing the Migration for Employment Convention (Revised), 1949, and the Discrimination (Employment and Occupation) Convention, 1958,

adopts this twenty-fourth day of June of the year one thousand nine hundred and seventy-five the following Convention, which may be cited as the Migrant Workers (Supplementary Provisions) Convention, 1975:

PART I. MIGRATIONS IN ABUSIVE CONDITIONS

Article 1

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

Article 2

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

2. The representative organisations of employers and workers shall be fully consulted and enabled to furnish any information in their possession on this subject.

Article 3

Each Member shall adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members –

- (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and
- (b) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions, in order to prevent and to eliminate the abuses referred to in Article 2 of this Convention.

Article 4

In particular, Members shall take such measures as are necessary, at the national and the international level, for systematic contact and exchange of information on the subject with other States, in consultation with representative organisations of employers and workers.

Article 5

One of the purposes of the measures taken under Articles 3 and 4 of this Convention shall be that the authors of manpower trafficking can be prosecuted whatever the country from which they exercise their activities.

Article 6

1. Provision shall be made under national laws or regulations for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions, which include imprisonment in their range, in respect of the illegal employment of migrant workers, in respect of the organisation of movements of migrants for employment defined as involving the abuses referred to in Article 2 of this Convention, and in respect of knowing assistance to such movements, whether for profit or otherwise.

2. Where an employer is prosecuted by virtue of the provision made in pursuance of this Article, he shall have the right to furnish proof of his good faith.

Article 7

The representative organisations of employers and workers shall be consulted in regard to the laws and regulations and other measures provided for in this Convention and designed to prevent and eliminate the abuses referred to above, and the possibility of their taking initiatives for this purpose shall be recognised.

Article 8

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

2. Accordingly, he shall enjoy equality of treatment with nationals in respect in particular of guarantees of security of employment, the provision of alternative employment, relief work and retraining.

Article 9

1. Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory and are admitted to employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.

2. In case of dispute about the rights referred to in the preceding paragraph, the worker shall have the possibility of presenting his case to a competent body, either himself or through a representative.

3. In case of expulsion of the worker or his family, the cost shall not be borne by them.

4. Nothing in this Convention shall prevent Members from giving persons who are illegally residing or working within the country the right to stay and to take up legal employment.

PART II. EQUALITY OF OPPORTUNITY AND TREATMENT

Article 10

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

Article 11

1. For the purpose of this Part of this Convention, the term “migrant worker” means a person who migrates or who has migrated from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.

2. This Part of this Convention does not apply to –

- (a) frontier workers;
- (b) artistes and members of the liberal professions who have entered the country on a short-term basis;
- (c) seamen;
- (d) persons coming specifically for purposes of training or education;
- (e) employees of organisations or undertakings operating within the territory of a country who have been admitted temporarily to that country at the request of their employer to undertake specific duties or assignments, for a limited and defined period of time, and who are required to leave that country on the completion of their duties or assignments.

Article 12

Each Member shall, by methods appropriate to national conditions and practice –

- (a) seek the co-operation of employers’ and workers’ organisations and other appropriate bodies in promoting the acceptance and observance of the policy provided for in Article 10 of this Convention;
- (b) enact such legislation and promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
- (c) take measures, encourage educational programmes and develop other activities aimed at acquainting migrant workers as fully as possible with the policy, with their rights and obligations and with activities designed to give effective assistance to migrant workers in the exercise of their rights and for their protection;
- (d) repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
- (e) in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment;
- (f) take all steps to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of

origin, including the possibility for children to be given some knowledge of their mother tongue;

- (g) guarantee equality of treatment, with regard to working conditions, for all migrant workers who perform the same activity whatever might be the particular conditions of their employment.

Article 13

1. A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory.

2. The members of the family of the migrant worker to which this Article applies are the spouse and dependent children, father and mother.

Article 14

A Member may –

- (a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;
- (b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;
- (c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

PART III. FINAL PROVISIONS

Article 15

This Convention does not prevent Members from concluding multilateral or bilateral agreements with a view to resolving problems arising from its application.

Article 16

1. Any Member which ratifies this Convention may, by a declaration appended to its ratification, exclude either Part I or Part II from its acceptance of the Convention.

2. Any Member which has made such a declaration may at any time cancel that declaration by a subsequent declaration.

3. Every Member for which a declaration made under paragraph 1 of this Article is in force shall indicate in its reports upon the application of this Convention the position of its law and practice in regard to the provisions of the Part excluded from its acceptance, the extent to which effect has been given, or is proposed to be given, to the said provision and the reasons for which it has not yet included them in its acceptance of the Convention.

Article 17

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 18

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.

2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.

3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

Article 19

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.

2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 20

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 21

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 22

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 23

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides –

- (a) the ratification by a Member of the new revising Convention shall *ipso jure* involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 19 above, if and when the new revising Convention shall have come into force;
- (b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 24

The English and French versions of the text of this Convention are equally authoritative.

Recommendation No. 151

Recommendation concerning Migrant Workers

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixtieth Session on 4 June 1975, and

Considering that the Preamble of the Constitution of the International Labour Organisation assigns to it the task of protecting “the interests of workers when employed in countries other than their own”, and

Recalling the provisions contained in the Migration for Employment Convention and Recommendation (Revised), 1949, and in the Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955, which deal with such matters as the preparation and organisation of migration, social services to be provided to migrant workers and their families, in particular before their departure and during their journey, equality of treatment as regards a variety of matters which they enumerate, and the regulation of the stay and return of migrant workers and their families, and

Having adopted the Migrant Workers (Supplementary Provisions) Convention, 1975, and

Considering that further standards are desirable as regards equality of opportunity and treatment, social policy in regard to migrants and employment and residence, and

Having decided upon the adoption of certain proposals with regard to migrant workers, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-fourth day of June of the year one thousand nine hundred and seventy-five the following Recommendation, which may be cited as the Migrant Workers Recommendation, 1975:

1. Members should apply the provision of this Recommendation within the framework of a coherent policy on international migration for employment. That policy should be based upon the economic and social needs of both countries of origin and countries of employment; it should take account not only of short-term manpower needs and resources but also of the long-term social and economic consequences of migration for migrants as well as for the communities concerned.

I. EQUALITY OF OPPORTUNITY AND TREATMENT

2. Migrant workers and members of their families lawfully within the territory of a Member should enjoy effective equality of opportunity and treatment with nationals of the Member concerned in respect of –

- (a) access to vocational guidance and placement services;
- (b) access to vocational training and employment of their own choice on the basis of individual suitability for such training or employment, account being taken of qualifications acquired outside the territory of and in the country of employment;
- (c) advancement in accordance with their individual character, experience, ability and diligence;
- (d) security of employment, the provision of alternative employment, relief work and retraining;
- (e) remuneration for work of equal value;

- (f) conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and occupational health measures, as well as social security measures and welfare facilities and benefits provided in connection with employment;
- (g) membership of trade unions, exercise of trade union rights and eligibility for office in trade unions and in labour-management relations bodies, including bodies representing workers in undertakings;
- (h) rights of full membership in any form of co-operative;
- (i) conditions of life, including housing and the benefits of social services and educational and health facilities.

3. Each Member should ensure the application of the principles set forth in Paragraph 2 of this Recommendation in all activities under the control of a public authority and promote its observance in all other activities by methods appropriate to national conditions and practice.

4. Appropriate measures should be taken, with the collaboration of employers' and workers' organisations and other bodies concerned, with a view to –

- (a) fostering public understanding and acceptance of the above-mentioned principles;
- (b) examining complaints that these principles are not being observed and securing the correction, by conciliation or other appropriate means, of any practices regarded as in conflict therewith.

5. Each Member should ensure that national laws and regulations concerning residence in its territory are so applied that the lawful exercise of rights enjoyed in pursuance of these principles cannot be the reason for non-renewal of a residence permit or for expulsion and is not inhibited by the threat of such measures.

6. A Member may –

- (a) make the free choice of employment, while assuring migrant workers the right to geographical mobility, subject to the conditions that the migrant worker has resided lawfully in its territory for the purpose of employment for a prescribed period not exceeding two years or, if its laws or regulations provide for contracts for a fixed term of less than two years, that the worker has completed his first work contract;
- (b) after appropriate consultation with the representative organisations of employers and workers, make regulations concerning recognition of occupational qualifications acquired outside its territory, including certificates and diplomas;
- (c) restrict access to limited categories of employment or functions where this is necessary in the interests of the State.

7. (1) In order to enable migrant workers and their families to take full advantage of their rights and opportunities in employment and occupation, such measures as may be necessary should be taken, in consultation with the representative organisations of employers and workers –

- (a) to inform them, as far as possible in their mother tongue or, if that is not possible, in a language with which they are familiar, of their rights under national law and practice as regards the matters dealt with in Paragraph 2 of this Recommendation;
- (b) to advance their knowledge of the language or languages of the country of employment, as far as possible during paid time;
- (c) generally, to promote their adaptation to the society of the country of employment and to assist and encourage the efforts of migrant workers and their families to preserve their national and ethnic identity and their cultural ties with their country of origin, including the possibility for children to be given some knowledge of their mother tongue.

(2) Where agreements concerning the collective recruitment of workers have been concluded between Members, they should jointly take the necessary measures before the

migrants' departure from their country of origin to introduce them to the language of the country of employment and also to its economic, social and cultural environment.

8. (1) Without prejudice to measures designed to ensure that migrant workers and their families enter national territory and are admitted to employment in conformity with the relevant laws and regulations, a decision should be taken as soon as possible in cases in which these laws and regulations have not been respected so that the migrant worker should know whether his position can be regularised or not.

(2) Migrant workers whose position has been regularised should benefit from all rights which, in accordance with Paragraph 2 of this Recommendation, are provided for migrant workers lawfully within the territory of a Member.

(3) Migrant workers whose position has not been or could not be regularised should enjoy equality of treatment for themselves and their families in respect of rights arising out of present and past employment as regards remuneration, social security and other benefits as well as regards trade union membership and exercise of trade union rights.

(4) In case of dispute about the rights referred to in the preceding subparagraphs, the worker should have the possibility of presenting his case to a competent body, either himself or through a representative.

(5) In case of expulsion of the worker or his family, the cost should not be borne by them.

II. SOCIAL POLICY

9. Each Member should, in consultation with representative organisations of employers and workers, formulate and apply a social policy appropriate to national conditions and practice which enables migrant workers and their families to share in advantages enjoyed by its nationals while taking account, without adversely affecting the principle of equality of opportunity and treatment, of such special needs as they may have until they are adapted to the society of the country of employment.

10. With a view to making the policy as responsive as possible to the real needs of migrant workers and their families, it should be based, in particular, on an examination not only of conditions in the territory of the Member but also of those in the countries of origin of the migrants.

11. The policy should take account of the need to spread the social cost of migration as widely and equitably as possible over the entire collectivity of the country of employment, and in particular over those who profit most from the work of migrants.

12. The policy should be periodically reviewed and evaluated and where necessary revised.

A. *Reunification of families*

13. (1) All possible measures should be taken both by countries of employment and by countries of origin to facilitate the reunification of families of migrant workers as rapidly as possible. These measures should include, as necessary, national laws or regulations and bilateral and multilateral arrangements.

(2) A prerequisite for the reunification of families should be that the worker has, for his family, appropriate accommodation which meets the standards normally applicable to nationals of the country of employment.

14. Representatives of all concerned, and in particular of employers and workers, should be consulted on the measures to be adopted to facilitate the reunification of families and their co-operation sought in giving effect thereto.

15. For the purpose of the provisions of this Recommendation relating to the reunification of families, the family of the migrant worker should include the spouse and dependent children, father and mother.

16. With a view to facilitating the reunification of families as quickly as possible in accordance with Paragraph 13 of this Recommendation, each Member should take full account of the needs of migrant workers and their families in particular in its policy regarding the construction of family housing, assistance in obtaining this housing and the development of appropriate reception services.

17. Where a migrant worker who has been employed for at least one year in a country of employment cannot be joined by his family in that country, he should be entitled –

- (a) to visit the country of residence of his family during the paid annual holiday to which he is entitled under the national law and practice of the country of employment without losing during the absence from that country any acquired rights or rights in course of acquisition and, particularly, without having his employment terminated or his right to residence in the country of employment withdrawn during that period; or
- (b) to be visited by his family for a period corresponding at least to the annual holiday with pay to which he is entitled.

18. Consideration should be given to the possibility of giving the migrant worker financial assistance towards the cost of the travel envisaged in the preceding Paragraph or a reduction in the normal cost of transport, for instance by the arrangement of group travel.

19. Without prejudice to more favourable provisions which may be applicable to them, persons admitted in pursuance of international arrangements for free movement of labour should have the benefit of the measures provided for in Paragraphs 13 to 18 of this Recommendation.

B. Protection of the health of migrant workers

20. All appropriate measures should be taken to prevent any special health risks to which migrant workers may be exposed.

21. (1) Every effort should be made to ensure that migrant workers receive training and instruction in occupational safety and occupational hygiene in connection with their practical training or other work preparation, and, as far as possible, as part thereof.

(2) In addition, a migrant worker should, during paid working hours and immediately after beginning his employment, be provided with sufficient information in his mother tongue or, if that is not possible, in a language with which he is familiar, on the essential elements of laws and regulations and on provisions of collective agreements concerning the protection of workers and the prevention of accidents as well as on safety regulations and procedures particular to the nature of the work.

22. (1) Employers should take all possible measures so that migrant workers may fully understand instructions, warnings, symbols and other signs relating to safety and health hazards at work.

(2) Where, on account of the migrant workers' lack of familiarity with processes, language difficulties or other reasons, the training or instruction given to other workers is inadequate for them, special measures which ensure their full understanding should be taken.

(3) Members should have laws or regulations applying the principles set out in this Paragraph and provide that where employers or other persons or organisations having responsibility in this regard fail to observe such laws or regulations, administrative, civil and penal sanctions might be imposed.

C. Social services

23. In accordance with the provisions of Paragraph 2 of this Recommendation, migrant workers and their families should benefit from the activities of social services and have access thereto under the same conditions as nationals of the country of employment.

24. In addition, social services should be provided which perform, in particular, the following functions in relation to migrant workers and their families –

- (a) giving migrant workers and their families every assistance in adapting to the economic, social and cultural environment of the country of employment;
- (b) helping migrant workers and their families to obtain information and advice from appropriate bodies, for instance by providing interpretation and translation services; to comply with administrative and other formalities; and to make full use of services and facilities provided in such fields as education, vocational training and language training, health services and social security, housing, transport and recreation: Provided that migrant workers and their families should as far as possible have the right to communicate with public authorities in the country of employment in their own language or in a language with which they are familiar, particularly in the context of legal assistance and court proceedings;
- (c) assisting authorities and bodies with responsibilities relating to the conditions of life and work of migrant workers and their families in identifying their needs and in adapting thereto;
- (d) giving the competent authorities information and, as appropriate, advice regarding the formulation, implementation and evaluation of social policy with respect to migrant workers;
- (e) providing information for fellow workers and foremen and supervisors about the situation and the problems of migrant workers.

25. (1) The social services referred to in Paragraph 24 of this Recommendation may be provided, as appropriate to national conditions and practice, by public authorities, by approved non-profit-making organisations or bodies, or by a combination of both. The public authorities should have the over-all responsibility of ensuring that these social services are at the disposal of migrant workers and their families.

(2) Full use should be made of services which are or can be provided by authorities, organisations and bodies serving the nationals of the country of employment, including employers' and workers' organisations.

26. Each Member should take such measures as may be necessary to ensure that sufficient resources and adequately trained staff are available for the social services referred to in Paragraph 24 of this Recommendation.

27. Each Member should promote co-operation and co-ordination between different social services on its territory and, as appropriate, between these services and corresponding services in other countries, without, however, this co-operation and co-ordination relieving the States of their responsibilities in this field.

28. Each Member should organise and encourage the organisation, at the national, regional or local level, or as appropriate in a branch of economic activity employing substantial numbers of migrant workers, of periodic meetings for the exchange of information and experience. Consideration should also be given to the exchange of information and experience with other countries of employment as well as with the countries of origin of migrant workers.

29. Representatives of all concerned and in particular of employers and workers should be consulted on the organisation of the social services in question and their co-operation sought in achieving the purposes aimed at.

III. EMPLOYMENT AND RESIDENCE

30. In pursuance of the provision of Paragraph 18 of the Migration for Employment Recommendation (Revised), 1949, that Members should, as far as possible, refrain from removing from their territory, on account of lack of means or the state of the employment market, a migrant worker regularly admitted thereto, the loss by such migrant worker of his employment should not in itself imply the withdrawal of his authorisation of residence.

31. A migrant who has lost his employment should be allowed sufficient time to find alternative employment, at least for a period corresponding to that during which he may be entitled to unemployment benefit; the authorisation of residence should be extended accordingly.

32. (1) A migrant worker who has lodged an appeal against the termination of his employment, under such procedures as may be available, should be allowed sufficient time to obtain a final decision thereon.

(2) If it is established that the termination of employment was not justified, the migrant worker should be entitled, on the same terms as national workers, to reinstatement, to compensation for loss of wages or of other payment which results from unjustified termination, or to access to a new job with a right to indemnification. If he is not reinstated, he should be allowed sufficient time to find alternative employment.

33. A migrant worker who is the object of an expulsion order should have a right of appeal before an administrative or judicial instance, according to conditions laid down in national laws or regulations. This appeal should stay the execution of the expulsion order, subject to the duly substantiated requirements of national security or public order. The migrant worker should have the same right to legal assistance as national workers and have the possibility of being assisted by an interpreter.

34. (1) A migrant worker who leaves the country of employment should be entitled, irrespective of the legality of his stay therein –

- (a) to any outstanding remuneration for work performed, including severance payments normally due;
- (b) to benefits which may be due in respect of any employment injury suffered;
- (c) in accordance with national practice –
 - (i) to compensation in lieu of any holiday entitlement acquired but not used;
 - (ii) to reimbursement of any social security contributions which have not given and will not give rise to rights under national laws or regulations or international arrangements: Provided that where social security contributions do not permit entitlement to benefits, every effort should be made with a view to the conclusion of bilateral or multilateral agreements to protect the rights of migrants.

(2) Where any claim covered in subparagraph (1) of this Paragraph is in dispute, the worker should be able to have his interests represented before the competent body and enjoy equal treatment with national workers as regards legal assistance.

Appendix II

**Report form sent to member
States and social partners**

INTERNATIONAL LABOUR OFFICE

REPORTS ON
UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

*(article 19 of the Constitution
of the International Labour Organisation)*

REPORT FORM FOR THE FOLLOWING INSTRUMENTS:

MIGRATION FOR EMPLOYMENT CONVENTION (REVISED), 1949 (No. 97)

MIGRATION FOR EMPLOYMENT RECOMMENDATION (REVISED), 1949 (No. 86)

MIGRANT WORKERS (SUPPLEMENTARY PROVISIONS) CONVENTION, 1975 (No. 143)

MIGRANT WORKERS RECOMMENDATION, 1975 (No. 151)

GENEVA

2014

INTERNATIONAL LABOUR OFFICE

Article 19 of the Constitution of the International Labour Organisation relates to the adoption of Conventions and Recommendations by the Conference, as well as to the obligations resulting therefrom for the Members of the Organization. The relevant provisions of paragraphs 5, 6 and 7 of this article read as follows:

5. In the case of a Convention:

...

- (e) if the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member except that it shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

6. In the case of a Recommendation:

...

- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

7. In the case of a federal State, the following provisions shall apply:

- (a) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
- (b) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces or cantons rather than for federal action, the federal Government shall:

...

- (iv) in respect of each such Convention which it has not ratified, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement, or otherwise;
- (v) in respect of each such Recommendation, report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice of the federation and its constituent states, provinces or cantons in regard to the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

In accordance with the above provisions, the Governing Body of the International Labour Office examined and approved the present report form. This has been drawn up in such a manner as to facilitate the supply of the required information on uniform lines.

REPORT

to be made no later than 29 February 2016, in accordance with article 19 of the Constitution of the International Labour Organisation by the Government of, on the position of national law and practice in regard to matters dealt with in the instruments referred to in the following questionnaire.

Article 19 report form on the instruments concerning migrant workers

Migration for Employment Convention (Revised), 1949 (No. 97), and Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86) Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and Labour Relations (Public Service) Convention, 1978 (No. 151))¹

N.B.: The information contained in the second column is intended to provide guidance on the nature of the information requested.

<p><i>The following questions relate to issues covered by Conventions Nos 97 and 143 and Recommendations Nos 86 and 151.</i></p>	<p><i>Please indicate whether and, if so, to what extent effect is given to the two Conventions and the two Recommendations in your country. As appropriate provide a detailed reply to the specific questions raised under the individual Articles and Paragraphs.</i></p>	<p><i>As appropriate, please give a specific reference (web link) or include information relating to the provisions of the relevant legislation, regulations and policies.</i></p>
<p>PART I. LEGAL AND POLICY FRAMEWORK AND COOPERATION ON INTERNATIONAL LABOUR MIGRATION</p>		
<p>1. Please indicate the relevant provisions of national laws and regulations on international labour migration and the employment of migrants indicating:</p> <ul style="list-style-type: none"> ■ whether they cover immigration or emigration or both; ■ the categories of migrant workers covered. 	<p>This should include information on permanent and temporary migrant workers, specifying the maximum periods of stay for short-term entry.</p>	<p>C.97. Art. 1(a); R.86, Paras 6 and 7; C.143 C.97, Arts 1(a) and 11; C.143, Parts I and Art. 11</p>
<p>2. Please indicate:</p> <ul style="list-style-type: none"> ■ whether a national policy has been adopted on international labour migration and, if so, provide information on the policy; ■ whether the national policy promotes and guarantees equality of opportunity and treatment between nationals and migrant workers in your country (national equality policy) ■ the elements of the national equality policy and the measures taken to ensure its effective implementation; ■ the measures taken to combat xenophobia and prejudice against immigrants, and stereotyped perceptions regarding the suitability of migrant workers for certain jobs or their role in society. 	<p>Please provide information on whether the policy:</p> <ul style="list-style-type: none"> – applies to the public and private sectors; – addresses the ground of nationality, race, sex or religion. <p>Please provide information on the relevant provisions of the legislative or administrative measures, public policies, collective agreements, as well as studies, practical guides, awareness raising, establishment of specialized bodies, workplace policies, and specialized enforcement mechanisms.</p>	<p>C.97, Art. 1, and C.143; R.151, Para. 1 C.143, Arts 10 and 12; R.151, Paras 2 and 3; C.97, Art. 6 C.143, Art. 12; R.151, Paras 3 and 4 C.97, Art. 3; C.143, Arts 10 and 12(b) and (c); R.151, Para. 4(a)</p>

¹ Governments of countries which have ratified the Conventions and from which a report is due under article 22 of the Constitution will use the present form only with regard to the Recommendations. It will not be necessary to repeat information already provided in connection with the Conventions. Part V of the report form contains questions that are addressed to all member States.

<p>3. Please indicate the measures taken to cooperate and to establish systematic contact and exchange information at national, bilateral, regional and multilateral levels, including information on bilateral or multilateral agreements concerning labour migration.</p>	<p>Please provide copies of the relevant agreements.</p>	<p>C.97, Arts 1(c) and 10; C.143, Arts 4 and 15, R.86, Annex I</p>
<p>PART II. PROTECTION OF MIGRANT WORKERS</p>		
<p>4. Please provide information including on relevant provisions of national laws and regulations, on measures taken to:</p> <ul style="list-style-type: none"> ■ ensure respect for the basic human rights of all migrant workers, irrespective of their migration status; ■ prohibit direct and indirect discrimination against migrant workers; ■ ensure that migrant workers and members of their family who are in a regular situation in the territory enjoy opportunity and treatment equal to that accorded to nationals in respect of: <ul style="list-style-type: none"> – employment and occupation – conditions of work – trade union rights – accommodation (housing) – social security – legal proceedings ■ ensure that migrants admitted on a permanent basis and members of their family maintain the right of residence in the case of incapacity for work; ■ ensure that migrant workers in regular status are not regarded as being in an irregular situation by virtue of the mere loss of employment and that this does not entail the automatic withdrawal of their authorization of residence or work permit. 	<p>This should include information on fundamental rights at work (freedom of association and collective bargaining, elimination of child labour, elimination of forced labour and elimination of discrimination in employment and occupation).</p> <p>Information should also be provided on discrimination on the grounds of nationality, race, sex or religion.</p> <p>This should also include information relating to access to vocational training and guidance, minimum age for employment, employment of women, membership of trade unions and collective bargaining, remuneration, hours of work, rest periods, holidays with pay, occupational safety and health measures, apprenticeship and training, etc.</p> <p>This should include information on equality of treatment in respect of security of employment, unemployment benefits, alternative employment, relief work and retraining.</p>	<p>C.143, Art. 1</p> <p>C.97, Art. 6; C.143, Arts 10 and 12</p> <p>C.97, Art. 6; R.86, Para 16(1); C.143, Arts 10 and 12(b) and (g), R.151, Para 2</p> <p>C.97, Art. 8; R.86, Para. 18(1)</p> <p>C.143, Art. 8; R.151, Paras 2(d) and 30–32(2)</p>
<p>5. Please indicate:</p> <ul style="list-style-type: none"> ■ the categories of migrant workers who are excluded from the coverage of equal treatment or non-discrimination provisions and the reasons for such exclusions. 		<p>C.97, Art. 11; C.143, Art. 11</p>

<ul style="list-style-type: none"> ■ any limitations on the free choice of employment of migrant workers as regards the change of employers, industries, occupations or residence. Please indicate whether migrant workers are subject to any restriction with regard to geographical mobility. 	Please indicate the types of employment and functions to which access is restricted or the categories of migrant workers subject to limitations, including the criteria governing restrictions on the change of employment.	C.143, Art. 14(a) and (c); R.86, Para. 16(2); R.151, Para. 6
6. Please indicate whether steps have been taken in your country to regularize migrant workers in an irregular situation and, if so, please elaborate.		C.143, Art. 9(4); R.151, Para. 8(2)
7. Please provide information on measures, including on relevant provisions of national laws and regulations, that seek to ensure that migrant workers who leave the country of employment enjoy, irrespective of their migration status, equality of treatment for themselves and their family in respect of rights arising out of past employment such as remuneration, social security and other benefits.		C.143, Art. 9(1) and (2); R.151, Paras 8(3)–(5) and 34
8. Please indicate: <ul style="list-style-type: none"> ■ whether the process of recruitment and placement of migrants for employment is regulated and, if so, in what way; ■ the type of migration information and assistance services available to migrant workers during the different stages of the migration process, indicating whether they are provided free of charge; ■ the measures taken against the provisions of misleading information regarding immigration and emigration. 	<p>Please include information concerning the role of the public authorities, supervision of private recruitment and placement agencies and employment contracts.</p> <p>Please provide information on how the services are organized, and how services or information are available to women migrants. Kindly explain the nature of the cooperation existing between countries of origin and destination, if any. Please provide copies of any agreements.</p>	<p>C.97, Art. 7; Annex I, Arts 3–7; Annex II, Arts 3, 4, 6, 7 and 12(1) and (2); R.86, Paras 13 and 14(5)</p> <p>C.97, Arts 2 and 7(2); Annex I, Art. 4; Annex II, Arts 4 and 8; C.143, Art. 12(c), R.86, Para. 5</p> <p>C.97, Art. 3</p>
PART III. ENFORCEMENT		
ENFORCEMENT		
9.(a) Please provide information and indicate the manner in which the provisions of the relevant laws and regulations, and policies and agreements concerning labour migration and the right of migrant workers, irrespective of their migration status, are effectively monitored and enforced.	Please include information on: the role of labour inspection, national specialized bodies on migration, equality bodies and cooperation between them, and any other dispute prevention and resolution mechanisms or processes.	C.143, Arts 5, 6 and 12(a); R.151, Paras 4(b) and 32(1) and (2); R.86 Para. 17; Annex I, Paras 15 and 16
(b) Please indicate whether, in the event of a dispute, migrant workers, including those whose situation cannot be regularized, can present their case to a competent body, either directly or through a representative.	Please include information on the administrative and judicial procedures available to migrant workers, irrespective of their migration status, to avail themselves of their rights, specifying applicable sanctions and remedies. Please include relevant reports or decisions, including relevant judicial decisions and decisions of other dispute settlement bodies.	C.97, Art. 6(1)(d); C.143, Art. 9(2); R.151, Paras 5, 8(1) and (4) and 34(2)

10. Please provide information on the procedures of expulsion and any costs for expulsion attributed to the migrant workers whose situation cannot be regularized.	Please provide information on the right of a migrant worker subject to an expulsion order to appeal and whether the appeal stays the execution of the order.	C.143, Art. 9(3); R.151, Paras 5, 8(5) and 33
STATISTICS		
11. Please provide any available statistical information, disaggregated by sex, nationality and migration status, if available, on labour migration flows (both regular and irregular migration) and on the employment of migrant workers.	Please provide statistics in respect of the distribution of migrant workers in the different branches of the economy and occupational categories, and by earnings level, and also any surveys and studies conducted.	C.97; C.143
12. Please indicate whether and how information is collected and analysed as a means of determining the nature and extent of inequalities and discrimination against migrant workers.		C.97, Art. 6; C.143, Arts 10 and 12
PART IV. SOCIAL DIALOGUE		
13. Please provide information on the role of and consultations with employers' and workers' organizations concerning: (a) all general questions related to migration for employment; and (b) the elaboration and implementation of laws, regulations and other measures relating to labour migration, including those aimed at irregular migration, the irregular employment of migrant workers and related abuses.	Please provide information on how representative employers' and workers' organizations are consulted in the context of cooperation at national, bilateral, regional and international levels.	C.143, Arts 2(2), 7 and 12; R.86, Paras 4(2) and 19
14. Please indicate how employers' and workers' organizations are involved in the promotion, understanding, acceptance and realization of the principle of equality of opportunity and treatment of migrant workers and their families.		C.143, Art 12(a) and (e); R.151, Paras 4, 7 and 9
PART V. IMPACT OF ILO INSTRUMENTS		
15. Please indicate whether any modifications have been made to national legislation or practice with a view to giving effect to all or some of the provisions of the two Conventions or of the two Recommendations. Please state also whether it is intended to adopt measures to give further effect to the provisions of the Conventions or of the Recommendations, including ratification.		
16. Please identify any obstacles impeding or delaying ratification of the two Conventions. Please indicate any measures taken or envisaged to overcome these obstacles.		

<p>17. If your country is a federal State:</p> <p>(a) please indicate whether the provisions of the Conventions or of the Recommendations are regarded by the federal government as appropriate, under the constitutional system, for federal action or as appropriate, in whole or in part, for action by the constituent states, provinces or cantons, rather than for federal action;</p> <p>(b) where federal action is appropriate, please provide the information specified in Parts I–V of this form;</p> <p>(c) where action by the constituent unit is regarded as appropriate, please supply general information corresponding to Parts I–V of the form. Please indicate also any arrangements that it has been possible to make within the federal State, with a view to promoting coordinated action to give effect to all or some of the provisions of the Conventions and the Recommendations, giving a general indication of any results achieved through such action.</p>		
<p>18. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the ILO.</p>		
<p>19. Please state whether you have received from the organizations of employers and workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.</p>		
POSSIBLE NEEDS FOR STANDARD-RELATED ACTION AND FOR TECHNICAL COOPERATION		
<p>20. What suggestions would your country wish to make concerning possible standard-related action pertaining to migrant workers to be taken by the ILO in the area of labour migration?</p>		
<p>21. Has there been any request for policy support or technical cooperation support provided by the ILO to give effect to the instruments in question? If this is the case, what has been the effect of this support? If not, how could the ILO best provide appropriate assistance within its mandate to support country efforts in the area of labour migration and protection of migrant workers' rights?</p>		
<p>22. What are your country's needs for future policy advisory support and technical cooperation to give effect to the objectives of the instruments in question?</p>		

Appendix III

Governments that provided reports

Algeria	Greece	Philippines
Antigua and Barbuda	Guatemala	Poland
Argentina	Honduras	Portugal
Australia	Hungary	Qatar
Austria	India	Romania
Azerbaijan	Indonesia	Russian Federation
Bahrain	Iran, Islamic Republic of	Saudi Arabia
Bangladesh	Iraq	Senegal
Belarus	Israel	Serbia
Belgium	Italy	Seychelles
Benin	Jamaica	Singapore
Bolivia, Plurinational State of	Japan	Slovakia
Bosnia and Herzegovina	Jordan	Slovenia
Brazil	Kenya	South Africa
Brunei Darussalam	Korea, Republic of	Spain
Bulgaria	Lao People's Democratic Republic	Sri Lanka
Burkina Faso	Latvia	Sudan
Cabo Verde	Lebanon	Suriname
Cambodia	Lesotho	Sweden
Cameroon	Lithuania	Switzerland
Chile	Luxembourg	Syrian Arab Republic
China	Madagascar	Tajikistan
Colombia	Mali	Tanzania, United Republic of
Costa Rica	Mauritania	The former Yugoslav Republic of Macedonia
Côte d'Ivoire	Mauritius	Togo
Cuba	Mexico	Trinidad and Tobago
Cyprus	Moldova, Republic of	Tunisia
Czech Republic	Montenegro	Turkey
Denmark	Morocco	Turkmenistan
Djibouti	Mozambique	Uganda
Ecuador	Myanmar	Ukraine
Egypt	Namibia	United Kingdom
El Salvador	Nepal	United States
Eritrea	Netherlands	Uruguay
Estonia	New Zealand	Uzbekistan
Ethiopia	Nicaragua	Venezuela, Bolivarian Republic of
Finland	Niger	Viet Nam
France	Norway	Zimbabwe
Gabon	Pakistan	
Gambia	Palau	
Georgia	Panama	
Germany	Peru	

Appendix IV

Workers' and employers' organizations that provided observations

Workers' organizations

International Trade Union Confederation (ITUC)

Argentina

- Confederation of Workers of Argentina (CTA Workers)
- General Confederation of Labour of the Argentine Republic (CGT-RA)

Austria

- Federal Chamber of Labour (BAK)

Belgium

- Confederation of Christian Trade Unions (CSC)
- General Confederation of Liberal Trade Unions of Belgium (CGSLB)
- General Labour Federation of Belgium (FGTB)

Bulgaria

- Confederation of Independent Trade Unions in Bulgaria (KNSB/CITUB)

Colombia

- Confederation of Workers of Colombia (CTC)
- General Confederation of Labour (CGT)
- Single Confederation of Workers of Colombia (CUT)

Côte d'Ivoire

- General Union of Workers of Côte d'Ivoire (UGTCI)

Finland

- Central Organization of Finnish Trade Unions (SAK)
- Confederation of Unions for Professional and Managerial Staff in Finland (AKAVA)
- Finnish Confederation of Professionals (STTK)

France

- General Confederation of Labour – Force Ouvrière (CGT-FO)
- General Confederation of Labour (CGT)

Germany

- German Confederation of Trade Unions (DGB)

Iraq

- General Federation of Iraqi Trade Unions

Italy

- Italian Confederation of Workers' Trade Unions (CISL)
- Italian General Confederation of Labour (CGIL)
- Italian Union of Labour (UIL)

Japan

- Japanese Trade Union Confederation (JTUC-RENGO)

Latvia

- Latvian Free Trade Union Confederation (LBAS)

Malaysia

- Malaysian Trade Unions Congress (MTUC)

Netherlands

- Netherlands Trade Union Confederation (FNV)

New Zealand

- New Zealand Council of Trade Unions (NZCTU)

Poland

- All-Poland Trade Unions Alliance (OPZZ)

Portugal

- General Confederation of Portuguese Workers–National Trade Unions (CGTP–IN)
- General Workers' Union (UGT)

Russian Federation

- Confederation of Labour of Russia (KTR)

Seychelles

- Seychelles Federation of Workers' Unions (SFWU)

Spain

- Trade Union Confederation of Workers' Commissions (CCOO)

Sweden

- Swedish Confederation for Professional Employees (TCO)
- Swedish Confederation of Professional Associations (SACO)
- Swedish Trade Union Confederation (LO)

Switzerland

- Swiss Federation of Trade Unions (USS/SGB)
- Travail.Suisse

Tunisia

- General Federation of Tunisian Workers (UGTT)

Turkey

- Confederation of Turkish Real Trade Unions (HAK-IS)
- Confederation of Turkish Trade Unions (TÜRK-IS)

United States

- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)

Viet Nam

- Viet Nam General Confederation of Labour (VGCL)

Employers' organizations

International Organisation of Employers (IOE)

Austria

- Austrian Federal Economic Chamber (WKÖ)

Colombia

- National Employers' Association of Colombia (ANDI)

Czech Republic

- Confederation of Industry and Transport (SP ČR)

Finland

- Confederation of Finnish Industries (EK)

Iran, Islamic Republic of

- Iranian Confederation of Employers' Associations (ICEA)

Korea, Republic of

- Korea Employers' Federation (KEF)

Latvia

- Employers' Confederation of Latvia (LDDK)

Mali

- National Council of Employers of Mali (CNPM)

Mexico

- Confederation of Employers of the Mexican Republic (COPARMEX)
- Confederation of Industrial Chambers of the United States of Mexico (CONCAMIN)

New Zealand

- Business New Zealand

Peru

- National Society of Industry (SNI)

Portugal

- Confederation of Trade and Services of Portugal (CCSP)

Seychelles

- Association of Seychelles Employers

Sweden

- Confederation of Swedish Enterprise (CSE)

Switzerland

- Union of Swiss Employers (UPS)

Turkey

- Turkish Confederation of Employers' Associations (TISK)

Appendix V

Ratification status (Conventions Nos 97 and 143)

Members	Convention No. 97	Convention No. 143
Afghanistan	–	–
Albania	Ratified 02/03/2005	Ratified 12/09/2006 (g)
Algeria	Ratified 19/10/1962 (b)	–
Angola	–	–
Antigua and Barbuda	–	–
Argentina	–	–
Armenia	Ratified 27/01/2006	Ratified 27/01/2006
Australia	–	–
Austria	–	–
Azerbaijan	–	–
Bahamas	Ratified 25/05/1976 (d)	–
Bahrain	–	–
Bangladesh	–	–
Barbados	Ratified 08/05/1967 (d)	–
Belarus	–	–
Belgium	Ratified 27/07/1953	–
Belize	Ratified 15/12/1983	–
Benin	–	Ratified 11/06/1980
Bolivia, Plurinational State of	–	–
Bosnia and Herzegovina	Ratified 02/06/1993 (c)	Ratified 02/06/1993
Botswana	–	–
Brazil	Ratified 18/06/1965	–
Brunei Darussalam	–	–
Bulgaria	–	–
Burkina Faso	Ratified 09/06/1961	Ratified 09/12/1977
Burundi	–	–
Cabo Verde	–	–
Cambodia	–	–
Cameroon	Ratified 03/09/1962 (d)	Ratified 04/07/1978
Canada	–	–

Members	Convention No. 97	Convention No. 143
Central African Republic	–	–
Chad	–	–
Chile	–	–
China	–	–
Colombia	–	–
Comoros	–	–
Congo	–	–
Costa Rica	–	–
Côte d'Ivoire	–	–
Croatia	–	–
Cuba	Ratified 29/04/1952	–
Cyprus	Ratified 23/09/1960 (d)	Ratified 28/06/1977
Czech Republic	–	–
Democratic Republic of the Congo	–	–
Denmark	–	–
Djibouti	–	–
Dominica	Ratified 28/02/1983 (d)	–
Dominican Republic	–	–
Ecuador	Ratified 05/04/1978 (d)	–
Egypt	–	–
El Salvador	–	–
Equatorial Guinea	–	–
Eritrea	–	–
Estonia	–	–
Ethiopia	–	–
Fiji	–	–
Finland	–	–
France	Ratified 29/03/1954 (b)	–
Gabon	–	–
Gambia	–	–
Georgia	–	–
Germany	Ratified 22/06/1959	–
Ghana	–	–
Greece	–	–
Grenada	Ratified 09/07/1979 (d)	–
Guatemala	Ratified 13/02/1952	–
Guinea	–	Ratified 05/06/1978
Guinea-Bissau	–	–
Guyana	Ratified 08/06/1966 (d)	–
Haiti	–	–

Members	Convention No. 97	Convention No. 143
Honduras	–	–
Hungary	–	–
Iceland	–	–
India	–	–
Indonesia	–	–
Iran, Islamic Republic of	–	–
Iraq	–	–
Ireland	–	–
Israel	Ratified 30/03/1953	–
Italy	Ratified 22/10/1952	Ratified 23/06/1981
Jamaica	Ratified 26/12/1962 (d)	–
Japan	–	–
Jordan	–	–
Kazakhstan	–	–
Kenya	Ratified 30/11/1965 (d)	Ratified 09/04/1979
Kiribati	–	–
Korea, Republic of	–	–
Kuwait	–	–
Kyrgyzstan	Ratified 10/09/2008	–
Lao People's Democratic Republic	–	–
Latvia	–	–
Lebanon	–	–
Lesotho	–	–
Liberia	–	–
Libya	–	–
Lithuania	–	–
Luxembourg	–	–
Madagascar	Ratified 14/06/2001 (c)	–
Malawi	Ratified 22/03/1965	–
Malaysia	–	–
Maldives, Republic of	–	–
Mali	–	–
Malta	–	–
Marshall Islands	–	–
Mauritania	–	–
Mauritius	Ratified 02/12/1969 (d)	–
Mexico	–	–
Moldova, Republic of	Ratified 12/12/2005	–
Mongolia	–	–
Montenegro	Ratified 03/06/2006 (c)	Ratified 03/06/2006

Members	Convention No. 97	Convention No. 143
Morocco	–	–
Mozambique	–	–
Myanmar	–	–
Namibia	–	–
Nepal	–	–
Netherlands	Ratified 20/05/1952	–
New Zealand	Ratified 10/11/1950 (a)	–
Nicaragua	–	–
Niger	–	–
Nigeria	Ratified 17/10/1960 (d)	–
Norway	Ratified 17/02/1955	Ratified 24/01/1979
Oman	–	–
Pakistan	–	–
Palau	–	–
Panama	–	–
Papua New Guinea	–	–
Paraguay	–	–
Peru	–	–
Philippines	Ratified 21/04/2009 (f)	Ratified 14/09/2006
Poland	–	–
Portugal	Ratified 12/12/1978	Ratified 12/12/1978
Qatar	–	–
Romania	–	–
Russian Federation	–	–
Rwanda	–	–
Saint Kitts and Nevis	–	–
Saint Lucia	Ratified 14/05/1980 (d)	–
Saint Vincent and the Grenadines	–	–
Samoa	–	–
San Marino	–	Ratified 23/05/1985
Sao Tome and Principe	–	–
Saudi Arabia	–	–
Senegal	–	–
Serbia	Ratified 24/11/2000 (c)	Ratified 24/11/2000
Seychelles	–	–
Sierra Leone	–	–
Singapore	–	–
Slovakia	–	–
Slovenia	Ratified 29/05/1992 (c)	Ratified 29/05/1992
Solomon Islands	–	–

Members	Convention No. 97	Convention No. 143
Somalia	–	–
South Africa	–	–
South Sudan	–	–
Spain	Ratified 21/03/1967	–
Sri Lanka	–	–
Sudan	–	–
Suriname	–	–
Swaziland	–	–
Sweden	–	Ratified 28/12/1982
Switzerland	–	–
Syrian Arab Republic	–	–
Tajikistan	Ratified 10/04/2007	Ratified 10/04/2007
Tanzania, United Republic of	–	–
Thailand	–	–
The former Yugoslav Republic of Macedonia	Ratified 17/11/1991	Ratified 17/11/1991
Timor-Leste	–	–
Togo	–	Ratified 08/11/1983
Trinidad and Tobago	Ratified 24/05/1963 (d)	–
Tunisia	–	–
Turkey	–	–
Turkmenistan	–	–
Tuvalu	–	–
Uganda	–	Ratified 31/03/1978
Ukraine	–	–
United Arab Emirates	–	–
United Kingdom	Ratified 22/01/1951 (e)	–
United States	–	–
Uruguay	Ratified 18/03/1954	–
Uzbekistan	–	–
Vanuatu	–	–
Venezuela, Bolivarian Republic of	Ratified 09/06/1983	Ratified 17/08/1983
Viet Nam	–	–
Yemen	–	–
Zambia	Ratified 02/12/1964 (d)	–
Zimbabwe	–	–

Convention No. 97:

(a) Has excluded the provisions of Annex I. (b) Has excluded the provisions of Annex II. (c) Has excluded the provisions of Annex III. (d) Has excluded the provisions of Annexes I to III. (e) Has excluded the provisions of Annexes I and III. (f) Has excluded the provisions of Annexes II and III.

Convention No. 143:

(g) Excluding Part II.