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Decent Work and Labour Mobilityⁱ

This Note discusses decent work and labour mobility in the Arab States, with particular reference to recruitment, skills development and recognition, decent working conditions, irregularity of migrant workers, and labour migration governance. It identifies some of the key issues and challenges, and proposes a number of questions for discussion.

The Arab States hosted nearly 35 million international migrants (including refugees) in 2015.¹ International migrants are particularly predominant in the countries of the Gulf Cooperation Council (GCC), where more than 25 million international migrants lived and worked in 2015. The majority of international migrants in the Arab States come from Asia, and the vast majority are migrant workers. Indeed the number of international migrants from Asia has more than tripled, from 5.7 million in 1990 to 19 million in 2015.² However, an important emerging trend is the increase in labour migration from Africa to the Arab States, with particularly high numbers coming from, amongst other countries, Sudan, Somalia, Ethiopia and Kenya.³

Intra-regional migration within the Arab States region is also common. While much of the flow has been due to displacement as a result of the Syrian conflict,⁴ significant numbers of migrants move for work as well, particularly to the Gulf countries from Egypt, Morocco and Jordan, although Jordan also receives a large number of intra-regional migrant workers, especially from Egypt. Other destinations for intra-regional migration have included Libya, although the current conflict in the country is likely to have significantly affected this trend. Labour migration to outside the Arab region is also prominent, with migrants travelling to the United States, Canada and the European Union.⁵

Migrant workers in the Arab States are employed in a range of sectors, including construction, domestic work, oil and gas, transportation, garment manufacturing, hospitality and retail. By far the largest number of migrant workers

¹ UNESCWA and IOM (Forthcoming), *2017 Situation Report on International Migration* (based on data from UNDESA, 2015). This data includes four major subregions: (i) Gulf Cooperation Council (GCC): Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and United Arab Emirates; (ii) Maghreb countries: Algeria, Libya, Morocco, and Tunisia; (iii) Mashreq countries: Egypt, Iraq, Jordan, Lebanon, State of Palestine, and Syrian Arab Republic; and (iv) Arab Least Developed Countries (Arab LDCs): Comoros, Djibouti, Mauritania, Somalia, Sudan, and Yemen.

² UNDESA (2015), *Trends in international migration stock: The 2015 revision*, <http://www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.html>.

³ UNDESA (2015), *Trends in international migration stock: The 2015 revision*, op cit. and Malit, Jr. F. and Al Youha, A. (2016), "Kenyan migration to the Gulf countries: Balancing economic interests and worker protection", <http://www.migrationpolicy.org/print/15632#.WOtDGK103cs>. Although data is limited, official records show that around 500,000 Ethiopian migrant workers migrated regularly between 2011 to 2013 to the Gulf countries; however, it is estimated that double this figure have an irregular status. Data also suggests that there are over 636,000 Sudanese migrants in Gulf countries, as well as between 100,000 and 300,000 Kenyan migrants – mostly low-skilled workers. Malit, Jr. F. and Al Youha, A. (2017), "Labor Protection in the Gulf Countries: A Comparative Analysis of Kenyan Governmental Dilemmas in the United Arab Emirates and Saudi Arabia", <http://digitalcommons.ilr.cornell.edu/workingpapers/181/>.

⁴ UNESCWA and IOM (Forthcoming), *2017 Situation Report on International Migration*, op cit.

⁵ See for example, Migration Policy Centre: Migration Profiles for Algeria, Egypt, Jordan, Lebanon, and Morocco, <http://www.migrationpolicycentre.eu/publications/migration-profiles-fact-sheets/>.

however, particularly in the Gulf States, are found in construction (approximately 4 million workers), with sizeable numbers also in domestic work (mostly women in household-related work and mostly men as drivers, guards and gardeners). In 2015, the ILO estimated that more than a quarter of the global total of migrant domestic workers were in the Arab states (27.4 per cent), which amounts to 3.2 million workers, with roughly equal shares of men and women migrant domestic workers.⁶ These numbers may be underestimated due to the concentration of domestic workers in informal employment and among migrants in an irregular situation. Countries in the Mashreq also receive significant numbers of seasonal workers in agriculture (both women and men).

1. Recruitment

As the first step in the process that brings millions of migrant workers to the Arab States region, the recruitment stage can determine whether a worker has a positive migration experience, with the opportunity to earn a decent wage, acquire skills and send remittances; or an exploitative one, characterized by excessive recruitment fees, low earnings, poor working conditions, and sometimes even situations of trafficking and forced labour. For migrant workers coming to the Arab States, recruitment takes place predominately through a complex network of private employment agencies and brokers.

When appropriately regulated – including through coordinated licensing and/or certification – private employment agencies play an important labour market function by matching supply and demand, increasing business efficiency and productivity and supporting migrants to navigate the labour migration process.⁷ However, the recruitment industry is characterized by a number of fraudulent and abusive practices facilitated by a complex network of intermediaries including informal actors, unauthorized sub-agents and those operating outside of the legal and regulatory framework in countries of origin and destination.⁸ Low-skilled workers are particularly vulnerable to such practices, and research shows that workers may pay up to 8 or 9 months of their salary just in recruitment fees.⁹

Both the ILO and the IOM have been actively involved in supporting fair recruitment initiatives including:

- The *ILO General principles and operational guidelines for fair recruitment* were adopted by tripartite consensus by a Meeting of Experts and approved by the ILO Governing Body in November 2016. The objective of these non-binding principles and guidelines is to inform the current and future work of the ILO and of other organizations, governments, national legislatures, and the social partners on promoting and ensuring fair recruitment.¹⁰
- The IOM has been working with the Leadership Group for Responsible Recruitment to develop the International Recruitment Integrity System (IRIS) as a voluntary multi-stakeholder certification system for labour recruiters.

However, many challenges remain including banning (and enforcing) charging fees to migrant workers in national legislation, changing mind sets of both employers and workers in support of the ‘employer-pays’ model, and better collaboration between countries of origin and destination.

Orientation and access to accurate information

Many migrant workers are not well informed regarding their rights and responsibilities under local labour laws in countries of destination, thereby increasing their vulnerability to exploitation and abuse, and the risk of inadvertently violating their legal obligations. In addition, migrants’ lack of awareness of cultural norms and practices in countries of destination can sometimes lead to social friction, miscommunication, and conflict with employers and local community members. Employers and labour recruiters should view orientation programmes as an important

⁶ ILO (2015), *ILO Global estimates on migrant workers: Results and methodology*, Geneva.

⁷ ILO (2016), *Ways forward in recruitment of ‘low-skilled’ migrant workers in the Asia-Arab States Corridor*, ILO White Paper, Regional Office for Arab States (ROAS), http://www.ilo.org/beirut/publications/WCMS_519913/lang--en/index.htm.

⁸ See for example, New York University Stern Center for Business and Human Rights, 2017. *Making Workers Pay: Recruitment of Migrant Labor Force in Gulf Construction Industry*, <http://www.stern.nyu.edu/experience-stern/faculty-research/making-workers-pay-recruitment-migrant-labor-force-gulf-construction-industry>.

⁹ Abella, M. (2017). “The high cost of migrating for work to the Gulf”, Conference Paper, Cambridge Gulf Research.

¹⁰ The principles and guidelines are derived from a number of sources – including international human rights and international labour standards and related ILO instruments. They apply to all the key actors in the recruitment process: governments, public employment services and enterprises, including labour recruiters and employers.

investment, as they counteract one important factor driving migrant workers to terminate their employment prematurely and return home, namely lack of preparation for their new working and living environments, resulting in adjustment difficulties and home sickness. Cooperation between countries of origin and destination is key to ensuring that migrant workers obtain accurate and reliable information through the full cycle of orientation from pre-employment, pre-departure, post-arrival, and upon return. To this end, in November 2014, the member States of the Abu Dhabi Dialogue adopted the Comprehensive Information and Orientation Programme for migrant workers in order to develop regional guides that provide information and outline orientation sessions for migrant workers at all these four key stages.

Skills development and recognition

Ensuring that the skills of workers match the needs of employers is an important aspect of recruitment and has beneficial implications for both workers (including higher wages) and employers (including improved productivity). More work is required, however, to establish credible systems for skills development and/or recognition at both the national level (in countries of origin and destination) and the inter-regional level, including enhancing efforts to share information on national occupational standards to promote comparison and harmonization of qualifications and standards, and labour market information to monitor utilization of skills in the labour markets concerned.

There also needs to be closer engagement with the private sector in countries of destination, in collaboration with workers' organizations. This may include establishing a network of employers to engage in the planning, awareness raising, implementation and monitoring of skills recognition systems; conducting research on employer priorities for skills development; identifying the circumstances under which skills certification would result in payment of a premium; adjustments to the skills recognition process; and policy incentives that would influence employers.

Furthermore, skills development initiatives need not be limited to technical skills, and could benefit from integrating soft skills with technical skills in the process of skilling migrant workers (basic language and IT literacy, etc.). Finally, an important aspect of skills development is to ensure that training and testing centres involved in the placement of workers abroad are accountable, and that skills development is not used as a 'backdoor' means through which to extract recruitment fees and costs from workers.

2. Decent working conditions

Whilst many migrant workers have a positive working experience in the Arab States, a proportion are subject to significant decent work deficits, including trafficking and forced labour, particularly in high risk sectors where migrant workers predominate, such as agriculture, construction and domestic work. Migrant workers are best protected in law and practice when they are covered by national labour laws and labour market institutions – such as inclusion in minimum wages, employment protection legislation, labour inspection, collective bargaining, and social security provision – on an equal footing with national workers. However, in the Arab States, there are examples where national labour laws exclude certain sectors from coverage, such as agriculture and domestic work, with a disproportionate impact on the large numbers of migrant workers in those sectors. The trend regarding domestic work is for the sector to be governed by separate legislation or by a standard unified contract, not grounded in the labour law and hence difficult to enforce effectively. Even where laws exist, and are robust, implementation and enforcement can be a challenge.

The key issues and challenges faced by migrant workers relating to working conditions include:

- Delayed and non-payment of wages, particularly in subcontracting layers where migrant workers at the end of the supply chain may be vulnerable to delays relating to client bankruptcy or financial strife.
- Withholding of passports and personal documents is common among employers of migrant workers, despite the existence of legislation outlawing the practice.
- Restrictions on the right to freedom of association, to organize and bargain collectively, and a general lack of collective voice among migrant worker populations.
- Poor occupational safety and health (OSH) is a concern in the construction, domestic and agriculture sectors, among others. Key OSH concerns include work at a height, the use of chemicals, heavy electronics and machinery, and working in extreme heat.

While prevention is paramount, States need also to ensure access to effective remedies for those migrant workers that find themselves in situations of exploitation and especially victims of trafficking. These might entail psychosocial support, shelter and medical assistance to address victims' immediate needs as well as legal protection that allow victims to testify against traffickers which is often key for prosecution of such crimes and human rights violations.

3. Addressing irregularity of migrant workers

Migrant workers in an irregular situation are particularly vulnerable to mistreatment, exploitation and forced labour; however, it is difficult to estimate the number of migrant workers in an irregular situation in the Arab States.

Migrant workers may use irregular migration channels for a number of reasons – and at least in some cases, this may be due to bans from the countries of origin¹¹ – primarily enacted against women who are migrating for domestic work – which may push migrants into migrating through irregular means. There are also many ways through which migrant workers may end up in an irregular situation, including if proper administrative processes are not followed when permits are being renewed or transferred to another employer. This can also occur if a worker leaves the employer after facing abuse and is awaiting the outcome of a legal case, as their residence status is not necessarily guaranteed.¹²

Being in an irregular situation has many negative impacts on migrant workers' lives. Such workers can be subject to harassment, arrest, detention and deportation without trial, and at greater risk of forced labour and trafficking in persons. A migrant worker in an irregular situation who is experiencing labour exploitation may not feel comfortable seeking help from a labour inspector or police officer.

While it is the sovereign prerogative of all States to control their borders and regulate labour migration, the human rights, including fundamental labour rights, of all migrants, regardless of their status, should be protected in accordance with international law.¹³ There are strong economic and labour market efficiency arguments for addressing irregularity of migrant workers in the Arab States, including that employers need a dynamic and flexible workforce.

4. Governance of labour migration

Fair and effective governance of labour migration at the international, regional, sub-regional, bilateral and national levels can ensure that the benefits of migration are shared equitably amongst all parties. Social dialogue and strong and functional labour market institutions are essential to protect the needs and interests of national and migrant workers and to meet labour market needs.

At the international level, in addition to the international human rights and labour standards, and the specific standards relating to labour migration governance and the protection of migrant workers, there are a number of fora dedicated to improving migration governance, including of labour migration, such as the discussions on the implementation of the migration-related aspects of the 2030 Agenda for Sustainable Development, the Global Forum on Migration and Development, currently co-chaired by Morocco, and the consultations on the GCM.¹⁴

At the regional level, there are a number of regional economic communities (RECs) and regional consultative processes (RCPs) on migration, such as the Ministerial Consultations on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia, also known as the Abu Dhabi Dialogue, where migration

¹¹ ILO (2015), *No easy exit – Migration bans affecting women from Nepal*, Geneva, and Napier-Moore, R. (2017), *Protected or put in harm's way? Bans and restrictions on women's labour migration in ASEAN countries*, ILO and UN Women.

¹² ILO (2017), *Migrant workers in an irregular situation through no fault of their own: Pathways and response options in the Arab States*, ROAS, Beirut, http://www.ilo.org/beirut/information-resources/factsheets/WCMS_568545/lang-en/index.htm.

¹³ This principle is set out in a number of international human rights instruments, including the eight ILO fundamental conventions addressing forced labour, child labour, trade union rights and non-discrimination in employment and occupation, which apply to all workers. The ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998, affirms this and calls for special attention to vulnerable groups, including migrant workers.

¹⁴ The Global Migration Group (GMG), an inter-agency mechanism comprising 22 UN agencies, also engages on migration and decent work issues.

governance is discussed and strengthened in different ways. At the government-to-government level, bilateral agreements – which can be legally binding or more informal in the form of Memoranda of Understanding (MoUs) – can be useful tools to support fair and effective labour migration governance, if they incorporate provisions aligned with international labour standards and are aligned with national policies relating to employment.

At a national level, governments need to institute a coherent policy on labour migration, taking account of both short and long-term workforce needs as well as wider economic, social and development contexts in both origin and destination countries. Guaranteeing equality of treatment for men and women migrant workers with nationals and ensuring that migrants can fulfil their human development potential at destination and origin requires robust and well-functioning labour market institutions which devote specific attention to the needs and interests of migrant workers.

Questions for discussion

- a) What are successful strategies in cutting the cost of recruitment for employers, and eliminating the cost of recruitment for workers? What do countries of destination require from countries of origin; and what do countries of origin require from countries of destination?
- b) What are the promising practices of recruitment through public placement agencies, direct recruitment by accredited employers and/or through the use of information technology (including E-matching services) which can successfully eliminate intermediaries?
- c) What mechanisms have been particularly successful in prevention of forced or compulsory labour and trafficking in persons? This may include education and awareness raising of both potential migrants and employers, as well as coverage and enforcement of relevant legislation relevant to the prevention of forced or compulsory labour and labour inspection services and other services responsible for the implementation of this legislation as well as the provision of protective services for victims.
- d) How can workers be organized to protect and advance their interests, within an environment of challenges to formal organizing and limitations to migrant worker representation in trade unions?
- e) What are the benefits, challenges and feasibility of unannounced labour inspection mechanisms in sectors with large number of vulnerable migrant workers, such as construction, agriculture and domestic work in countries of destination; and how can these mechanisms be more closely linked to access to justice for migrant and national workers?
- f) How can countries of destination identify migrant workers in an irregular situation through no fault of their own, and what can be suitable remedies for regularizing such workers?
- g) What are the good practices in developing fair, evidence-based and gender-responsive labour migration policies through social dialogue and linked with employment policies?

ⁱ This brief was drafted by the International Labour Organization team in preparation for the Regional Consultation on International Migration in the Arab Region.