



International
Labour
Organization

Decent Work for Migrant Workers

A manual for Pakistani trade unionists



South Asia Labour Migration Governance Project
The project is funded by the European Union

ILO Country Office for Pakistan



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Preface

Labour migration is often presented as a triple-win – a win for destination countries that can enjoy a level of economic activity that would be impossible without foreign labour; a win for countries of origin because it reduces unemployment and brings in remittances and skills; and a win for migrants who can increase their income and escape poverty. Unfortunately, this triple-win does not deliver benefits equally to all three parties. Migrant workers typically are short-changed.

Too many migrant workers endure high recruitment costs, low wages and lack of fundamental rights, such as freedom of movement and freedom of association. The lack of decent work options in a country of origin make work abroad a compelling choice for many people. But abuses during recruitment and employment are common and have been well documented.

The International Labour Organization strongly promotes social dialogue as required for improving conditions for migrant workers. But is migration really an issue for trade unions? If so, what can trade unions do? The answer to the first question is clearly yes. This manual provides ideas in response to the second question.

All workers, regardless of their legal status in a country, are entitled to protection of their rights as human beings and as workers. At their core, trade unions function to protect human rights at work. Additionally, protecting the rights of migrant workers also protects the rights of national workers (especially when working to prevent competition between them). Migrant workers are potential members of trade union organizations, but reaching out and organizing migrant workers into trade unions will only be possible if unions are seen as promoting the rights of migrant workers. To make sure migration gives its full positive impact, migration flows should be managed through tripartite consensus, not only at the national level but also at the regional and global levels. To avoid undue pressure on existing wages and conditions, migrant workers' rights to equal treatment must also be respected.

This manual promotes the strengthening of the trade union movement's capacity to participate in the shaping of migration policies, promoting sound labour migration practices, reaching out to migrant workers and ensuring that the benefits of migration, when it occurs, are maximized for all parties. It is an adaptation of the ILO manual *In Search of Decent Work – Migrant Workers' Rights: A Manual for Trade Unionists*, which was developed by the Bureau for Workers' Activities in 2006. The manual for Pakistan was modified to a two-day training course, with support from the ILO through its European Commission funded project Promoting the Effective Governance of Labour Migration from South Asia Through Actions on Labour Market Information, Protection During Recruitment and Employment, Skills, and Development Impact, in short the South Asia Labour Migration Governance (SALM).

It is our hope that this manual will help those who promote the rights of migrant workers and that it will also encourage others to join this fight.



Francesco d'Ovidio
Director, ILO Country Office for Pakistan



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Abbreviations

GCC	Gulf Cooperation Council
GEFONT	General Federation of Nepalese Trade Unions
ILC	International Labour Conference
ILO	International Labour Organization
ITUC	International Trade Union Confederation
MOU	Memorandum of Understanding
MTUC	Malaysian Trades Union Congress
NGO	Non-government organization
POEA	Philippine Overseas Employment Administration
SARTUC	South Asian Regional Trade Union Council
UAE	United Arab Emirates
UN	United Nations

Introduction

To help Pakistan's trade union movement better respond to labour migration needs, this training manual provides direction on shaping migration policies, promoting sound labour migration practices and reaching out to migrant workers. This guidance is meant to ultimately maximize the benefits of migration for all involved parties: the countries of origin of migrant workers, the countries of destination and – especially – migrant workers and their families.

This manual is an adaptation of the International Labour Organization's *In Search of Decent Work – Migrant Workers' Rights: A Manual for Trade Unionists*,¹ which was developed by the Bureau for Workers' Activities (ACTRAV) in 2006. This current iteration closely follows the 2006 edition, with adaptation specifically for trade unions in Pakistan. It thus reflects Pakistan's legal and policy frameworks related to migration as well as information and statistics on the flow of migrant workers from the country.

The training manual – developed for a two-day workshop – explains how to establish a trade union platform for action around migrant workers' issues in Pakistan. The structure is based on four intended goals for trade unionists in the country:

- understand that migration and the rights of migrant workers are important issues for trade unions;
- develop a gender-sensitive trade union perspective and approach to the issue of migrant workers, and understand the difficulties and differences women and men face in the labour market;
- organize migrant workers, regardless of their legal status or work in the formal or informal segment of the economy; and
- defend migrant workers' rights, including through international and national laws.

For whom is this manual intended?

The material covered in the manual was selected for a variety of individuals:

- trade union office bearers and national committee members
- trade union activists
- educators and education committee members
- trade union lawyers and other legal staff
- other users interested in defending migrant workers' rights.

How can this manual be used?

There are different ways of using the manual:

- working through it in a union meeting as a team of union office bearers or active members and then following up subsequent suggestions or making plans and organizing associated events and actions
- in a workshop, seminar or course – although the manual is not solely meant for use in an education programme; and
- as a source of continual reference.

Above all, the manual is a tool. It aims to be useful for integrating migrant workers as a cross-cutting issue within the trade union movement. This manual should be treated as a working

¹ ILO, 2008.

document that provides easy reference or suggestions for trade union action. It also looks to stimulate discussion with thought-provoking questions through exercises that lead towards the development of an action plan for an organization.

Structure of the manual

Section 1 Migration from Pakistan: Concepts and statistics

The first section lays out the basic trends and concepts of migration. It profiles migrant workers from Pakistan, talks about their destination countries and why they migrate. The benefits of migration are also discussed – at individual, household, community and national levels – along with the challenges that men and women migrants encounter during each stage of the migration process. It also explains the difference between the concepts of migration, smuggling and trafficking.

Section 2 The rights of migrant workers

This section describes the relevance of the international legal framework on human and labour rights and how it applies to labour migration. It focuses on ILO Conventions relevant to migrant workers as well as the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It then moves the focus to Pakistan's legal and policy framework related to migration. It ends with an introduction to potential trade union interventions, such as advocacy and reaching out to workers with needed information on the migrant process.

Section 3 The role of trade unions

This section details why trade unions have a say in labour migration policies and discusses the unique role they have to ensure that migration benefits all parties. It suggests ways that trade unions can work for the rights of migrant workers. Pakistan's trade unions have been engaged with migration issues, and this experience has shaped a more defined agenda for what unions can do further. This section ends with a major group exercise – the development of an action plan for an organization, based on four recommended pillars:

- promoting a rights-based migration policy
- creating alliances with trade unions in other countries
- educating and informing union members
- reaching out to migrant workers.

1. Migration from Pakistan: Concepts and Statistics

Section 1 at a glance

This section explains the basic trends and concepts of migration, including the distinctions with smuggling and trafficking. With a focus on migrant workers from Pakistan, it discusses the profile of migrant workers, their foreign destinations and why they migrate. It also outlines the benefits of labour migration – at individual, household, community and national levels – as well as the challenges that men and women migrants encounter during each stage of the migration process.

1.1 What is migration?

Migration is the movement of people from one place in the world to another for the purpose of taking up permanent or semi-permanent residence, usually across a political boundary. An example of "semi-permanent residence" would be the seasonal movements of migrant farm labourers, or workers who move (through regular or irregular channels) to another country for short- or long-term employment. People can either choose to move ("voluntary migration") or be forced to move ("involuntary migration").

Migrations have occurred throughout human history, beginning with the movements of the first human groups from their origins in East Africa.

Scope of labour migration

- The world's foreign migrant population in 2013 reached an estimated **232 million (persons residing outside their country of birth)**, according to the United Nations Population Division. The International Labour Organization estimated (in 2010) the population of foreign migrant workers at more than 105 million – with more than 30 million (almost 30 per cent) in Asia.
- The estimated annual outflow of migrant workers from five countries in South Asia totals some **2.5 million** (based on various estimates for certain years). India has the largest number of migrants leaving the country, followed by Pakistan, Nepal, Bangladesh and Sri Lanka.
- Migrant workers fill more than **90 per cent of all private sector jobs in Gulf Cooperation Council (GCC)** countries.
- Pakistan ranks **third in Asia** for the largest number of youth aspiring to work abroad (behind Cambodia and Bangladesh).²

1.2 Migration from Pakistan

An increasing number of workers leave Pakistan each year. The unfavourable socio-economic conditions and uncertain political circumstances over the years have prompted them to seek out better economic opportunities in Europe, North America, East Asia and the Gulf States. Over the years, the popular destinations have shifted; in the 1950s and 1960s, for instance, Pakistan's workers migrated to the United Kingdom and other Western countries. These migrants were mostly men with relatively little education who took up low-paid industrial jobs. The male migration gave rise to the later migration of families to those countries.

² First ever National Policy for Overseas Pakistanis launched, Views of Country Director ILO-Islamabad, Mr. Francesco d'Ovidio in a Workshop on Migrant Workers Rights (The Nation February 22, 2013)

After the oil boom in the 1970s a great avenue opened into the countries of the Gulf region, which has today become the principal destination of Pakistani workers.

According to Bureau of Emigration and Overseas Employment estimates, more than 6 million Pakistani migrant workers live around the globe. This corresponds to around 2.5 per cent of the country's entire population and is roughly in line with the global percentage of migrants.

An estimated 96 per cent of the population of Pakistani migrant workers is concentrated in six countries of the Gulf region: Saudi Arabia, United Arab Emirates (UAE), Kuwait, Qatar, Bahrain and Oman. Of them, 85 per cent work in just two countries Saudi Arabia and UAE (Table 1).

Table 1. Number of Pakistanis living overseas, by country, 2008–2013

Country	2008	2009	2010	2011	2012	2013	Total
Saudi Arabia	138 283	201 816	189 888	222 247	358 560	270 502	1 381 296
UAE	221 765	140 889	113 312	156 353	182 630	273 234	1 088 183
Oman	37 441	34 089	37 878	53 525	69 407	47 794	280 134
Bahrain	5 932	7 087	5 877	10 641	10 530	9 600	49 667
Qatar	10 171	4 061	3 039	5 121	7 320	8 119	37 831
Italy	5 416	3 738	2 875	3 361	785	2 068	18 243
Malaysia	1 756	2 435	3 287	2 092	1 309	2 031	12 910
Libya	940	1 293	2 157	490	1 872	4 543	11 295
Kuwait	6 250	1 542	153	173	5	229	8 352
Others	985	952	1 258	1 117	368	1 288	5 968

Source: Bureau of Emigration and Overseas Employment.

Profile of Pakistani migrant workers

Unskilled and semi-skilled workers constitute around 50 per cent of all Pakistani migrants abroad – 43.6 per cent of all migrant workers are categorized as manual workers. Only 1.8 per cent of them are categorized as white-collar workers, such as doctors, engineers, accountants, managers and teachers, 4.8 per cent highly skilled, while 43.2 per cent workers are classified as skilled.³ Drivers make up the largest group among the skilled workers, followed by masons, carpenters and tailors (see Annex I for an overview of the number of Pakistani migrant workers by occupation).

An estimated 85 per cent of migrant workers leave their family behind in Pakistan.⁴ An estimated 51.5 per cent of migrant workers is from Punjab Province, while 18.1 per cent come from Sindh, 27.5 per cent from Khyber Pakhtunkhwa, 1.2 per cent from Balochistan, 6.8 per cent from AJK, 0.1 per cent from Gilgit Bultistan and 4.8 per cent from the Federally Administered Tribal Areas and Islamabad Capital Territory.⁵ (see Annex II for an overview of the number of migrant workers protectorate wise).

³ BE&OE, 2015

⁴ Overseas Pakistani Workers, Significance and Issuance of Migration, Source: Briefing Paper (# 34) for Pakistani Parliamentarians, PILDAT, July 2008.

⁵ BE&OE, 2015

1.3 Women migrants



A significant change in the patterns of migration is the increasing proportion of women migrants, at about 48 per cent of all migrants in 2013.⁶ Initially, women migrated (sometimes with their children) to be with their husband. Today, women are increasingly migrating on their own for employment. They are typically found in low-paid work, such as domestic help, cleaning services, caregiving and in the health care and hospitality sectors.

Considerable differences in the numbers of women migrating are apparent across regions: The proportion of female migrants is greatest from Europe (at 52 per cent), followed by Latin America and the Caribbean (at 52 per cent), Northern America (at 51 per cent), Oceania (at 50 per cent), Africa (at 46 per cent) and Asia (at 42 per cent).

Now from South Asia, more and more women are joining the expanding movement of females going abroad for employment, although it remains at a low level: the share of female migration is large only in Sri Lanka, where women constitute about 50 per cent of all migrants.

The emigration of Pakistani women is negligible, with only some 8,000 female workers having moved abroad for employment, primarily for jobs in health services, the finance sector, cosmetology and fashion designing. Religious and social values tend to keep women from migrating, although the Government says that it is because women are encouraged to participate in the country's own labour force.

Because low-skilled female migrants are one of the most vulnerable groups, policy ambiguities concerning their migration are currently limiting such movement from all South Asian countries. India, for example, only permits women 30 years or older to migrate for low-skilled occupations; Nepal similarly bans women younger than 30 from going abroad for domestic work. Sri Lanka applies different age limits (21, 23 or 25) for women migrating for domestic work, including a full ban for those with children younger than 5 years. Given this, there are now increasing calls in most South Asian countries for greater opportunities for female migration. Pakistan's new emigration policy,⁷ for example, emphasizes the importance of increasing female migration for non-vulnerable occupations. The Government claims that there is no official or unofficial ban on employment of Pakistani women in foreign countries.

Female domestic workers are particularly vulnerable to exploitation and abuse. The isolation of domestic workers in private homes, which are not monitored by labour inspectors or social workers, and their limited opportunities to move outside the household, heighten their vulnerability to exploitation. Employers in Gulf countries justify their holding of workers'

⁶ World Migration in Figures, A joint contribution by the United Nations Department of Economic and Social Affairs and the Organisation for Economic Co-operation and Development to the United Nations High-Level Dialogue on Migration and Development, 3–4 October 2013.

⁷ Still in draft form.

passports and confinement in the home on the basis of the *kefala* system, which gives them legal responsibility for the residency and employment of their domestic workers. Their sense of entitlement over workers is heightened by the significant cash outlay they have made to recruit them from another country. The ILO Committee of Experts on Application of Conventions and Recommendations has drawn attention to the vulnerability of female domestic workers to multiple forms of discrimination and abuse due to the individual employment relationship, lack of legislative protection, stereotyped thinking about gender roles and undervaluing domestic work, which frees women in the household to join the country’s labour force.⁸ In most GCC countries (as with most other countries), domestic workers are not covered by labour legislation.

1.4 Why do people migrate?

People migrate for a variety of reasons. They consider the advantages and disadvantages of staying at home or moving abroad along with such factors as distance, travel costs, travel time, modes of transportation, terrain and cultural barriers. The following summarizes some of the “push” and “pull” factors that motivate people to migrate.

Economic factors

Job opportunities
Job transfer
Exploitation of natural resources (such as gold and diamonds)

Social factors

Better education
Medical services
Marriage
Join a spouse or family
Move away from traditional practices

Political factors

Avoid political or religious persecution
Armed conflict (political refugees)

Environmental factors

Environmental hazards (drought, famine, volcanic eruptions, earthquakes)
Poverty

1.5 Positive and negative effects of migration

Migration offers both opportunities and challenges to countries of origin, such as Pakistan. This section discusses some of them.

National development: Labour migration generates substantial benefits for Pakistan, primarily in the form of remittances but also through professional, cultural and social skills that workers gain during their overseas employment, including experience with new technologies. Human labour is the second-biggest source of foreign exchange earnings for Pakistan.

Table 2. Inflow of remittances to Pakistan, 2005–2014

Year	Foreign exchange remittances (US\$)	Year	Foreign exchange remittances (US\$)
2005–2006	5.4 billion	2010–2011	11.2 billion
2007–2008	6.4 billion	2011–2012	13.2 billion
2008–2009	7.8 billion	2012–2013	13.9 billion
2009–2010	8.9 billion	2013–2014	15.8 billion

Source: State Bank of Pakistan.

⁸ ILO, 2009 a in ILO, 2011.

According to the World Bank's *Migration and Remittances Report 2014*, Pakistan ranks seventh in terms of officially recorded remittances in the world. After India, Pakistan is the second-largest recipient of remittances in South Asia.

Nonetheless, development frameworks are largely quiet on how to use migrants' remittances towards economic change of the country, communities and households. It is clear that migrants make a hefty contribution simultaneously towards economic development and poverty reduction in countries of origin and towards the prosperity of destination countries. This contribution needs to be more recognized and reinforced and should become an integral part of national, regional and global strategies for economic growth.

Box 1 Migration and remittances

- Remittance flows to South Asia in 2013 were estimated at US\$111 billion. Growth in remittances to the region has slowed due to modest growth in the amount of earnings remitted to families in India and a decline in Bangladesh.
- Remittance inflows are critical to the balance of payments in many countries of the region. The Pakistan Remittance Initiative, launched in 2009, remains a central part of the Government's effort to encourage inflows from the Pakistani diaspora, while Nepal is exercising greater prudence in managing liquidity generated by its current growth in remittances.
- The cost to send remittances is falling, but faster progress in Europe means that South Asia is now the second-lowest cost destination for remittances.

Targeted government efforts to attract remittances: The case of Pakistan

As part of the Pakistan Remittance Initiative, the Government of Pakistan paid financial institutions almost US\$100 million in March 2014 to cover bank fees and outstanding dues. The initiative was launched in 2009 to facilitate remittance flows to Pakistan. As part of that initiative, a dedicated remittance complaint resolution mechanism is forthcoming, as is a campaign to encourage migrants to open bank accounts before they depart.⁹

Source: Migration and Development Brief, April 2014.

Social development: Migration has tremendously helped marginalized communities and individuals, especially in Pakistan's rural areas. A new middle-class has emerged, which has shaken the age-old class-based structure of the society in rural areas. This has helped in the promotion of a democratic polity, with many individuals from this new middle class participating in the country's political and democratic processes. The standard of living of many returned migrants and/or their dependants has undergone significant improvement. Improved household economic conditions and a heightened appreciation of the importance of education have led to the increased enrolment of children in school.

⁹ See <https://blogs.worldbank.org/peoplemove/pakistan-remittance-initiative-pri>.

Image: The growing number of Pakistanis travelling overseas as migrant workers has increased the international exposure of Pakistan and Pakistanis and has proved to be a mixed blessing. In general, Pakistanis have been regarded as hardworking, law-abiding and enterprising. This has enhanced the image of Pakistani workers and that of the country as a whole. On the other hand, a few but high-profile cases of Pakistani migrant workers engaging in illegal practices during the migration process or afterward has also tarnished the country's image. The fact that around 85 per cent of migrant workers are illiterate also weighs heavily against the reputation of the country. The image of the country varies, depending on the composition of the Pakistani migrant workers in a certain country. The image differs in the Middle East and the United Kingdom, where most migrants have little or no education, in comparison with the United States, where the proportion of white-collared migrant workers is much greater. Table 3 summarizes a few other positive and negative effects of labour migration.

Table 3. Positive and negative impacts of labour migration

	Positive effects	Negative effects
Origin	<ul style="list-style-type: none"> ✓ Migrants send money and/or goods back home that helps raise living standards of the household ✓ Acquisition of new skills by migrants – brain gain ✓ Reduction in population pressure on agricultural land ✓ Decline in the rate of unemployment ✓ Reduction in pressure on social services 	<ul style="list-style-type: none"> ✓ Shortage of labour ✓ Reduction in size of market ✓ Food shortage, especially if youth migrate and leave aged family members and women on their own ✓ Brain drain
Destination	<ul style="list-style-type: none"> ✓ Cheap labour ✓ Large market size ✓ Increased productivity ✓ Increased revenue 	<ul style="list-style-type: none"> ✓ Pressure on housing and health care services ✓ Congestion and development of slums ✓ Environmental degradation

1.6 Migration issues and challenges

Migrant workers and the communities and countries that send them face a range of possible difficulties, some of which are highlighted here.

Exploitation of migrant workers: Migrant workers are at risk of exploitation and abuse at all stages of their migration cycle, including during recruitment and employment. It is important that legal and policy frameworks are set up and enforced and that relevant services are made available to migrants in need.

- **Exploitation during recruitment:** Unfair recruitment practices and high migration costs have eroded a large part of the gains from migration. In South Asia, recruitment for overseas employment is largely managed by the private sector, with only a small share of the market handled by public sector employment agencies.¹⁰ This is paving the way for a thriving industry of intermediaries in both origin and destination countries. Although the

¹⁰ The public sector employment agencies often operate labour services under government-to-government arrangements, such as the Employment Permit System in the Republic of Korea.

role of this industry in expanding opportunities for employment abroad has to be recognized, it is well documented that the recruitment industry is also responsible for a number of malpractices and abuses, including the high costs and fees, misrepresentation, failure to meet placement obligations and contract substitution. The high recruitment costs combined with low wages have led to a heavy debt burden for workers. Regulation of recruitment agencies is often ineffective, timely information on job opportunities is not readily available and recruitment options are largely limited to private recruitment agencies. The multiplicity of agents and intermediaries abets the corrupt practices and the high migration costs largely because migrant workers with few or no skills and little education are not able to distinguish between genuine agents and others. International instruments are clear on the role and responsibilities of recruitment agencies and the provisions for protection of migrant workers, but there is typically great disparity between principles and actual practice.

Abuse and exploitation during employment: Wages to migrant workers in some sectors have reportedly stagnated over the past three decades and fallen in real terms.¹¹ One of the most common complaints of migrant workers is non-payment or delayed payment of wages. Even where access to legal redress is provided under national law, there are few prosecutions and convictions in the area of labour exploitation, forced labour and trafficking. As noted, female domestic workers are particularly vulnerable to abuse and exploitation. The isolation of domestic workers in private homes, which are not inspected by labour inspectors or social workers, and their limited opportunities to move outside the household, heighten their vulnerability to exploitation.

Community welfare attachés in Pakistan Embassies are supposed to respond to such problems, but many need to be properly trained.

In addition to abuse and exploitation, a number of restrictive policies impact the rights of migrant workers. These include the *kafala*, or sponsorship, system, which regulates the relationship between employers and migrant workers in many countries in the Middle East in a manner that is firmly weighted towards the employer. In many GCC countries, absence of freedom of association further contributes to making migrant workers vulnerable to abuse and exploitation. Retention of migrant workers' identity documents and personal travel documents by employers is a common practice. Employers also prevent their employees from leaving by requiring them to pay high fees for their release and withholding their wages. Other common problems during employment include signing of new contracts with lower wages, modified work and living conditions and reduced employment benefits, such as overtime, holiday pay and return airfare payment.¹²

In 2012, the ILO¹³ estimated that there were some 600,000 forced labour victims in the Middle East.

- **Brain drain versus brain gain:** A negative effect of the mass-scale migration of professionals and skilled workers has been what is often referred to as "brain drain". Debate continues on whether the remittance of funds by skilled professionals who leave the country is a good substitute for those same individuals staying in the country to work. Research on the impact of remittances points to major improvements at the household level, such as the increased propensity among remittance-receiving families to send

¹¹ Al Jazeera, 2014.

¹² Rajan et al., 2008.

¹³ ILO, 2012.

children to school and to better health care facilities as well as the multiplier effect resulting from increased spending. But that idea is valid only to a minimal extent because there is no substitute for the services these professionals could render that would contribute to more rapid economic, scientific and technological development of the country if they stayed.

The other aspect of brain drain is brain gain. When migrants return to Pakistan after having learned new skills abroad and put them to use, the country gains. Both the country of origin and country of destination can benefit from the knowledge, skill and competencies of expatriates (in case of destination) and returnees (in case of origin) by creating opportunities to use them. Trade unions can help promote use of these talents in education, capacity building and technical institutions.

- **Social costs of migration:** Many migrant workers are not able to take their families with them and thus live separately for several years. This creates emotional disparities between them and can have high social costs, including a sense of alienation among family members and divorce.
- **Reintegration of returned migrants:** The Government has not yet developed a policy for the reintegration of returned migrants nor are any particular programmes or services available. Accurate details on the number of returned migrants are not available, which impedes the Government from making policies that could take advantage of the returned skills.
- **Absence of trade unions catering to the needs of migrant workers :** With the exception of Kuwait and Oman, no GCC country allows the establishment of trade unions. Given that, migrant workers are not able to join or form trade unions to represent their interests in countries of destination.
- **Voting rights of migrant workers:** Pakistani workers do not enjoy their voting rights at home when they are in other countries.
- **Labor mobility, skills and certification:** The South Asia-GCC migration corridor is characterized by a lack of information on current and future employment opportunities, including qualifications, skills and wages, and how demand will evolve in the short, medium and long terms. As a result, prospective migrant workers and related public and private institutions do not have a reliable basis for forward planning. This results in lost opportunities or training investment mistakes in both source and recipient countries. In addition, there are no systems of mutual recognition of educational attainments and acquired skills that are based on comparable standards for low-skilled and semi-skilled occupations between the GCC countries and South Asia.

Such a system certifies workers' qualifications and skills and thus are recognized in the country to which they move. It also provides opportunity to be periodically tested and certified for upgraded skills and documents they accumulate throughout their employment. The system also facilitates agreements with the participating countries of origin on the mutual recognition of upgraded skills, such as through an internationally recognized "skills passport". This type of system brings tremendous benefits to countries, employers and workers.

There is a need for diversification of women' workers skills and employment opportunities beyond the traditional domestic work and service sectors.

- **Health impact, including HIV:** Labour rights violations, such as long working hours with little or no rest, exposure to unsafe working conditions, poor sanitation and nutrition, paired with limited access to health care services and information in appropriate language, have the potential to compromise the health of migrant workers and predispose them to a range of diseases, including HIV. An aggravating factor is the vast majority of all migrant workers from Pakistan are under visa types that do not allow them to bring their spouse with them, which can indirectly increase their exposure to sexually transmitted diseases (if they seek out unprotected sexual relations). The availability of information on health risks for migrant workers at pre-departure, post arrival and reintegration stages are either limited or non-existent. In Pakistan, a quick orientation is provided at the Protector of Emigrants office, but the orientation is limited to the consequences of carrying illicit drugs. The information regarding HIV and AIDS is not provided at any level.

1.7 Migration, people smuggling and trafficking

Because there is some confusion with these terms, it is important for trade unionists to be clear about the differences between them and the definitions in international law.

Migration

Migration may take place through regular or irregular channels and may be freely chosen or forced upon a migrant as a means of survival (during a conflict, an economic crisis or an environmental disaster).

People smuggling

If the method of migration is irregular, then a migrant may be assisted by a smuggler who will facilitate illegal entry into a country for a fee. Smugglers may demand an exorbitant fee and may expose migrants to serious dangers in the course of their journey; but on arrival at their destination, the migrants are free to make their own way and normally do not see the smuggler again.

The international legal definition of smuggling is found in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000).

“Smuggling of migrants shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident (Article 3(a)).”



A most important clause of the Protocol establishes that:

“Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of (smuggling).”

Trafficking

Trafficking in persons is an extreme form of irregular migration. All types of workers can be trafficked, but women and children are particularly vulnerable. Trafficking in persons increased dramatically during the 1990s. In 2012, the ILO estimated that 20.9 million women, men and children suffered in forced labour globally.¹⁴ This estimate also included victims of human trafficking for labour and sexual exploitation. It is not known how many of those victims were trafficked, but the estimate implies millions of trafficking in victims in the world currently.

Much attention has been focused on trafficking into commercial sexual exploitation. But it must be emphasized that people are also trafficked into other forms of labour. In such situations they typically are exposed to dangerous work, excessive working hours, violence and low pay – if any pay at all.

There is a clear human rights approach to the issue of human trafficking, which puts victims first. This is recognized in the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children¹⁵ (often referred to as the Palermo Protocol). Under this UN Protocol, trafficking is defined as:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Article 3(a)).”

Human trafficking used to involve more abductions than it does nowadays. What typically happens, at least in South Asia, is that job-seekers looking to leave their home in an act of migration and cross a border are subsequently trafficked at some point in that journey – if they are tricked or forced into a situation they do not want and have no freedom to leave. They may have signed a contract with an agent, but this is worthless when violence and coercion are used, in a country where they do not speak the language and/or lack any support.

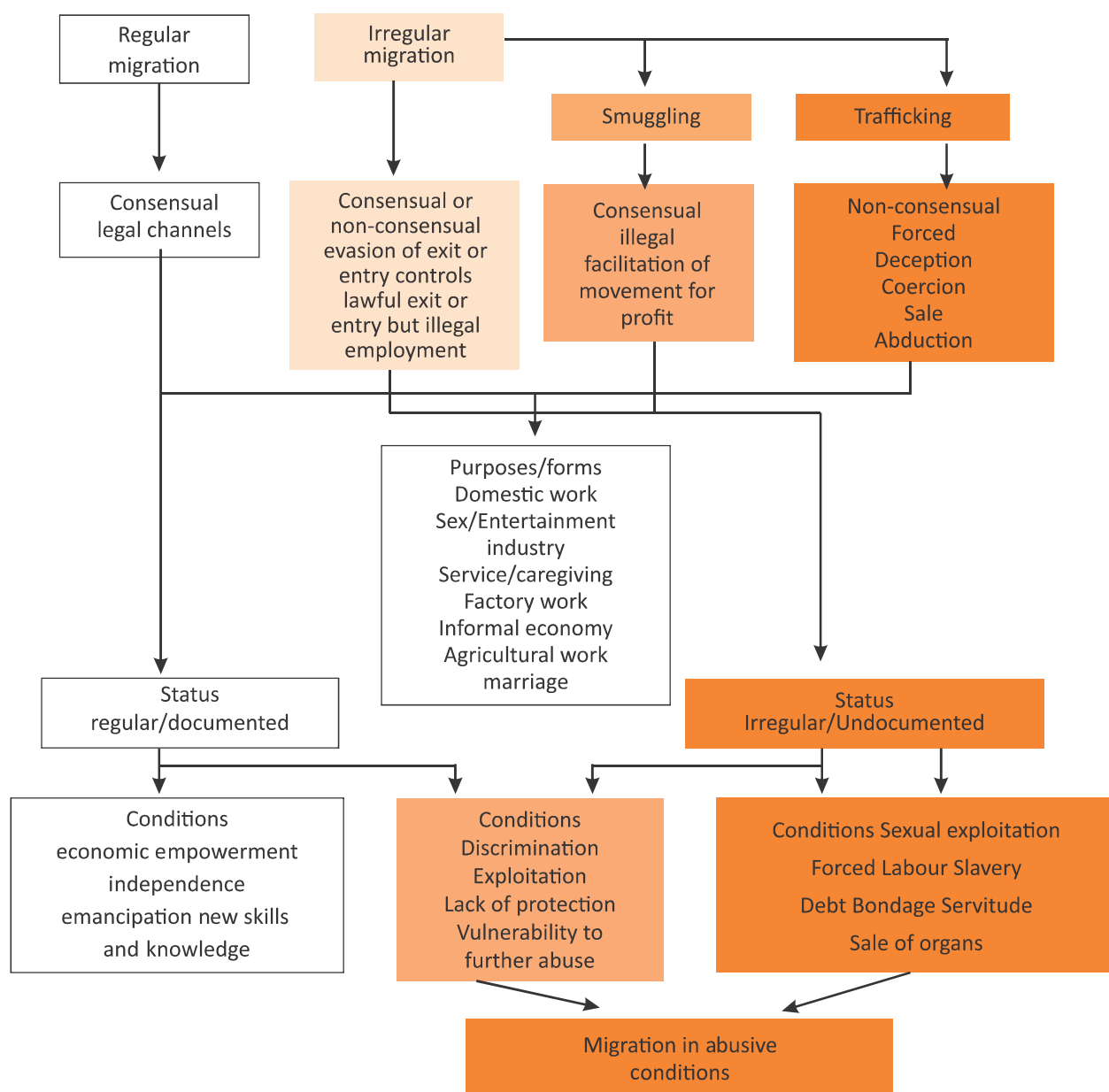
The vast majority of people who are trafficked may think they are crossing borders for legitimate employment. For most trafficked people, it is only once they arrive in a country of destination that their real problems begin. The work they were promised does not exist, and they are forced instead to work in jobs or conditions that they did not agree to do.

¹⁴ See www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang-en/index.htm.

¹⁵ See www.osce.org/odihr/19223?download=true.

Figure 1. Regular and irregular migration, smuggling and trafficking

Interrelations between regular and irregular migration, trafficking and smuggling



Source: ILO GENPROM: *An Information Guide: Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers*, Geneva, 2003.

Box 2 Irregular or illegal?

The debate around migrant workers often involves the idea of “illegal” migrants. But this phrasing is inaccurate because all persons are “legal”. Yet, some migrants are “irregular” because they opted (or were tricked) to migrate through a non-legal, or irregular, channel. They thus are in a host country illegally – but that does not make them illegal. It is a distinction of importance – it is their status that is illegal but as human beings they are entitled to certain legal protections.

Most migrant workers leave their home country in search of decent work. They want to escape poverty and discrimination, improve their standard of living and support their family. Some obtain entry to a foreign country and work officially through permit and quota schemes. Many migrants, however, do not or sometimes cannot because governments may not accept the reality that low-skilled migrant workers are needed as much as skilled workers.

Workers hear about well-paid jobs abroad through family or friends or through recruitment agencies and other individuals who offer to find them employment and make the travel arrangements. Many migrants have little choice but to rely on people smugglers to access foreign jobs. Some think they are migrating legally only to discover upon their arrival that they have not entered a country formally.

In a number of countries, not having a passport or valid visa or overstaying a permitted period are considered criminal offences. This means that a person that breaks these laws commits a criminal act, or an illegal act. But to then say that the person is illegal is wrong. The act is illegal and resulting in an irregular situation for the migrant. The unscrupulous employers who use the services of irregular migrants, paying them less than the minimum wage, not providing health care and safety protection or social security, often exploiting them – are also breaking the law.

Learning exercises – Section 1

Exercise 1	
Activity:	Migrant workers – who benefits?
Objective:	To think about the advantages and disadvantages of migrating for work from different points of views.
Time:	For this exercise, you will need about 20 minutes, plus 30 minutes to report back and discuss.
Process:	This exercise can be done independently or in pairs.
Tasks:	Fill in the following table.

From the point of view of...	What are the advantages of migration for work?	What are the disadvantages of migration for work?
Unskilled migrant workers		
Skilled migrant workers		
Workers in a destination country		
Employers		
Government in origin country		
Government in destination country		
Trade unions in origin country		
Trade unions in destination country		
Employment agencies		

Exercise 2	
Activity:	Why do people move?
Objective:	To think about why people migrate for work.
Time:	For this exercise, you will need about 10 minutes to discuss the questions, plus 5 minutes per group to report back.
Process:	This exercise can be done in pairs or in groups of four–five participants.
Tasks:	1. Read the following case study about Daniyal, a migrant worker.
	2. Answer the questions based on Daniyal’s experience.

Case study – Daniyal, the graduate

Daniyal is a smart young man who had studied finance and accounting at his local university. Due to a crunch in the labour market, he was not able upon graduation to find a suitable job that matched his qualifications and was consequently unable to support his family. His uncle advised him to attend a technical course to acquire a vocational skill that at least would allow him to apply for jobs in other sectors or even in another country. Daniyal took the advice and attended a one-year diploma course in general electrics; upon graduation, he obtained a certificate from Citi & Gilds.

Still not able to find work, Daniyal recalled meeting with a Mr Riaz during his one-year course. Mr Riaz is the head of a fairly large and well-known overseas-employment agency. Daniyal arranged a meeting with Mr Riaz and decided to register his name as a potential candidate for job openings in Saudi Arabia.

After a couple of weeks, Mr Riaz called Daniyal and informed him that he had a job for him as a skilled worker with a large construction company. Mr Riaz explained that the qualifications of the job were below those of Daniyal but because this was his first job, he should accept the job offered and work his way up.

Despite initial hesitation, Daniyal decided that he had no other option but to accept the post offered to him. Within three months, he had moved to Saudi Arabia where he worked for five years in the same position.

What triggered Daniyal to move to Saudi Arabia?	
What are the push and pull factors in this story?	
What could Daniyal have done during those five years to be more productive?	
How can trade unions help individuals like Daniyal?	

Exercise 3	
Activity:	How do we protect vulnerable migrant workers?
Objective:	To understand the particular challenges of female migrant workers and what trade unions can do to support them.
Time:	For this exercise, you will need about 30 minutes to discuss and answer the questions, plus 10 minutes per group to report back.
Process:	This exercise can be done in pairs or in groups of four–five participants.
Tasks:	Answer the following questions.

Question	Your answers
List the potential issues or problems that women domestic workers might experience in their job in a foreign country.	
List potential solutions to those issues or problems.	
List the stakeholders, agencies or organizations that could respond to these issues or the needs of domestic workers.	
List the specific roles of trade unions in responding to these issues and needs.	

2. The rights of migrant workers

Section 2 at a glance

This section describes the relevance of the international legal framework of human rights and labour rights and how they apply to labour migration. It focuses on the ILO Conventions specifically relevant to migrant workers as well as the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. It then moves the focus to the legal and policy framework in Pakistan related to migration. The section ends with exercises for trade unionists to consider the possible areas of intervention, including advocacy and reaching out to workers with needed information on the migration process, such as their rights and what they need to know to better protect themselves. This information will help the trade unions in any advocacy campaign.

2.1 Human rights and fundamental freedoms

The central notion of human rights is that certain principles apply to all people, in all societies, under all conditions of economic, political, ethnic and cultural life. Human rights are universal; all human beings possess these rights, regardless of race, colour, creed, sex, age, class, language, national origin or political belief.

The critical question for trade unionists and migrant workers is: *How well do laws protect the rights of migrant workers while at the same time protecting national workers?*

The best way to protect national workers is to ensure protection of migrant workers as well – particularly by not permitting employers to place workers in competition with each other.

Using international human rights law to protect migrant workers

International human rights law may seem remote and irrelevant. But it can be a powerful tool to defend the rights of all workers, including migrant workers. Where a State has agreed to be bound by an international treaty or convention, it can be subject to international supervision. That pressure may guide a State to treat all workers better.

Ratified treaties have legal status and are subject to enforcement and supervision at the national level. Even non-ratified instruments can be used in national jurisdiction.

ILO Conventions are international treaties. They are adopted through a tripartite process involving a government and representatives of employers and workers. When ratified, an ILO Convention has legal force in the ratifying country. The application of international labour standards in a country creates a decent working environment for all workers, including migrant workers.

Where does the protection of human rights originate?

The principle of universality of human rights is the basis of international human rights law. This principle was first emphasized in the Universal Declaration on Human Rights, which was adopted in 1948 by the United Nations General Assembly. It is still an inspiring document, with the universality of human rights reiterated in numerous international human rights conventions,

Box 3
Universal Declaration of Human Rights

- Article 13** Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including their own, and to return to their country of citizenship (or origin).
- Article 14** Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- Article 23** (1) Everyone has the right to work, to the free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favourable remuneration, ensuring for themselves and their family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join a trade union for the protection of their interests.

2.2 Fundamental human rights in Pakistan's Constitution

Chapter 2 of the Constitution of Pakistan details the rights of all citizens, such as the following.

Article	Detail
8	Fundamental rights are supreme
9, 10, 12 & 13	Right to life and liberty
11	Prohibition of slavery and forced labour
14	Dignity of man [sic] and privacy of home
15, 16, 17, 18 & 19	Basic freedoms
20, 21 & 22	Religious freedom and safeguards
23 & 24	Property rights
25, 26 & 27	Guarantees of equality and non-discrimination
28	Preservation of culture

In addition to fundamental human rights, the Constitution also lists several Principles of Policy. The Government is to make policies accordingly, which all public institutions and all civil servants are expected to uphold.

2.3 International labour standards for migrant workers explained

There are two ILO Conventions and linked Recommendations specifically concerning migrant workers:

- 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)

Box 4

International conventions and international labour standards explained

This manual refers to a number of international conventions that originated through various United Nations entities.

International labour standards are legal instruments drawn up by ILO constituents (governments, employers and workers) that set out basic principles and rights at work. They are either Conventions, which are legally binding international treaties that may be ratified by member States, or Recommendations, which serve as nonbinding guidelines. In many cases, an ILO Convention lays down the basic principles to be implemented by ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidelines on how it could be applied. Recommendations can be autonomous – not linked to any Convention.

Conventions and Recommendations are drawn up by representatives of governments, employers and workers and are adopted at the ILO annual International Labour Conference (ILC). Once a standard is adopted, member States are required under the ILO Constitution to submit them to their competent authority (typically the parliament) for consideration. In the case of Conventions, this means consideration for ratification. If it is ratified, a Convention generally comes into force for that country one year after the date of ratification. Ratifying countries commit themselves to applying the Convention in their national law and practice and to reporting on its application at regular intervals. If needed, technical assistance is provided by the ILO to integrate provisions from Conventions into their national setting. In addition, representation and complaint procedures can be initiated by trade unions against countries for violations of a Convention they have ratified.

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

Convention No. 97 (ratified by 49 member States) provides for equality of treatment and non-discrimination on the basis of nationality, race, sex or religion for migrant workers (who have been regularly admitted into a host country) in relation to nationals, arising out of laws, regulations or the practices of the administrative authorities in four areas: living and working conditions, social security, employment taxes and access to justice. The provisions include, among others, equal remuneration, membership in trade unions and enjoyment of the benefits of collective bargaining.

The Convention and its accompanying Recommendation No. 86 also detail contract conditions, the participation of migrants in job training or promotion provisions for family reunification, appeals against unjustified termination of employment or expulsion and other measures to regulate the entire migration process.

In Article 11, Paragraph 1, the Convention defines migrant workers.

“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.”

Convention No. 97 excludes “(a) frontier workers; (b) artists and members of the liberal professions who have entered the country on a short-term basis; c) seamen.”

Apart from these exclusions, the principle of equal treatment is applicable to all migrant workers who have been regularly admitted into a country that has ratified the Convention.

“Equal treatment” (treatment not less favourable to that which applies to nationals) is the central element of Convention No. 97. It is contained in Article 6, which prohibits discrimination of regularly admitted migrant workers in relation to national workers regarding:

“(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 ... (c) employment taxes, dues or contributions payable in respect of the person employed; and legal proceedings relating to the matters referred to in this Convention.”

Article 3, Paragraph 2 of Convention No. 97 invites ratifying States to engage in cooperation to combat misleading propaganda. The ILO Committee of Experts on the Application of Conventions and Recommendations has clarified that misleading propaganda not only covers misleading information that migrants may receive before their departure to lure them into going to a specific country, but it also concerns racist propaganda in the countries of destination.

Article 4 requires States to provide migrant workers with adequate and free services in connection with recruitment and job placement.

Article 7 provides that a member State should “ensure that the services rendered by its public employment service to migrants for employment are rendered free”. This also applies to private employment agencies through ILO Convention No. 181.

Convention No. 97 contains important protection provisions for migrant workers. For instance, they should have access to appropriate medical services (Article 5) and should be allowed to transfer their earnings and savings (Article 9).

Article 8 prohibits the expulsion of migrants admitted formally in the event of incapacity for work. This is an important provision. In many countries, there remains questionable links between health status and job security or security of residence.

Some bilateral agreements signed between countries of origin and countries of destination contain language linking the termination of employment (and therefore expulsion from a country) to the possibility of workers contracting HIV or “any other contagious disease”. Indeed, a number of countries require migrant workers applying for jobs to undergo mandatory testing for HIV or condition the renewal of the work permit on such testing. This is clearly a violation of their human rights and also goes against the ILO code of practice on HIV/AIDS and the world of work. Such a requirement also contradicts Convention No. 97.

Ratifying States may, under Article 14, exclude from ratification any or all of the three annexes to the Convention. The two first annexes deal with organized migration for employment. They contain important provisions, however. For instance, Article 5 of Annex I and Article 6 of Annex II make provision for migrant workers to obtain a written contract indicating conditions and job descriptions before leaving their country of origin. And Article 3 of Annex I speaks of the required supervision by States of agencies dealing with recruitment to ensure compliance

with the law. The third Annex is more general and deals with migration, whether organized or spontaneous.

Migration for Employment Recommendation (Revised), 1949 (No. 86)

Convention No. 97 is accompanied by Recommendation No. 86. Recommendations are not subject to ratification and as such are not binding instruments. Yet, when they accompany a Convention they may provide useful guidelines on how to implement the Convention or on how to read a particular provision of a Convention.

Recommendation No. 86, for instance, contains provisions aimed at protecting migrant workers who have been admitted on a formal basis from expulsion on account of their lack of means or employment. Paragraph 18 of the Recommendation states:

“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.”

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

The full title of Convention No. 143 is Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers. The Convention consists of three parts, and governments may decide to exclude either Part I or Part II from their ratification of this instrument.

Basic human rights

Part I covers Articles 1–9 and constitutes the first attempt by the international community to deal with irregular migration and to do it from a rights-based perspective.

Article 1 thus lays down the general obligation for member States to respect the basic human rights of all migrant workers – the rights of all migrant workers, regardless of their status, are to be respected. The intention is to affirm, without challenging the right of States to regulate migratory flows, the right of migrant workers to be protected, whether or not they entered or remained in the country on a regular basis, with or without official documents. According to the ILO Committee of Experts, this article refers to the fundamental human rights contained in the international instruments adopted by the United Nations and includes the fundamental rights of workers covered by the ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in 1998.

The ILO Declaration lists these rights in Paragraph 2: “(a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation”.

Articles 2 and 3 of Convention No. 143 invite member States to act and possibly cooperate to suppress the clandestine movement of migrants. Attention is paid to the fact that it is the recruiters or the employers of irregular workers who may be prosecuted and sentenced but not migrant workers. The ILO Committee of Experts has indicated, however, that contrary to the spirit of the Convention, “sanctions against migrants in an irregular situation are very widespread, both in sending and in receiving countries”. Actual sanctions against employers are

rare, compared with deportation or other measures applied against migrant workers. Articles 2 and 3 are important but often ignored.

Cooperation between member States as provided by the Convention should also, according to Article 4, make it possible to prosecute traffickers in whichever country they operate. This is reminiscent of the adoption more recently by a number of countries of legislation that includes “extraterritorial” provisions, namely in addressing the issues of trafficking and paedophilia and enabling countries to prosecute offenders even if their crimes have been perpetrated outside their territory.

Consultation of social partners is foreseen in Article 7 of the Convention which provides employers and trade union organizations with the right of initiative in the field of combating abusive conditions in labour migration.

Part I of the Convention also lays down certain protective measures for migrants who have lost their employment. In that respect, Article 8 specifies:

“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 authorization 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.”

Rights of undocumented migrant workers

Regarding migrant workers in an irregular situation, Article 9 states:

“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 regularized, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.”

In other words, a migrant worker who has performed work, even if in an irregular situation, has the right to be paid the salary and is entitled for the work performed to social security and other benefits that would apply to a migrant in a regular situation.

Part II of Convention No. 143: Promoting equality of opportunity

Part II of Convention No. 143 only applies to regularly admitted migrants.

While Convention No. 97 intends to prohibit inequalities of treatment between migrant workers in a regular situation and national workers, Part II of Convention No. 143 provides for “equality of opportunity”. This means that it also aims to eliminate discrimination in practice by proposing specific measures to ensure equal access to opportunities, including, for instance, in recruitment, job mobility or education and vocational training.

According to Article 10 of Convention No. 143, this also applies to social security, trade union membership and cultural rights.

Article 14 suggests that migrant workers should be allowed to change employers, at least after a maximum of two years. This is an important means of avoiding abusive situations; the obligation to stay with an employer for longer periods may give the employer an unwarranted way of putting pressure on employees by threatening to stop or not renew their contract, in which case they will lose residential authorization and will be forced to leave the country or face deportation.

Family reunification

Article 13 requires States parties to the Conventions to facilitate the reunification of the family of the migrant workers legally residing on their territory. Article 9(4) of Convention No. 143 provides that “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”. Countries are usually extremely cautious regarding policies leading up to legalizing the situation of migrant workers in an irregular situation. During the discussion on the ILO tripartite multilateral framework on labour migration, it was clear that governments considered regularization as an issue of sovereignty that should not be addressed in proposed ILO policies. In any event, the provision of Convention No. 143 is a declaratory one that does not require specific measures to be taken by ratifying States. But its accompanying Recommendation No. 151 suggests that the decision on whether a migrant worker’s situation is to be regularized should be taken quickly and that once a worker’s position has been regularized, they should benefit from all rights provided for migrant workers lawfully admitted within the territory of the member State.

From the examination by the ILO Committee of Experts of governments’ reports on Recommendation No. 151, there does not appear to be any difficulty in its application on these points. The Committee noted that migrant workers are sometimes allowed to be employed illegally for a number of years in a country, with no decision being taken relating to their status. This leaves them in a situation of permanent uncertainty in which they are far more vulnerable to abusive conditions. To avoid such situations, the Committee emphasized the importance of rapid detection of migrant workers in an irregular situation and a decision as to whether to regularize them. Illegal employment of migrant workers partly results from a certain tolerance by States. The consequences of the slowness of existing proceedings and the incapacity of States to effectively detect whether migrants are illegally employed in their territory ought not to fall exclusively upon migrant workers in an irregular situation, the ILO Committee of Experts said. Although this is not explicitly covered in these instruments, the Committee considered that as a matter of equity in such cases, the State concerned should examine, on a case-by-case basis, the situation of each migrant worker in an irregular situation who has been living for a certain length of time in the country and consider the possibility of delivering a residence permit.

Migrant Workers Recommendation, 1975 (No. 151)

Recommendation No. 151 consists of three parts. Part I deals with practical measures to ensure respect for the principles of equality of opportunity and treatment. It reaffirms the rights of migrant workers, including those in an irregular situation, to join trade unions and exert their trade union rights. It calls on authorities to make sure that migrants who are in an irregular situation are rapidly informed as to whether their status can be regularized. In case of deportation, a migrant should not be asked to bear the associated expenses.

Safety and health

Part II of Recommendation No. 151 refers to social policy, in particular safety and health issues. This is particularly important because migrant workers are most probably among the 6,000 workers who die every day from work-related accidents or illnesses, including migrants in an irregular situation. Indeed, the most dangerous sectors in terms of working conditions (agriculture – 335,000 fatal accidents every year; construction – 55,000 fatal accidents a year; or mining) are also those in which the presence of migrant workers is greatest.

Paragraphs 21 and 22 of the Recommendation deal extensively with the preventive aspects of safety and health. For instance, Paragraph 21 states:

“(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.”

Minimum protection

Part III of the Recommendation calls for the adoption of a number of measures to ensure minimum protection in the event of loss of employment, expulsion or departure from the country of employment. Paragraphs 33 and 34 are self-explanatory and provide interesting guidelines for policies. For instance, Paragraph 33 states:

“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.”

Paragraph 34 states:

“(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 been 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, and

“(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.”

The two ILO Conventions and the accompanying Recommendations cover many issues involved in labour migration and provide equitable responses to many of the concerns expressed by trade union organizations. Although they require initiatives from governments, the poor ratification of these instruments has more to do with weak promotional efforts than with government reluctance to engage in developing sound migration policies.

However, certain provisions seem to present some difficulties for governments. In the case of Convention No. 97, the provisions mostly cited as challenging are Article 6 on equal treatment (particularly because it refers to social security) and Article 8 on the maintenance of residence

rights, in the event of incapacity to work. In the case of Convention No. 143, Articles 8 (protection in the event of loss of employment), 10 (equality of opportunity and treatment) and 14(a) (right of migrant workers to geographical and occupational mobility) seem to create the most difficulties for governments.

2.4 ILO fundamental labour standards and other international labour standards

There are some ILO Conventions that are regarded as fundamental to protecting basic human rights. The ILO Declaration on Fundamental Principles and Rights at Work was adopted at the International Labour Conference in 1998. The ILO Declaration requires that all States, by the act of their membership within the ILO, should abide by the rights and principles contained in the eight fundamental Conventions (Box 5).

The importance of these eight Conventions for trade unions and migrant workers is that violations of fundamental rights are more likely to occur to migrant workers.

Migrant workers frequently find themselves in forced labour conditions, with their travel documents (such as passport) taken from them and an obligation to pay the “debts” incurred in moving them to a destination country.

Typically, only adult workers migrate. If they do take their family, their children are often forced to work. Trafficking in persons often involves young workers) – any child who is hired or assisted into employment considered hazardous to their well-being is considered to have been trafficked, regardless of their consent.

The principles of freedom of association and the right to organize are recognized as applying to all workers, including migrants, regardless of their regular or irregular status. Unscrupulous employers frequently try to keep migrant workers from joining a trade union. It is the absence of unions that makes migrant workers easy to exploit.

Box 5 **ILO fundamental Conventions and their main points**

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

With 153 ratifications, it guarantees the removal of acts of discrimination against trade unions; the protection of employers' and workers' organizations against mutual interference; and calls for measures to promote collective bargaining. Article 2 is "vital: Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization."

Right to Organise and Collective Bargaining Convention, 1949 (No. 98): With 164 ratifications, it protects workers who are exercising their right to organize; upholds the principle of non-interference between workers' and employers' organizations; and promotes voluntary collective bargaining.

Forced Labour Convention, 1930 (No. 29): With 177 ratifications, it aims at the immediate suppression of all forms of forced or compulsory labour, with exceptions, such as military service, convict labour and during emergencies (such as war, fires and earthquakes).

Abolition of Forced Labour Convention, 1957 (No. 105): With 174 ratifications, it provides for the abolition of all forms of forced or compulsory labour as a means of political coercion or education as sanctions against the free expressions of political and ideological opinions, as workforce mobilization, as labour discipline, as a punishment for taking part in strikes and as a measure of discrimination.

Equal Remuneration Convention, 1951 (No. 100): With 171 ratifications, it underscores the principle of equal remuneration between men and women for work of equal value.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111): With 172 ratifications, it provides for a national policy designed to eliminate, in respect of employment and occupation, all direct and indirect discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin.

Minimum Age Convention, 1973 (No. 138): With 167 ratifications, it applies to all sectors of economic activity; States must declare a national minimum age for admission to employment; all children are covered whether they are employed for wages; States must pursue a national policy to ensure the effective abolition of child labour; the minimum age for entry into work shall not be less than that for the completion of compulsory schooling (although a younger age than 14 years may be adopted for light work, for countries that are less developed); an age minimum of 18 years is set for hazardous work.

Worst Forms of Child Labour Convention, 1999 (No. 182): With 179 ratifications, it is the most widely ratified ILO Convention. It requires member States to draw up a time-bound programme for the elimination of the worst forms of child labour. Although the Convention gives a list of the worst forms, member States, in consultation with social partners, are to draw up their own list of the worst forms relevant to their context.

Remember!

Unless stated otherwise, all ILO fundamental Conventions apply equally to all migrant workers, regardless of their status.

While many international labour standards are relevant to migrant workers, two are especially relevant.

Private Employment Agencies Convention, 1997 (No. 181)

ILO member States that ratify the Private Employment Agencies Convention, 1997 (No. 181) must ensure that private employment agencies do not charge workers for their services and that workers are allowed to join trade unions.

In particular, Article 11 states:

“A Member shall, in accordance with national law and practice, take the necessary measures to ensure adequate protection for the workers employed by private employment agencies as described in Article 1, Paragraph 1(b) above, in relation to:

- a. freedom of association;*
- b. collective bargaining;*
- c. minimum wages;*
- d. working time and other working conditions;*
- e. statutory social security benefits;*
- f. access to training;*
- g. occupational safety and health;*
- h. compensation in case of occupational accidents or diseases;*
- i. compensation in case of insolvency and protection of workers' claims; and*
- j. maternity protection and benefits, and parental protection and benefits.”*

Regulating employment agencies properly is extremely important to ensure migrant workers' welfare. Only 28 countries have ratified this Convention, but few of them are large origin countries.

Article 8 of the Convention is particularly concerned with preventing abuses of migrant workers.

“A Member 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 Members, to provide adequate protection for and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations which provide for penalties, including prohibition of those private employment agencies which engage in fraudulent practices and abuses.

“Where workers are recruited in one country for work in another, the Members concerned shall consider concluding bilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment.”

Domestic Workers Convention, 2011 (No. 189)

The Domestic Workers Convention and its accompanying Recommendation (No. 201) are a strong recognition of the economic and social value of domestic work and a call for action to address the exclusion of domestic workers from labour and social protection provided to other workers. The Convention lays down basic principles and measures regarding the promotion of decent work for domestic workers. The Convention can be a means to include migrants in labour protection schemes because it is based on fundamental rights and not citizenship. It

explicitly notes in its preamble that migrants are a significant part of the domestic labour force and also recognizes the need for labour rights protection for migrants.

The UN International Convention on the Protection of Rights of All Migrant Workers and Their Families (UN Convention)

This UN Convention, which the ILO participated in the drafting of, recognizes and builds upon the provisions contained in ILO Conventions and, in some ways, goes beyond them. It extends rights to migrant workers who enter or reside in a host country illegally (and members of their families) that were previously limited to individuals involved in regular migration for employment. It goes beyond the provisions elaborated in Part I of ILO Convention No. 143. Although the long-term objective of the UN Convention is to discourage and finally eliminate irregular migration, it also aims to protect the fundamental rights of migrants caught up in such migratory flows, taking account of their vulnerable position. One other significant aspect of the UN Convention is the “indivisibility” of the instrument – ratifying States are not permitted to exclude any category of migrant worker from its application, including those who are excluded from existing ILO instruments.

The Convention requires States parties to promote “sound, equitable, humane and lawful conditions” for the international migration of workers and members of their families. These requirements include:

- establishment of policies on migration;
- exchange of information with other States parties;
- provision of information to employers, workers and their organizations on policies, laws and regulations; and
- assistance to migrant workers and their families.

The UN Convention establishes rules for the recruitment of migrant workers and for their return to their country of origin. It also details the steps to be taken to combat illegal or clandestine migration.

Table 4. ILO Conventions and their ratification status

	Pakistan	Bahrain	Kuwait	Saudi Arabia	Oman	Qatar	UAE
Forced Labour Convention, 1930 (No. 29)	23 Dec 1957	11 Jun 1981	23 Sep 1968	15 Jun 1978	30 Oct 1998	12 Mar 1998	27 May 1982
Freedom of Association Convention, 1948 (No. 87)	14 Feb 1951	–	21 Sep 1961	–	–	–	–
Migration for Employment Convention, 1949 (No. 97)	–	–	–	–	–	–	–
Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	26 May 1952	–	9 Aug 2007	–	–	–	–
Equal Remuneration Convention, 1951 (No. 100)	11 Oct 2001	–	–	15 Jun 1978	–	–	24 Feb 1997
Abolition of Forced Labour Convention, 1957 (No. 105)	15 Feb 1960	14 Jul 1998	21 Sep 1961	15 Jun 1978	21 Jul 2005	2 Feb 2007	24 Feb 1997
Discrimination Convention, 1958 (No. 111)	24 Jan 1961	26 Sep 2000	1 Dec 1966	15 Jun 1978	–	18 Aug 1976	28 Jun 2001
Minimum Age Convention, 1973 (No. 138)	6 Jul 2006	7 Mar 2012	15 Nov 1999	15 Jun 1978	21 Jul 2005	3 Jan 2006	2 Oct 1998
Migrant Workers Convention, 1975 (No. 143)	–	–	–	–	–	–	–
Private Employment Agencies Convention, 1997 (No. 181)	10 Oct 1953	–	–	–	–	–	–
Worst Forms of Child Labour Convention, 1989 (No. 182)	11 Oct 2001	23 Mar 2001	15 Aug 2000	15 Jun 1978	11 Jun 2001	30 May 2000	28 Jun 2001
Domestic Workers Convention, 2011 (No. 189)	–	–	–	–	–	–	–
UN Convention, 1990	–	–	–	–	–	–	–

Source: See www.ilo.org/dyn/normlex/en/f?p=1000:11001:0::NO::

2.5 Pakistan's policies, laws and regulations governing migrant workers

Emigration Ordinance, 1979

Emigration from Pakistan for the purpose of overseas employment is controlled, regulated, facilitated and monitored under Emigration Ordinance, 1979 and its Rules, which are amended from time to time.

Two basic functions of the Emigration Ordinance and the Rules are to promote Pakistani migrant workers in a protected, legal and systematic manner and define the role of the Bureau of Emigration and Overseas Employment for controlling, regulating, facilitating and monitoring the emigration process (beyond looking after the interests of such emigrants).

The ordinance also provides for the appointment of various officers, including the Director General of the Bureau of Emigration and Overseas Employment, Protector of Emigrants and Community Welfare Attachés. It also provides for the establishment of an Overseas Employment Corporation as well as penalties for violation of the Ordinance. Severe punishments have been prescribed for various offences (Table 5).

Table 5. Crimes and penalties under the Emigration Ordinance

Offence	Punishment
Fraudulently inducing persons to emigrate	Imprisonment of up to 14 years, or fine, or both
Receiving money for providing foreign employment	Imprisonment of up to 14 years, or fine, or both
Unlawful emigration	Imprisonment of up to 5 years, or fine, or both, for first offence Imprisonment of up to 7 years, or fine, or both, for second offence.
False representation to a government authority	Imprisonment of up to 5 years, or fine, or both
Violation of terms of agreement by emigrant	Fine of up to PKR10,000
Other offences	Imprisonment of 1 year, with fine

If at any time the Government deems it in the public interest, it may discontinue the practice of granting licenses to overseas employment promoters and entrust the work to institutions established or controlled by the Government.

Before any person emigrates, they are required to appear along with their employment promoter (agent) – except in the case of the Overseas Employment Corporation – before the Protector of Emigrants and furnish information as required.

The Ordinance provides the procedure for appointing overseas employment promoters as well as for establishing the Overseas Employment Promoters' Association and a code of conduct to be observed by promoters.

The Ordinance also calls for setting up an Advisory Committee to counsel the Government on formulating policies on aspects of overseas employment promotion, eradicating malpractices and other related matters.

Table 6. Key points of the Emigration Ordinance, 1979

Section	Definition
1	Short title, extent of application and commencement
2	Definitions
3	Director General, Bureau of Emigration and Overseas Employment
4	Functions of the Director-General
5	Appointment of Protectors of Emigrants
6	General duties of Protector of Emigrants
7	Appointment of labour attachés
8	Regulation of emigration
9	Prohibition of advertisement
10	Advisory Committee
11	Power to search and detain vessels
12	Grant overseas employment promoters' licences
13	Powers to withdraw overseas employment promoters' licences
14	Delegation of power to Director-General to receive and dispose of applications
15	Appearance of engaged persons before and registration of names by the Protector of Emigrants
16	Power to make rules
17	Unlawful emigration
18	Fraudulently inducing someone to emigrate
19	False representation of government authority
20	Violation of terms of agreement with foreign employer by emigrant
21	Certain amount recoverable as arrears of land revenue
22	Receiving money or other payment for providing foreign employment
23	Penalty for other offences
24	Special courts
25	Indemnity
26	Validation
27	Saving

Emigration Rules, 1979 (updated up to 2012)

The Emigration Rules provide detailed information on the legal emigration process, the functioning of various officers and offices, regulation of overseas employment promoters, the smooth functioning of the recruitment process, complaint handling and the Workers' Welfare Fund establishment.

National Policy for Overseas Pakistanis

Caretaker Prime Minister Hazar Khan Khoso approved the first-ever national policy for overseas Pakistanis in May 2013, after the approval was granted by the Cabinet.

The national policy was made through a consultative process with all stakeholders, including ministries, the Board of Investment, the Federal Board of Revenue and the Overseas Employment Foundation. ILO provided substantial technical support to the Ministry of Overseas Pakistanis for the designing the National Emigration Policy, including conducting focus group discussions and a national consultative conference .

Because the policy was approved by a caretaker government, the current elected government considers it still a draft and has not yet adopted it. Analysis of the national policy at this stage is important and timely because it has been tabled for a final review and formal approval before the National Assembly and Senate.¹⁶ Issues raised in this review will help in generating debate among stakeholders, particularly policy-makers and members of both legislative houses to assess and discuss the challenges of producing a highly skilled labour force and protecting migrant workers and their families from any form of exploitation during the migration cycle.

Table 7. Components of the Emigration Policy

One – Background	Two – Challenges	Three – Strategies
The policy background consists of three chapters that provide information on Pakistan's economic scenario, with a focus on its population and labour force, followed by a detailed summary of different aspects of overseas emigration from Pakistan.	Current challenges and future prospects comprise the fourth and fifth chapters and provide a situation analysis of the current internal and external challenges impeding a safe emigration process. The section also explores briefly the prospects for increasing emigrants in existing and other future markets.	Future strategies explain in detail the implementing mechanisms proposed for promoting emigration, protecting emigrants, female emigration, remittance management and restructuring and development of regulations and welfare set-ups.

¹⁶ Fifteenth session of the National Assembly, 29 October 2014.

2.6 National institutional framework for labour migration

The Ministry of Overseas Pakistanis and Human Resource Development is the focal agency for foreign employment, while provincial labour departments manage issues of local employment. The Ministry was created in 2013 through a merger of the Ministry of Overseas Pakistanis and the Ministry of Human Resource Development, with the mandate to promote the export of Pakistani migrants abroad, elevate the living conditions of the working class and secure decent working conditions for them. The Ministry's activities encompass the management of labour relations, social security, socio-economic improvements among the working class and the export of Pakistani labourers abroad.

The Ministry is divided into six organizations, with three directly related to foreign employment:¹⁷ the Bureau of Emigration and Overseas Employment, the Overseas Employment Corporation and the Overseas Pakistanis Foundation.

- The **Bureau of Emigration and Overseas Employment** was established in October 1971 as a regulatory body that controls, regulates, facilitates and monitors the emigration process, which is applied by overseas employment promoters (agents). According to Bureau data, there are currently some 1,750 licensed promoters in Pakistan. The city of Rawalpindi has the largest number of promoters, followed by Lahore and Karachi. Another task of the Bureau is to collect and tabulate emigration data of all Pakistanis who go abroad for employment (its statistical records on regular migrant workers date to 1971). The Bureau also developed and supervises the Emigration Ordinance, 1979 and a set of Rules there under. This policy is implemented through different field offices of the Bureau within and outside the country. The mandate of the Bureau is implemented through seven regional offices, known as Protector of Emigrants and located in the cities of Peshawar, Rawalpindi, Karachi, Lahore, Quetta, Multan and Malakand.
- The **Overseas Employment Corporation (OEC)** is a public company owned by the Government and mandated to promote employment of Pakistanis in foreign countries under government-to-government arrangements. The OEC promotes employment of professional, highly skilled, skilled, semi-skilled and unskilled migrants in foreign countries. The OEC has so far provided more than 137,500 workers to foreign employers in the public and private sectors in 55 countries. The OEC also acts as a protector of emigrants to ensure their welfare and to promote harmonious working relationships between employers and employees. It assists employers in conducting skills qualification tests and interviewing job candidates.
- The **Overseas Pakistanis Foundation** was established under the Emigration Ordinance. It has three objectives: (1) to advance the social welfare of Pakistanis working or settled abroad and their families in Pakistan through various initiatives (including scholarships, stipends and grants to schools, community centres, mosques and libraries); (2) to manage the Workers' Welfare Fund (including fundraising); and act as the custodian of the security deposits required of overseas employment promoters; and (3) to establish and manage vocational training institutions, housing societies and colonies, educational and religious institutions, foundation offices and branches, commercial, industrial or service enterprises and health care centres.

¹⁷ The other three organizations are the Employees' Old-Age Benefits Institution, the Workers' Welfare Fund and the National Industrial Relations Commission Islamabad.

2.7 Making use of ILO standards: The role of trade unions

A range of possibilities is available to trade unions to ensure that the provisions of the ILO Conventions are reflected in their national laws and in practice.

Reports on ratified Conventions

First of all, governments are required to regularly submit reports to the ILO on the Conventions that they have ratified. For most Conventions, reports are due every five years (this is the case for Convention No. 97 and No. 143), but for the fundamental Conventions (see box 5), they are due every two years. The same applies to those described as “priority Conventions”,¹⁸ dealing with labour inspection, employment policies and tripartite consultation. These reports are submitted on the basis of a questionnaire prepared by the ILO Governing Body. In the countries that have ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), governments are obliged to consult employers’ and workers’ organizations in preparing their reports. But even in those countries that have not ratified Convention No. 144, the governments are required under article 23 (paragraph 2) of the ILO Constitution to submit a copy of their reports to representative trade union organizations, thus enabling them to make their own comments.

All trade union bodies should submit comments to the ILO so that it can gauge the situation as accurately as possible. In the absence of these comments, only those submitted by governments will describe the situation in a given country. These comments are studied by a committee of independent experts from a legal standpoint. The analysis of that committee is published in the report of the Committee of Experts on the Application of Conventions and Recommendations, which is circulated to all member States and to employers’ and workers’ organizations. Each year, the tripartite Conference Committee on the Application of Standards, which meets during the International Labour Conference and reports to the delegates, studies the cases singled out by the independent experts and, at the proposal of the workers’ and employers’ organizations, may call on governments to give an account of the situation in their country. Not a single year goes by without the Committee of Experts deploring the paucity of comments received from trade union organizations in its general remarks. Yet, it is a crucial stage in the hierarchy of mechanisms made available to trade union organizations because it often serves to prevent more extensive violations.

Reports on non-ratified Conventions

As pertains to non-ratified Conventions, the ILO Governing Body decides each year on a subject (among the Conventions and Recommendation, as appropriate) for detailed reporting by member States, even if they are not party to the Convention in question. Here again, trade union organizations can contribute significantly by sending their own comments and thereby enabling the Committee of Experts to prepare the most objective possible general survey, which will be discussed during the annual meeting of the Conference Committee on the Application of Standards. The outcome of these discussions will make it possible to assess the effectiveness and current value of the instruments, provide governments with an opportunity to review their policy if necessary or even to ratify new Conventions and to consider the formulation of new standards

¹⁸ There are four Conventions considered as priority Conventions: the Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Available at: www.ilo.org/ilolex/index.htm.

if need be. For example, a general survey on migrant workers was conducted in 1999 and is still serving to this day as the baseline for all matters related to the ILO instruments on migrant workers (for more information, go to www.ilo.org/ilolex/english/surveyq.htm).

Representations

In the event of more serious infringements, trade union organizations may resort to the representations envisaged in article 24 of the ILO Constitution. Representation is a special procedure and is subject to strict criteria¹⁹ When the receiving criteria are met, the representation is transmitted to a tripartite committee appointed by the ILO Governing Body for examination. The committee reports back to the Governing Body and formulates conclusions and recommendations. The government in question is invited to send a representative to take part in the deliberations on its case. The Governing Body decides on the appropriateness of publishing the representation and any answer from the government and communicates its decision to the organizations and the government concerned.

Complaints

In case of serious breaches of ratified Conventions, a complaint may be filed pursuant to article 26 of the ILO Constitution. This procedure may be initiated by a government against another government under certain conditions, but such cases are extremely rare. It may also be started by the Governing Body, whether ex officio or, as in most instances, in response to a complaint filed by a party delegated to the International Labour Conference. In such a case, the Governing Body appoints a Commission of Inquiry to examine the matter raised and make a report accordingly. That report is communicated to the government concerned, which must state whether it accepts the conclusions. Should it not accept them, it must signal whether it wants to submit them to the International Court of Justice, which is the only competent body to rule on legal disputes. The decision of the International Court is final. This complaints procedure is applicable only in cases of grave violations of ratified Conventions. It has been used in recent years against Belarus with respect to freedom of association and against Myanmar in connection with forced labour.

Complaints to the Committee on Freedom of Association

All these special procedures may be used only when a Convention has been ratified. However, there is an exception. It is the case of complaints made to the Committee on Freedom of Association. This Committee examines complaints of violations of freedom of association regardless of whether the government in question has ratified Convention No. 87 on freedom of association and protection of the right to organize. In fact, the principles set out in Conventions No. 87 as well as No. 98 are also enshrined in the ILO Constitution, and thus all member States must observe them. The complaints are examined by a tripartite committee that meets three times a year and reports to the ILO Governing Body. These reports are made public.

Follow up to the Declaration

With the exception of complaints filed with the Committee on Freedom of Association, the procedures made available to trade union bodies are applicable only in connection with ratified Conventions. In the case of non-ratified Conventions, the annual follow-up of the Declaration

¹⁹ To be receivable, a representation must be communicated to the ILO in writing; emanate from an industrial association of employers or workers; refer expressly to article 24 of the ILO Constitution; pertain to an ILO member; be related to a Convention ratified by the member in question and indicate the respect in which the member has failed to secure the effective observance of the said Convention within its jurisdiction.

constitutes another possibility for pressure and intervention by trade unions. Governments are required to indicate each year, on the forms prepared by the ILO Governing Body, the de jure and de facto situations regarding the principles contained in the fundamental Conventions that they have not ratified. In the absence of comments from trade union organizations, the ILO Governing Body will have only a partial view of the facts.

Although the effectiveness of the ILO is sometimes questioned, trade unions must also be held more accountable. They have contributed towards equipping the ILO with a package of unique instruments at the multilateral level. It is therefore incumbent on them to ensure the optimal use of all this potential. Trade unions must be mindful of the reason for their existence: the defence of workers' rights. This defence necessarily entails a greater degree of involvement on their part and a stronger commitment to secure observance of the ILO Conventions and to denounce breaches of them.

Box 6 provides a checklist for trade unions that are using any of the ILO procedures for reports and complaints.

Box 6 **Checklist for using ILO procedures**

Note: The term “submission” is used in the checklist to refer to both a representation and a complaint.

- Has your country ratified the Convention concerned? You cannot make a representation if the government has not ratified the Convention. (This does not apply in cases concerning freedom of association, however.)
- Is your submission about something that comes clearly within the scope of the Convention?
- Can you obtain help to draft your submission in legal terms?
- Do you have exact and precise details of the violations? You need names, dates and places.
- What steps have you taken in trying to resolve the issues at the national level? (It is not necessary to have used national procedures before making a submission first).
- Do you know what submissions have been made by other organizations in your country, or by global union federations on the same issue and what was the outcome?
- Can you make a joint submission with another organization in your country or with an international organization, such as a global union federation or the International Trade Union Confederation?
- Are you willing to cooperate with migrant workers' associations or non-government organizations?

Campaigning for ratification

An important area for trade union action in the defence of migrant workers' rights is to campaign for ratification of the Conventions that provide protection to them: the two ILO Conventions (No. 97 and No. 143) and the UN Convention.

Box 7 Checklist on ratification

To promote ratification of specific Conventions in your country, there are ten strategic steps to follow.

- Contact the relevant ministry (it is usually the Ministry of Labour) and ask for a discussion on the Conventions and reasons for non-ratification.
- Contact “friendly” members of Parliament and discuss the matter with them.
- Talk to other national centres (if any) and see if there is any scope for cooperation on this issue.
- Talk to employers’ organization leaders and see if their organization has a view on ratification of the Conventions. Even if the answer is negative, then at least you are prepared.
- Have the Conventions and Recommendations been laid before the “competent authority”? (This is almost always Parliament.) If not, campaign for them to be tabled.
- Obtain a copy of any reports sent to the ILO on the Conventions.
- Has the Ministry of Labour called any tripartite meetings to discuss ratification? If not, make that demand.
- If the texts have been laid before Parliament and no decision to ratify was taken, then seek to get the issue reopened. Call for an ILO tripartite workshop as a first action.
- Launch a public campaign, using the news media.
- Your area ILO office and ACTRAV Specialist in Workers’ Activities can help you.

Checklist of migrant workers’ rights under ILO standards

In summary and based on the provisions of ILO Conventions, migrants who go abroad for employment are entitled to certain conditions.

1. Pre-departure and during the journey

Access to information: Migrants have the right to information concerning the general conditions of work and life in the intended country of work and on any other issues of potential interest to them in their capacity as migrants.

The information provided should be in their language or dialect or at least in a language they can understand. The information provided should be free.

Recruitment: Recruitment should only be carried out by:

- public authorities;
- prospective employers; and
- authorized private agencies.

Employers and private agencies involved in recruitment should be subject to prior authorization by the relevant government body and their activities carried out under official supervision, so as to protect against:

- excessive fees
- the use of misleading propaganda
- attempts to evade immigration controls.

Where governments maintain a system of supervising contracts of employment, migrants have the right to receive, before departure, a written contract of employment covering conditions of work and terms of employment, particularly the rate of remuneration.

Facilitated departure: Migrants have the right to assistance in dealing with documentation and other administrative formalities relating to the immigration process. That assistance should be provided for free. Workers and members of their families authorized to accompany them have the right to a medical examination before departure and to adequate medical attention during the journey. Note that pregnancy testing or testing for HIV status are considered a violation of human rights.

2. On arrival and after entry

Customs exemption: Migrant workers may take into their country of work, free of customs duty, their personal effects – including those of members of their families authorized to accompany or join them – as well as the tools of their trade.

Settling in: Migrants are entitled to the services of the appropriate public authority in finding suitable employment, without payment of fees or other administrative costs. Migrants are entitled to other assistance necessary to settling into their new environment, including interpretation services and assistance with housing-related administrative formalities. Discrimination in access to accommodation should be prohibited.

Equality in terms and conditions of employment, vocational training and related matters: Migrant workers are to be accorded equality of opportunity and treatment in respect of:

- access to vocational guidance and placement services;
- access to vocational training and employment of their own choice, on the basis of individual suitability for such training and employment;
- merit-based advancement;
- job security;
- the provision of alternate employment, relief work and retraining;
- rates of pay and all other forms of remuneration;
- conditions of work, including hours of work, rest periods and annual holidays;
- occupational safety and health measures;
- social security, particularly regarding employment injury, maternity, sickness, disability, retirement, death, family responsibilities and unemployment; and
- freedom of association and collective bargaining rights.

Access to courts: Migrants should be given the same right of legal recourse as nationals, including the right to legal assistance, in respect of:

- employment-related disputes; and
- the exercise of trade union rights.

Social security matters: Social policies should enable migrant workers and their families to share in advantages enjoyed by the country's nationals. Elements of such a policy may include:

- measures to facilitate the reunification of families; and
- social services, including translation and interpretation services.

Migrant workers have the right to transfer part of their earnings and savings, taking into account the limits allowed by national laws and regulations concerning the export and import of currency.

3. Residence and repatriation

Employment and status in country: Migrant workers who reside legally in a country and who lose their employment must not then be regarded as in an irregular situation and should be allowed an extension of the authorization of residence to enable them to seek alternative employment.

In case of disputes concerning a migrant worker's status, they have the right to present their case before the competent body, either personally or through a representative.

In cases in which decisions are successfully challenged, migrants should be entitled to reinstatement, time to find alternate employment and compensation for loss of wages. Migrant workers who are in an irregular situation and are in a dispute about wages owed, should be allowed to remain until the case is resolved.

A migrant worker in an irregular situation and whose position cannot be regularized must enjoy equality of treatment with respect to rights arising out of past employment regarding remuneration, social security and other benefits.

Departure from the destination country: In cases in which migrant workers cannot be regularized or are subject to an expulsion order, the costs of returning to their country should not be borne by them.

Return to home country: The personal possessions and tools of the trade of the migrant worker and their family should be exempt from customs duty upon returning to the home country. Assuming they have retained the nationality of their country of origin, workers returning to their countries should be eligible for unemployment benefits without any condition as to previous residence or employment.

Learning exercise – Section 2

Activity:	Migrant workers' rights according to Emigration Ordinance, 1979
Objective:	To compare the protection for migrant workers provided by the Emigration Ordinance with that of the applicable international legal framework.
Time:	For this exercise, you will need about 30 minutes, plus time for reporting and discussing.
Tasks:	<ol style="list-style-type: none"> 1. Refer back to the presentations and handouts related to the international legal framework safeguarding the rights of migrant workers. 2. Review your copy of the Emigration Ordinance. 3. Draw up a table comparing migrant workers' rights in the international legal frameworks with those in the Emigration Ordinance. Focus on identifying areas that need improvement in national legislation, including the areas that are absent.

Provision in international legal framework (specify Convention and Article)	Provision in the Emigration Ordinance	Describe what needs to be done (what needs to be changed, added or deleted)

3. The roles of trade unions

Section 3 at a glance

This section details why trade unions have a say in labour migration policies and discusses the unique role they have to ensure that migration benefits all parties. It suggests ways that trade unions can work for the rights of migrant workers. Pakistan's trade unions have been engaged with migration issues for a long time, and this experience has shaped a more defined agenda for what unions can do further.

The section suggests four pillars that trade unions can centre their action upon: (1) promoting a rights-based migration policy; (2) creating alliances with trade unions in other countries; (3) educating and informing union members; and (4) reaching out to migrant workers. The section concludes with an important group exercise – the development of a plan of action for their organization.

3.1 Why is labour migration a trade union issue?

There are several reasons why trade unions should engage in issues related to migration.

Migrant workers are workers: Migrant workers, regardless of their status, are first of all workers. As such, they have rights, including freedom of association— the right to form or join a trade union. It is also important to remember that, unless specified otherwise, all standards adopted by the ILO apply to migrant workers. Too often, labour migration is linked to exploitation, the extreme cases of which can be trafficking and child labour.

Trade unions are in the business of protecting all workers, not just their members. This is why trade unions fight for equality, for decent work for all, for social protection and against child labour or forced labour, although not all these workers will be union members. This is because trade unions care for society as a whole. Of course, the larger their membership the greater is their capacity to influence.

Because migrant workers are among the most vulnerable groups of workers, they are in need of particular attention in organizing efforts and at the negotiating table. For trade unions, migrant labour concerns rights, equality, equal treatment and equal opportunity; it concerns health and safety at work, jobs, vocational training, social security and union organization.

Decent work deficit: The principal reason why workers decide to move from one country to another is the search for decent work due to the lack of decent opportunities at home. Too many workers have been left behind by globalization. While globalization has produced many benefits, these have not been evenly or fairly distributed. Inequalities between countries and within countries are growing. Inequalities and injustice are union concerns. And the historic role of trade unions in fighting poverty everywhere is an important contribution to reducing migration pressures and ensuring that when migration occurs, it is out of choice and not for mere survival.

Labour shortages in most industrialized countries, together with unemployment and population growth in developing countries, will continue to drive labour migration and it will remain a major source of growth in the global economy.

Promoting decent work and avoiding a situation in which governments and employers resort to migration as a source of cheap labour or as a means of regulating labour markets without granting migrant workers' rights or in an attempt to undermine existing rights for all workers will continue to require special attention by the trade union movement.

A source of strength and survival for the trade union movement: Beyond the moral obligation of rights and solidarity, one good reason for recruiting and organizing migrant workers is to provide “new blood” for the trade union movement. Unions can revitalize their membership by organizing migrants. Labour market restructuring in the developed economies has meant that trade union membership and density have shrunk in many once highly unionized sectors. The average age of union members has risen.

Recruiting members and organizing in sectors traditionally outside the union movement – including those in which many migrant workers can be found – has become critical to the survival and growth of the trade union movement. Indeed, many trade unions are now targeting migrant workers, which increasingly include undocumented migrant workers, in their recruitment drives. This is why it is important for trade unions to be seen as leaders in promoting the rights-based approach to labour migration. Support for restrictive migration policies and repression of workers who are in an irregular situation will only make potential members of the trade union movement reluctant to join.

What is the solution?

The answer is to ensure that labour laws and collective agreements are applied to migrant workers, that labour inspectors ensure that they are not exploited and that migrant workers are organized into the trade union movement. If they are paid the same wages and enjoy the same benefits as national workers, then they cannot be used to undermine national workers.

Particular attention should be paid to undocumented workers. When workers become irregular, employers have a strong weapon to use against any effort to organize unions or fight for better conditions. When migrant workers are vulnerable, their second class status is not only used against them but against other workers as well.

Having a voice in policy-making

Governments are sovereign and can decide whom they admit to their territory, providing they meet their international obligations and respect human rights. But because migration policies are a labour market issue, trade unions have every right to be involved, and their views should be listened to when labour migration policies are considered. Unions (and employers) are uniquely placed to assess the real labour market needs.

Labour migration is not a law and order issue, nor one of border control. Migrant workers are workers. Trade unions are interested in the conditions of workers and the world of work.

Government policies on labour migration are often based on short-term considerations and electoral prospects. By promoting a rights-based approach (including the ratification of international instruments to protect migrant workers), trade unions are promoting a more stable and predictable migration process, which can maximize the benefits for all parties.

Gender discrimination

A significant change in patterns of migration is the increasing percentage of women migrants. Initially, women migrated (sometimes with their children) on the basis of “family reunion”. But they typically moved as housewives. Increasingly, women are migrating for work on their own. They are frequently found in low-paid jobs, such as domestic work, cleaning services, hospitality, caregiving and in the health care and hospitality sectors. This work is largely undervalued.

In this increasing “feminization of migration”, families are separated (when a family reunification option is not allowed) and children suffer the most. These are high social costs that are not considered in measuring the benefits of migration. The trade union movement is committed to the fight against gender discrimination at all levels, and this must include the double discrimination that women migrant workers suffer.

Conclusion

Migration for work, or labour migration, is an issue for trade unions because it is part of the world of work. Labour migration concerns rights, equality, equal treatment and equal opportunity; it concerns health and safety at work, jobs, social security and union organization. It is linked to trafficking, child labour and exploitation. Labour migration concerns discrimination and vocational training.

All of these are trade union issues. Labour migration is a part of the world of work, a “bread-and-butter” issue that cannot be ignored. Governments are already putting forward policies and introducing legislation on migrant workers.

Box 8

Global and regional trade union action on migration

At the global level, the **International Trade Union Confederation** (ITUC) and regional trade union organizations, as well as global union federations at the sector level, have increasingly placed concern for migrant workers high on their list of priorities and are campaigning for a rights-based approach. In 2011, ITUC adopted a policy on labour migration entitled Migration: A Decent Work Issue.²⁰

To promote the interest of migrant workers from South Asia and to improve better cooperation among trade unions in countries of origin and destination and, based on the International Labour Standards and the ITUC 2011 policy on migration, the **South Asian Regional Trade Union Council** (SARTUC) developed a **Kathmandu Plan of Action** (see Annex III). The Plan was developed through a series of meetings in 2013, bringing together trade union representatives from Bahrain, Jordan, Lebanon, Bangladesh, India, Nepal, Pakistan, Sri Lanka and the national human rights committee in Qatar, to discuss, identify and address causes hindering progress in the present status of migrant workers within the South Asia–GCC migration corridor. The Kathmandu Plan of Action promotes a balanced strategy that takes into consideration concerns and priorities of both national and migrant workers regarding the effective protection of their fundamental rights as workers.

²⁰ Available at www.ituc-csi.org/migration-a-decent-work-issue.

3.2 The task for trade unions

There are four areas in which trade unions can work:

- **Trade unions must become involved in the policy debate about managing migration** so that the benefits are maximized for workers and the costs are minimized. The trade union position is that migration and migrant workers are not “problems” to be dealt with, rather migrant workers are people trying to improve their lives and must be treated accordingly.
- **Information and awareness-raising campaigns for workers and the public at the country level.** Racism and ethnicity are often used to divide workers. Unions must reach out and inform members and workers about the facts and fight the myths and lies spread by racist organizations.
- **Cooperation with trade unions in other countries.** This must involve unions in countries of origin and countries of destination for migrant workers. International solidarity is not an option or even a duty for trade unions. In a globalized world, it is a necessity.
- **Organizing migrant workers.** Trade unions know that the best way to protect workers is for them to be organized. Organizing is the key to improvement. There are many examples of trade unions working to support and organize migrant workers (see Annex IV).

These four areas can be referred to as the four pillars of trade union action. Annex IV provides a detailed discussion on what each of pillar can include and gives a range of examples of trade union action.

Learning exercise – Section 3

Activity:	Develop an action plan on migration
Objective:	To develop an action plan for trade union action on migration.
Time:	For this exercise, you will need about 2 hours, plus 10 minutes per group to report back and answer questions.
Process:	Divide participants into four groups.
Tasks:	<p>1 As discussed in the manual, there are four pillars for trade union action:</p> <ul style="list-style-type: none"> (1) promoting a rights-based migration policy (2) creating alliances with trade unions in other countries (3) educating and informing union members (4) reaching out to migrant workers <p>Each group focuses on one pillar only.</p> <p>2 Draw up an action plan, using the following format.</p> <p>3 When filling in the table, refer back to all sections of the training so far and refer to the in-depth descriptions of the four pillars in Annex IV.</p>

Trade union action plan on migration	
Pillar: (specify)	
What are we going to do?	
What are the first steps?	
What is the timetable?	
Who is going to do it?	
What resources and help will they need?	

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Useful links for learning

- www.ilo.org/migration
- www.iom.int
- www.ituc-csi.org/migration
- www.mfasia.org
- www.sartuc.org
- www.gefont.org

Annex I

Number of Pakistani migrant workers leave the country through official channels, by job category, 2008–2013

S #.	CATEGORIES	2008	2009	2010	2011	2012	2013
1	Labourer	187 844	168 519	144 111	190 854	242 202	222 422
2	Driver	27 417	33 501	34 905	48 188	86 568	72 610
3	Mason	36 254	38 085	30 612	35 328	54 493	44 170
4	Technician	16 928	17 483	19 718	18 100	28 066	32 070
5	Carpenter	26 673	22 555	18 544	24 568	33 822	30 849
6	Electrician	15 455	15 731	14 515	17 326	24 166	26 767
7	Steel fixer	17 904	16 781	14 403	17 226	24 978	24 000
8	Plumber	8 703	8 301	7 677	9 023	14 109	17 279
9	Agriculturist	17 584	11 420	9 155	11 128	17 114	17 102
10	Mechanic	9 645	9 978	11 874	13 139	12 099	14 829
11	Painter	6 471	7 747	6 505	7 623	13 252	13 999
12	Welder	6 069	5 352	5 120	6 361	9 891	13 135
13	Operator	9 533	8 113	8 273	9 813	12 883	12 829
14	Salesman	226	138	133	207	426	12 824
15	Fitter	7 644	6 371	4 441	5 736	8 134	11 358
16	Clerk/typist	3 047	2 086	2 661	3 716	4 261	6 376
17	Cook	3 330	4 245	4 034	3 886	5 340	6 130
18	Foreman/supervisor	3 755	2 773	1 962	4 277	5 535	6 077
19	Tailor	4 527	5 264	4 050	4 567	5 919	5 342
20	Engineer	3 295	2 352	2 408	2 951	3 577	4 764
21	Waiter	879	1 727	1 147	2 146	4 335	4 612
22	Manager	3 164	2 145	1 936	2 272	2 797	3 849
23	Accountant	2 325	1 248	1 381	1 802	2 593	3 473
24	Denter	1 047	2 192	1 633	2 200	2 750	2 856
25	Computer programmer or analyst	940	624	598	720	1 743	2 502
26	Surveyor	897	686	553	811	1 972	2 063
27	Storekeeper	792	454	504	1 056	1 965	1 740
28	Doctor	516	589	819	1 453	1 218	1 131
29	Artist	–	–	–	–	–	1 025
30	Teacher	413	458	537	615	956	868
31	Rigger	5 655	4 401	6 647	7 461	7 496	770
32	Designer	70	214	68	55	204	709
33	Secretary or stenographer	77	86	93	109	214	405
34	Draftsman	156	260	430	548	486	389
35	Nurse	119	219	78	131	449	315
36	Cable joiner	179	705	1 072	292	382	288
37	Blacksmith	10	45	16	62	44	254
38	Goldsmith	76	90	40	94	429	230
39	Pharmacist	556	468	129	890	1 469	187
40	Photographer	118	104	63	111	83	116
Total		430 293	403 510	362 845	456 845	638 420	622 714

Annex II

Number of Pakistani migrant workers leaving the country through official channels, by protectorate wise, 2008–2013²¹

Year	Karachi	Lahore	Multan	Rawalpindi	Peshawar	Malakand	Quetta	Total
2008	53 317	99 225	36 410	114 907	79 294	43 237	3 924	430 314
2009	56 471	92 241	37 943	102 550	62 914	48 359	3 050	403 528
2010	56 210	84 158	37 440	93 224	48 825	40 243	2 804	362 904
2011	71 566	109 031	45 451	117 176	56 840	54 330	2 499	456 893
2012	99 023	161 955	62 656	163 220	74 117	74 546	3 070	638 587
2013	98 593	155 911	64 394	170 280	83 623	45 611	4 302	622 714
Total	435 180	702 521	284 294	761 357	405 613	306 326	19 649	2 914 940

²¹ Data obtained from Bureau of Emigration and Overseas Employment, Pakistan.

Annex III

The South Asian Regional Trade Union Council Kathmandu Plan of Action

Structured regional and inter	Task of TU in origin country	Task of TU in destination country	Role of support organizations
Migrant workers join/establish workers' organizations	Revise constitution and reform TU structures to include migrant workers.	Revise constitution and reform TU structures to include migrant workers.	ITUC and ILO to provide technical support to revise structures and bylaws
	Establish pressure groups and alliances with militant right based civil society organizations, and initiate campaigns for the ratification and implementation of C87 and C98	Establish pressure groups and alliances with militant right based civil society organizations, and initiate campaigns for the ratification and implementation of C87 and C98	ITUC to support actions in this regard. The ILO to support promotional activities.
	Establish a special migration unit within TUs with clear functions, policies and roles with decision making powers, based on the principles of gender equality	Establish a special migration unit within TUs with clear functions, policies and roles with decision making powers, based on the principles of gender equality	ITUC and its regional and sub-regional organizations (SARTUC and ITUC-Arab) to establish focal points and mechanisms on migration. ILO and ITUC to support establishing these units
	Trade union training for migrant workers at pre- departure (including sharing of information) and recruit union focal points. Ensure TU representation in Government pre-departure orientation programs	Establishing contacts with focal points and organize TU training programs for migrant workers.	ILO and ITUC to Organize specific trainings programs for migrant workers on the national and regional levels
	Development of orientation guides for migrant workers	Development of orientation guides for migrant workers. Establishing contact points for migrant workers as of the arrival.	ILO and ITUC to provide technical and financial support in this regard.
	Identify out-migration areas and organize workers and coordinate with militant right based civil society organizations in order to outreach potential migrant workers. Combat fraudulent practices by illegal recruiters and intermediaries. Monitoring the work of recruitment agencies to ensure conformity with C181.	Identify migrant communities and organize and coordinate with militant right based civil society organizations in order to outreach migrant workers. Combat fraudulent practices by illegal recruiters and intermediaries. Monitoring the work of recruitment agencies to ensure conformity with C181.	ILO and ITUC to follow-up on the implementation of C181 and provide technical assistance on the development of adequate recruitment procedures

	Exchange experiences and good practices among TU organizers and including migrant workers in training programs		To include a component for migrant workers in all projects through ITUC and ACTRAV. To make better use of committed Arab and Asian expertise on migration as well as providing space for TU exchange.
Equal treatment and better working conditions	TU to promote relevant conventions, including C189, C97 and C143, and use ILO supervisory mechanisms regarding violations of migrant workers' rights. Moreover, to push for the respect of the international Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	TU to promote relevant conventions, including C189, C97 and C143, and use ILO supervisory mechanisms regarding violations of migrant workers' rights. Moreover, to push for the respect of the international Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	ITUC to support in using ILO supervisory mechanisms and ILO to provide technical assistance.
	TUs to initiate and take part in global and regional TU solidarity campaigns.	To ensure migrant workers issues are considered on equal footing with those of national workers, including collective bargaining, tripartite structures and campaigns.	ITUC to support national endeavours and initiate global campaigns in support of migrant workers' rights and FoA and CB. ILO to develop timely responses to TU demands.
	Providing legal support/advice for pre-departing and returning migrants with accessible services, including facilitation of reintegration of returning migrants.	Providing legal support/advice with accessible services for migrant workers.	ILO and ITUC to support in developing these services and establish legal inter-regional network.
	Development of a national TU migration policy and pressure governments to participate in developing a national migration policy.	Development of a national TU migration policy and pressure governments to participate in developing a national migration policy.	ILO and ITUC to provide technical support for the articulation of a migration policy
	Structured regional and inter-regional mechanisms between TUs of countries of origin and destination through SARTUC and ITUC-Arab to achieve, review and follow-up on progress on this action plan.		

Annex IV

Four pillars of a trade union strategy

Pillar 1 – Promoting a rights-based migration policy

In many countries, the legal and policy frameworks for labour migration has not kept up with rapid developments. Labour migration is not properly regulated, either by origin or destination countries.

The ILO Multilateral Framework on Labour Migration: A “rights-based” approach

All the elements of a modern, fair policy framework do exist, however. The ILO’s Multilateral Framework on Labour Migration is based on good practice and international standards.

While these are described as “Non-binding principles and guidelines for a rights-based approach to labour migration”, they have been developed by a committee of experts, drawn from governments, employers and trade unions, and approved for publication by the ILO Governing Body. They therefore provide an authoritative architecture for a labour migration policy. In addition, where ILO Conventions have been ratified, they constitute obligations that States must respect and implement.

A fair deal for all migrant workers requires a rights-based approach, in accordance with existing international labour standards and ILO principles, which recognize labour market needs and – at the same time – the sovereign right of all nations to determine their own migration policies, including defining entry into their territory and under which conditions migrants may remain.

As part of the broader commitment to promoting decent work, the ILO and its constituents agree on the desirability of maximizing the benefits to all that can flow from:

- i. promoting policies that give priority to economic growth and employment;
- ii. encouraging regulated labour migration; and
- iii. promoting a wider application of international labour standards and in particular, the ratification and implementation of Conventions No. 97 and No. 143.

This goal requires a commitment to adopt national policies aimed at the equal treatment of migrant workers with nationals in respect of national labour laws, access to applicable social protections, combating the exploitation often associated with migrants in irregular situations and the promotion of basic human rights for all migrants. It is clear that closer cooperation among member States and the tripartite constituents can contribute towards more effective labour migration processes and protection systems.

An advocacy agenda for unions

Trade unions can lobby for

- a transparent labour migration admissions system that is designed to respond to legitimate needs and which takes into account domestic labour concerns;
- a standards-based approach to the regulation of migration, the protection of the basic rights of all migrants and combating exploitation and trafficking;
- ratification of the two ILO Conventions that specifically address migrant workers (No. 97 and No. 143) and the UN Convention;
- urging governments that have ratified the Conventions to implement them fully;
- tripartite procedures to ensure that trade unions are consulted on labour migration issues and their views taken into account;
- establishing and strengthening national procedures of social dialogue to ensure consultation on all aspects of labour migration;
- ensuring that all policy is guided by international labour standards and other relevant international instruments and the multilateral agreements concerning migrant workers;

- ensuring that labour migration policies are gender-sensitive, address the problems and particular abuses that women often face in the migration process, and recognize gender equality as integral to the process of policy-making, planning and programme delivery at all levels; and
- ensuring that trade unions take a consultative role in all issues relating to assisting and supporting migrant workers.

Social dialogue

Because labour migration is a labour market issue, it is sensible that those organizations with experience of the labour market should discuss and try to agree on policy. This means social dialogue – and not leaving labour migration policy to be determined by a bidding war of which political party will do the most to “keep out migrants”. The apex bodies of trade unions at the national and international levels should, in their role as social partners, continuously engage with, and seek to influence, national and global policy relating to migrant workers. Where possible, trade unions should be represented on specialized enforcement bodies, such as equality commissions and human rights commissions which often have an advisory role as well as monitoring and investigating powers.

Trade unions have the social authority and political legitimacy to take a leading role in national and international efforts to address labour migration in a framework of decent work and human rights. Indeed it is critical that they do so.

Tripartite supervision of bodies that regulate migration is a way of institutionalizing social dialogue. The Philippine Overseas Employment Administration (POEA) has a tripartite governing board consisting of the Secretary of Labour and Employment, representatives of other government departments, a workers’ representative from the Trade Union Congress of the Philippines, and an employers’ representative from the Association of Private Recruitment Agencies. This is also the case in many other countries.

Universal principles

Unless otherwise specified, all ILO Conventions and Recommendations apply to all workers, including all migrant workers; they apply whether they are temporary or long-term migrant workers and to those in a regular or irregular situation, even if certain provisions may not always be applicable to undocumented migrant workers. The ILO’s fundamental principles and rights at work are universal and applicable to all workers in all States, regardless of whether they have been ratified or not. These universal principles have been agreed by governments and employers at the International Labour Conference, and trade unions need to remind them of what they have agreed and the obligations they have freely undertaken.

Pillar 2 – Creating alliances with trade unions in other countries

There is a fundamental difference between the approach of trade unions and other organizations, such as charities and rights groups to migrant workers. Trade union approaches are based on solidarity and collective bargaining. Although solving the individual problems of migrant workers is important, in the long term it must be linked to a collective approach. When we talk about migrant workers, the main concern of trade unions is primarily with their rights as workers.

There are many examples of the ways in which trade unions from origin and destination countries work with each other to support and organize migrant workers. Trade unions are uniquely placed to do this, and as a result, bilateral and multilateral agreements between trade unions from origin and destination countries are on the increase.

Bilateral agreements

The General Federation of Nepalese Trade Unions (GEFONT) has a long history of safeguarding – through various arrangements – the interests of Nepalese migrant workers in foreign countries. Significant achievements have, for example, been made in the Republic of Korea, Hong Kong (China) and Malaysia, where GEFONT has signed MOUs with national trade union federations that have agreed to provide various services to Nepali migrant workers. In the Middle East, two such MOUs have been

signed: the MOU with the Kuwait Trade Union Federation, signed in 2012, and the MOU with the Bahrain Union Federations. The lack of MOUs with the GCC countries is of course due to the absence of freedom of association in most GCC countries. However, in countries where trade unions are not allowed – such as in Qatar and the United Arab Emirates – GEFONT can, and has to some extent already, formed networks with alternative structures, such as the Nepal Embassies and the Non-Resident Nepali Association country chapters with the aim of increasing migrant workers’ access to legal and other support services as needed.

Pillar 3 – Educating and informing union members

Trade unions and their members in destination countries

Trade unions need to ensure that they have the support of their own members when it comes to migrant worker policy and activity. National populations can find migrant workers threatening, and xenophobia is a serious problem in many countries. Trade unions are well placed to work with their members to ensure that such tensions and attitudes do not emerge or take root. The key lies in education, training and development.

Trade unions and their members in origin countries

Trade unions in origin countries have a slightly different task. They typically have few resources, so they need to use members as a way of getting their message across to non-unionized workers. In particular, unions should try to disseminate information to those workers who are considering migrating for work – whether they are union members or not.

Private agencies and individuals offering to arrange entry to another country and the promise of work, for a large fee, have a tendency to exaggerate the benefits and minimize the drawbacks. Even when workers have had a bad experience in migrating abroad for work, they may not be willing to speak too openly about this when they return. A family may have sold their land or gone into debt to send one member on a journey lasting months to a country with a strange language, culture, climate and food. This worker may experience racism and discrimination and may not get the kind of pay that was expected or promised. But it is hard to return to your home country and admit any kind of “failure” or difficulty. Of course, some migrant workers have a good experience and can send plenty of money home, and return with capital to set up a new business.

Providing accurate information is the job of a government agency. But many people will not trust a government agency. And such agencies may not do the job well. Unions must become a source of information, and use their members to spread factual information.

Leaving home – Organizing in countries of origin

One way trade union organizations can ensure that migrant workers are “better prepared” for their lives away from their country of origin is to support and organize them prior to migration. There are now several examples demonstrating the advantages of unionizing migrant workers in origin countries before they migrate.

Belgian trade unions are promoting dialogue with unions from origin countries through workshops and drop-in centres, and French unions have established offices in origin countries where information on rights and union membership is available.

Trade unions in countries of origin are also keen to initiate cooperation (and networking) with unions in destination countries – as well as continuing to keep in touch with their own expatriate members. For example:

- National trade union centres are keen to maintain links with their expatriate membership. The Senegalese union federation, Union National des Syndicats Autonomies du Sénégal, has done this successfully.

- The Ceylon Workers' Congress in Sri Lanka has organized workers in Sri Lanka before their departure.
- Some of the trade union centres in countries of origin have adopted policies for assisting migrant workers upon their return.

Pillar 4 – Reaching out to migrant workers

Migrant workers are not passive. By definition, they are among the most enterprising and determined people – being willing to travel and work in a different country requires some boldness and even courage. Migrant workers must therefore be at the centre of trade union strategies on migrant labour. Trade unions must work to protect migrant workers through initiatives in both origin and destination countries through organizing, advocacy and campaign activities.

Trade unions in countries of origin

When the whole cycle of migrating for work is examined, it starts and finishes in the origin country. This is often where the least resources exist. When governments have put in place a pre-departure system, as in the Philippines, then trade unions can become involved in the pre-migration stage. They can take part in briefings and advise workers of the possibilities of joining trade unions in the country where they are going to work.

Where such systems do not exist, unions may have to consider setting up pre departure methods of advising and briefing workers on their rights. This service may have to be put in place in collaboration with other organizations concerned with workers' welfare.

When the origin and destination countries are close together, there are good possibilities of collaboration. The Finnish trade unions have established an information centre in Estonia for Estonians who have work permits and intend to migrate to Finland or who are considering migrating. Visitors are given information on labour and tax laws and social security and are encouraged to seek help from unions after migration.

Labour migration is a major area of work identified by the Nepali trade union GEFONT. In support of this, a Migrant Desk has been established at the GEFONT head office in Nepal to further strengthen GEFONT's initiatives to protect and promote the rights of migrant workers. One such initiative includes organizing Nepali migrant workers in specific destination countries through the formation and mobilization of GEFONT Support Groups. These groups provide a platform for Nepali migrant workers in the destination countries to organize themselves and build on social capital and social protection through the network. The groups are providing information to migrant workers on issues such as legal policies and provisions related to migrant workers, living conditions and other issues. The Support Groups conduct interaction programmes in destination countries, focusing on the rights of migrant workers, informal interactions with Nepali migrant workers through outreach workers and mobilization of regional committees to increase area reach. The Support Groups also have been active in coordinating with the Nepal Government and non-government agencies in the destination countries to advocate for policy and legal frameworks needed for the protection of the migrant workers along with providing direct support to migrant workers in need, such as rescue support and repatriation to Nepal. To date, such support groups have been established in six countries or territories – Hong Kong (China), the Republic of Korea, Kuwait, Malaysia, Qatar and UAE.

Trade unions in destination countries

Organizing, collective bargaining and the protection and promotion of rights are the three key tasks for unions – exactly the same principles apply to migrant workers.

The examples in Pillar 3 illustrate how unions have been trying to organize migrant workers – often in conjunction with trade union officers from origin countries. Establishing migrant workers rights' committees, branches and conferences are good ways of involving workers.

Leaflets in workers' native languages and organizers who can communicate with workers directly are essential in recruiting migrant workers. Once recruited, potential leaders can be identified and offered union training.

Once migrant workers see that the trade union movement is on their side, they will join if they can do so without fear of losing their job or being deported.

In industrial relations' practices, trade unions can include equality clauses in collective bargaining agreements for migrant workers. Collective bargaining agreements should be gender-sensitive: taking into account gender differences between migrant workers. It would be important to consult migrant workers on the issues to be included in collective bargaining agreements. Unions should also encourage women migrant workers to form their own organizations within the union.

Trade unions in the Russian Federation work for migrant workers: In the Russian Federation, increased support from trade unions to protect irregular migrant workers and the victims of trafficking has paid off. After the United States, the Russian Federation receives more migrant workers than any other country. A bilateral cooperation agreement was signed between the construction industry workers unions of the Russian Federation and Tajikistan on ensuring protection of construction industry workers rights. A total of 2,872 migrants had joined Russian trade unions after the first year of the programme; 1,862 migrants received legal employment with their assistance and more than 5 million rubles of back wages were recovered after intervention by unions.

Malaysia unions stand up for migrant workers: Malaysia, one of the so-called tiger economies of South-East Asia, is mainly a "destination" country. Migrant workers from Bangladesh, Indonesia and Nepal come into the country to undertake mainly unskilled work, and some skilled Malaysian workers move abroad. The Malaysian Trades Union Congress (MTUC) policy, adopted in 2005, recognizes that irregular migrant workers pose a threat to local workers. A series of actions will be initiated by the MTUC to realize an effective mechanism that will give adequate protection to the 1.5 million documented migrant workers in the country. The MTUC supports State action to manage migration flows. The presence of undocumented workers in large numbers has a profound effect on wage rates and terms of employment for documented migrants as well as for local workers. The undocumented migrant workers are often forced to work for less and without the other basic facilities, such as housing, medical care, overtime payment and so forth.

The MTUC has engaged in

- organizing migrant workers;
- providing opportunities for skill enhancement so that they may not only be able to have a better working environment and benefits but also be better trained and skilled when they eventually return home;
- monitoring the real labour needs of every sector and working closely with the Government to ensure that there is no excess supply of labour in any sector;
- working closely with embassies and national trade unions of origin countries;
- setting up a special committee with the Bar Council and NGOs to review all the laws that discriminate against migrant workers and deny them fundamental labour rights, and work towards areas for legal reform and the development of a comprehensive labour migration and management policy;
- reviewing, together with other national trade unions from origin countries, all MOUs and contracts;
- working out a standard model MOU and contract for recruitment and employment of migrant workers;
- advocating with the relevant government agencies for the issuance of a temporary stay visa for all workers who have a case of labour dispute or abuse to enable the workers to stay and work in the country until the case is settled;
- placing a special focus on domestic workers and proposing changes to the Employment Act to recognize domestic work as work, to develop standardized contracts and to organize domestic workers into unions.

- strengthening labour inspection services to enforce legal conditions of work for migrant workers; and
- addressing the specific risks for all migrant workers— men and women— in certain occupations and sectors, with particular emphasis on dirty, dangerous and degrading jobs and on women in domestic service and the informal economy.

Organize and fight!

Legislation in a number of countries still limits trade union rights for migrant workers. Membership in mainstream and strong trade unions and federations alongside nationals gives migrants greater voice in society and the world of work, thereby ensuring their equal rights and providing a disincentive to the forced labour and trafficking of migrants. Over the past decade, the attitude and engagement of the trade union movement as a whole has clearly given priority to organizing migrant workers and promoting their rights, regardless of their immigration status. Major policy shifts, followed by extensive organizing drives among migrant workers, have been instigated by mainstream trade unions and national confederations across Europe as well as in Africa, the Americas and Asia. The trade union movement has always taken an important role in promoting the integration of migrant workers into host country societies. When organized in trade unions, migrant workers can participate in discussions affecting their role in society and their contribution to economic and social progress; they can take part in the elaboration of trade union policy; they can vote to elect their representatives and, in most countries, are eligible for leadership positions.

The unionization of migrant workers is an essential step towards realization of the effective recognition of their right to collective bargaining. Equality needs to be promoted within unions; and migrant trade union representatives should be able to sit side by side with others when collective agreements are negotiated. Such agreements can include clauses dealing with discrimination based on sex, race and religion – to which migrant workers are particularly vulnerable.

Irregular migrants are most at risk of being subjected to forced labour and exploitation, but regular migrants can also be denied both their human and labour rights. The fact that so many are denied the right to join a trade union is another reason why the national and international trade union movements have mobilized around migrant worker issues. As the ITUC says:

“The fundamental concern of the trade union movement has been the struggle to secure the right of workers to form and join independent trade unions and to bargain collectively with their employer. This is the very basis of trade union organization and is still its highest priority... The basic trade union rights are the right to form or join a trade union, the right to bargain collectively and the right to strike.”

Protecting migrant workers

Migrant workers’ unions

The best place for migrant workers is in a well-established trade union in their country of destination, with special measures to help them organize, such as their own section and literature in their own languages. In a number of cases, where legislation discriminates against migrant workers, this may be difficult. In these situations, some structures, such as migrant worker unions, may be necessary.

Another way of organizing would be a structure that links migrant workers who are members of different sector unions into a group for mutual support and help within a national centre. These structures should be run by the migrants with the support of national centres.

Examples include the Indonesian Migrants Union and the South Korean Migrants’ Trade Union, affiliated to the Korean Confederation of Trade Unions. The Indonesian Migrant Workers’ Union was established in Hong Kong (China) in 2000 and has organized thousands of women migrant domestic workers in some 20 trade unions, which have the support of the Hong Kong Congress of Trade Unions.

Domestic workers

Even migrant workers who are traditionally isolated, hidden and super-exploited, such as women domestic workers, can be organized. Associations of domestic workers have established some form of collaboration with existing trade unions, and members of such associations have joined existing trade unions. In some cases, trade unions have been a driving force for the organization of domestic workers.

Organizing domestic workers requires innovative strategies and approaches. The provision of a wide range of services, including addressing lack of self-esteem and awareness, is crucial to attracting domestic workers. The Costa Rican Domestic Workers' Association, which was set up in 1991, adopted a holistic approach, to provide domestic workers with services such as a telephone helpline, advice, support, legal and social guidance, temporary shelter for dismissed workers and training on various subjects, including both labour rights and duties. The union has many female migrant worker members, primarily from Nicaragua and also from El Salvador, Guatemala and Honduras. It advocates for increased coverage of domestic workers in the labour laws.

Exposing abuse

Trade unions, with their presence throughout the world of work, are well placed to identify abuse of migrant workers. They may observe this in the suppliers or customers of their own employers or as they go about their communities. They may also use the ILO supervisory procedures (see section 2) to report violations of ILO standards.

Trade union members can be encouraged to report their suspicions. The issue of abuse of migrant workers can be included in trade union education programmes and in union magazines for members. This would include abusive employment agencies and identifying those involved in human trafficking.

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