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Compact for Safe, Orderly and Regular Migration

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Item 3 (a) and (d) of the provisional agenda**

Thematic discussions on key issues in the Asia-Pacific region for facilitating safe, orderly and regular migration:

**Legal and orderly labour migration as a contribution towards all dimensions
of sustainable development, including decent work, labour mobility,
recognition of skills and qualifications and other relevant measures**

**Regional cooperation and governance with regard to migration in all its
dimensions, including at borders and during transit, entry, return,
readmission, integration and reintegration**

Labour migration in Asia and the Pacific

Note by the secretariat

Summary

International labour migration is a significant component of development in many countries in the Asian and Pacific region. While countries have developed policy frameworks for managing labour migration, the rapid expansion of migration has resulted in migration policies that are sometimes reactive rather than being integrated in overall development strategies. As a consequence, there are significant challenges in ensuring safe, orderly and regular migration, notably with regard to the rights of labour migrants. The international community has adopted a comprehensive normative framework for international labour migration, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, numerous International Labour Organization conventions and recommendations, non-binding frameworks, and declarations of subregional intergovernmental organizations. Several policy challenges remain, however, including effective protection of the rights of migrant workers, limiting irregular migration and developing regional or subregional instruments and programmes to facilitate the management of labour migration.

In view of these policy challenges, the international community is negotiating a global compact for safe, orderly and regular migration, to be submitted to an international conference in 2018. The effort to develop the global compact has been guided by many processes within and outside the United Nations. The Asian and Pacific region is expected to submit a regional input to the negotiations towards developing the global compact.

The present document is intended to guide the intergovernmental process in Asia and the Pacific to develop the regional input to the negotiations by highlighting issues of relevance and providing recommendations for consideration by participants.

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** E/ESCAP/GCM/PREP/L.1.

I. Trends, impacts and challenges of labour migration

A. Trends

1. Migration for employment is the dominant form of migration in the Asian and Pacific region. Several countries in the region formally process more than half a million migrant workers a year through regular migration channels. Notably, the Philippines processed 1.8 million workers each year between 2011 and 2015. International labour migration is driven by the substantial differences in wage levels and employment opportunities between countries of origin and countries of destination. Barring a global economic slowdown, it is likely that the current volume of labour migration will hold steady or increase.

2. In Asia and the Pacific, the recruitment and deployment of migrant workers from countries of origin and their placement and employment in countries of destination are generally managed by private sector agencies. Government agencies, sometimes at the ministerial level, have been established in several countries to process and regulate labour migration.

3. The proportion of women among migrants from main countries of origin varies (table 1). The number and percentage of female migrants from Indonesia and Sri Lanka have been declining in recent years, while those from Bangladesh and the Philippines have been increasing.¹ These individual country trends are the result of many factors, including shifts in policy. For example, Bangladesh has reduced restrictions on female migration, while Indonesia and Sri Lanka have introduced restrictions.

Table 1
Number of migrant workers deployed, selected countries, 2011-2015

<i>Country</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>
Bangladesh					
Total	568 062	607 798	409 253	425 684	555 881
Male	537 483	570 494	352 853	349 677	452 163
Female	30 579	37 304	56 400	76 007	103 718
India					
Total	626 565	747 041	816 655	804 878	-
Indonesia					
Total	586 802	494 609	512 168	429 872	-
Male	210 116	214 825	235 170	186 243	-
Female	376 686	279 784	276 998	243 629	-
Nepal					
Total	384 665	450 834	52 878	-	-
Pakistan					
Total	456 893	638 587	622 714	752 466	773 869 ^a
Philippines					
Total	2 057 000	2 220 000	2 209 000	2 320 000	2 377 000
Male	1 080 000	1 148 000	1 116 000	1 149 000	1 168 000
Female	978 000	1 072 000	1 092 000	1 170 000	1 209 000

¹ Philippine Statistics Authority, "Total number of OFWs estimated at 2.2 million (results from the 2016 survey on overseas filipinos)", 27 April 2017. Available from www.psa.gov.ph/content/total-number-ofws-estimated-22-million-results-2016-survey-overseas-filipinos.

Country	2011	2012	2013	2014	2015
Sri Lanka					
Total	262 961	282 331	293 218	300 413	263 307
Male	136 307	143 784	175 185	189 924	172 630
Female	126 654	138 547	118 033	110 489	90 677
Thailand					
Total	147 623	134 101	130 511	119 529	117 291
Male	121 391	108 892	107 184	-	-
Female	26 232	25 209	23 327	-	-

Sources: Economic and Social Commission for Asia and the Pacific (ESCAP), *Asia-Pacific Migration Report 2015: Migrant's Contributions to Development* (ST/ESCAP/2738), p. 21; Bangladesh Bureau for Manpower, Employment and Training 2014-2015 database (available from www.bmet.gov.bd/BMET/statisticalDataAction#); Pakistan 2015: Ministry of Overseas Pakistanis and Human Resource Development, *Labour Migration from Pakistan, 2015 Status Report* (Islamabad, 2015); 2016: Overseas Filipinos, Philippines Statistic Authority database (available from www.psa.gov.ph/tags/overseas-filipinos); Sri Lanka Bureau of Foreign Employment 2015 database (available from www.slbfe.lk/file.php?FID=253); Bank of Thailand 2014-2015 database (available from www2.bot.or.th/statistics/ReportPage.aspx?reportID=111&language=eng).

^a Through October 2015 only.

4. The migrant workers from major countries of origin in South and South-West Asia tend to seek work in countries of the Gulf Cooperation Council, namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Ninety-seven percent of overseas workers processed by Pakistan in 2015² and about three fourths of migrant workers from Bangladesh in 2014³ went to Western Asia. In South-East Asia, about two thirds of land-based migrant workers were from the Philippines in 2015.⁴ Migrant workers from other countries in the subregion, such as Myanmar, Thailand and Viet Nam, tend to remain within East and South-East Asia.

5. While highly skilled and professional workers participate in the international flows of labour migration, and the Association of Southeast Asian Nations (ASEAN) has agreed to the freer movement of several categories of professionals, migration flows are nevertheless still dominated by workers in low- and semi-skilled occupations. Low- and semi-skilled migrant workers comprised the majority of migrant workers in the most recent reports from

² Pakistan, Ministry of Overseas Pakistanis and Human Resource Development, *Labour Migration from Pakistan: 2015 Status Report* (Islamabad, 2015). Available from www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-kathmandu/documents/publication/wcms_514139.pdf.

³ Asian Development Bank and International Labour Organization (ILO), "Overseas employment of Bangladeshi workers: trends, prospects and challenges", ADB Briefs, No. 63 (August 2016). Available from www.adb.org/sites/default/files/publication/190600/overseas-employment-ban-workers.pdf.

⁴ Philippine Overseas Employment Administration, *Overseas employment statistics, 2016*. Available from www.poea.gov.ph.

Bangladesh,⁵ Pakistan,⁶ and Sri Lanka.⁷ They also comprised the largest occupational group among workers from the Philippines.⁸

6. A distinct labour migration system has evolved in North and Central Asia, centred on the Russian Federation and, to a lesser extent, Kazakhstan. The Russian Federation allows visa-free entry to nationals of Armenia, Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. Furthermore, nationals of Armenia, Kazakhstan and Kyrgyzstan, as members of the Eurasian Economic Union, do not need work permits to be employed in the Russian Federation.⁹ In 2014, 3.69 million foreigners (including 2.5 million from other countries in North and Central Asia) were registered to work in the Russian Federation. At the same time, between 2.8 million and 3 million migrant workers were in an irregular status (with between 1.8 million and 2 million from the subregion).¹⁰

7. Since 2014, economic factors in the Russian Federation, such as falling oil prices and new policy measures aimed at reducing irregular migration, such as re-entry bans for irregular migrants, have led to reductions in labour migration in the subregion. For instance, the number of registered migrant workers from Uzbekistan in the Russian Federation fell from 2,343,000 in 2014 to 1,756,000 in 2016, while the number from Tajikistan declined from 1,034,000 to 879,000.¹¹ The large numbers of migrant workers leaving the Russian Federation have an impact on the labour force in the countries of origin and also in Kazakhstan, where some of them seek employment as an alternative destination. There has also been increased interest by countries in Eastern Europe to recruit workers from some North and Central Asian countries, such as Georgia.

8. Another distinct migration system exists in the Pacific. No developing Pacific island country had a positive net in-migration rate between the two most recent censuses, while several had high average annual rates of net out-migration. Out-migration is for long-term or permanent settlement, as well as for seasonal work through specific schemes in agriculture, horticulture and viticulture in Australia and New Zealand.¹²

⁵ See www.bmet.org.bd/BMET/viewStatReport.action?reportnumber=35.

⁶ See www.beoe.gov.pk/files/statistics/2017/occupation.pdf.

⁷ Sri Lanka Bureau of Foreign Employment, *Annual Statistical Report of Foreign Employment 2014*, SLBFE, Colombo, 2014.

⁸ See www.psa.gov.ph/content/total-number-ofws-estimated-22-million-results-2016-survey-overseas-filipinos-0.

⁹ United Nations Development Programme Regional Bureau for Europe and the Commonwealth of Independent States, *Labour Migration, Remittances, and Human Development in Central Asia*, 2015.

¹⁰ Sergey V. Ryazantsev, "The role of labour migration in the development of the economy of the Russian Federation", Working Paper No. 1 (Economic and Social Commission for Asia and the Pacific, Bangkok, 2016, p. 42).

¹¹ International Organization for Migration (IOM), Nazarbayev Center and United States Agency for International Development, *Migrant Vulnerabilities and Integration Needs in Central Asia. Root Causes, Social and Economic Impact of Return Migration*, 2016.

¹² ESCAP, *Asia-Pacific Migration Report 2015: Migrant's Contributions to Development* (ST/ESCAP/2738).

B. Impacts

9. The most direct economic impact of labour migration on countries of origin results from remittances sent by migrant workers. In 2016, the amount totalled almost \$269 billion for the region as a whole, with China, India, Pakistan and the Philippines being the largest recipients. In some smaller economies, remittances comprise a significant percentage of gross domestic product (GDP). For example, remittances contributed more than one quarter of the 2015 GDP of Nepal, Tajikistan and Kyrgyzstan (table 2). As remittances are sent directly to families, they have an immediate and substantial impact on spending for food, education, health care and housing.

10. While remittances may have the most direct impact on countries of origin, the large volume of overseas employment also affects the national labour market. Overseas employment accounts for more than one fifth of the growth in the labour force in Bangladesh and absorbs more than one half of new manufacturing jobs.¹³

Table 2

Developing countries in Asia and the Pacific ranked by volume of remittances received, 2016, and by percentage contribution of remittances to gross domestic product, 2015 (top ten countries)

<i>Remittances received, million (United States dollars)</i>		<i>Remittances as percentage of gross domestic product</i>	
India	62 745	Nepal	32.2
China	61 000	Tajikistan	28.8
Philippines	29 878	Kyrgyzstan	25.7
Pakistan	19 847	Samoa	17.2
Bangladesh	13 680	Armenia	14.1
Viet Nam	13 383	Marshall Islands	13.7
Indonesia	9 234	Kiribati	11
Sri Lanka	7 252	Tuvalu	10.6
Republic of Korea	6 395	Georgia	10.4
Nepal	6 276	Philippines	9.8

Source: World Bank's calculations based on data from the International Monetary Fund Balance of Payments Statistics database and data released from central banks, national statistical agencies and World Bank country desks. Available from www.knomad.org/sites/default/files/2017-06/Updated%20remittanceinflows%28Apr.2017%29.xls (accessed 1 August 2017).

¹³ Asian Development Bank and ILO, Overseas employment of Bangladeshi workers, ADB Briefs No. 63. Available from www.adb.org/sites/default/files/publication/190600/overseas-employment-ban-workers.pdf.

11. Large numbers of migrants leaving a country for overseas employment can potentially cause labour market shortages of well-educated and skilled workers. However, the return of migrant workers with new skills and savings to invest can make positive contributions to the economies of countries of origin, as has occurred in India and the Republic of Korea, for example. Returning migrants also bring social capital in the form of increased knowledge, experience and networks of contacts that benefit their home countries.

12. Migrant workers affect the economies of host countries through increasing capital productivity, meeting unmet labour demand, promoting trade, their contributions to GDP and public finances and their involvement in entrepreneurial activities. Migrant workers, especially the highly skilled, help facilitate foreign direct investment and international trade in goods and services. When migrants are concentrated in specific sectors of the economy, their sectoral impacts can be particularly significant.

13. Migrant workers may compete with local workers at the same skill level, which puts pressure on employment and wage levels. However, migrant workers primarily complement local workers in other occupations, taking jobs that local workers are unwilling to do. Thus, the presence of migrant workers in agriculture increases the wages and number of jobs for local workers employed in related areas, such as food processing, transport and sales, as in Malaysia and Thailand.¹² Migrant workers also contribute to the economy of the host country by spending much of their earnings there, starting businesses or opening trade connections, when they are in the position to do so.

14. Migrant workers affect public finances in host countries by the services they use and the taxes that they pay. Even when migrants do not earn enough to pay income taxes, they still contribute to public finances through value-added taxes that they and their employers pay on their consumption and production, and the payment of insurance premiums. As most labour migrants are relatively young, they generally do not spend large amounts on health care, although this can be affected by their living and working conditions.

C. Challenges

15. Governments and other stakeholders face notable challenges in developing mechanisms for managing labour migration. These include protecting the human and labour rights of migrant workers; reducing the high costs to migrants of obtaining employment abroad; reducing irregular migration; linking migration policies with broader development strategies; and developing regional subregional and bilateral agreements on labour migration.

16. For migrant workers to contribute most effectively to development in both countries of origin and destination, their human rights and successful integration in the community should be ensured, and they should enjoy the protection of national labour standards at their place of work, including the right to equal pay for equal work, safe working conditions and access to workers' organizations and social protection. If basic rights are not ensured for migrant workers, labour standards will deteriorate, resulting in harm not only to migrants but also to the national labour force.

17. In practice, the fundamental rights of migrants are not respected throughout the migration process. Recruitment, especially when conducted by private recruitment agencies, remains an area where significant abuses, such as high fees and fraudulent practices, are widespread. Such practices leave migrant workers heavily in debt, vulnerable to unscrupulous employers or in

situations in which their wages and working conditions are significantly worse than had been promised before departure. This may result in forms of forced labour or trafficking and undermine Government and corporate efforts to promote socially responsible business practices.

18. While abroad, migrant workers are subject to practices such as seizure of their documents, underpayment of wages, overwork and unsafe working conditions. These practices are generally illegal in countries of destination; however, due to different factors such as limited labour inspection capacity in many countries, migrant workers are often unable to access complaint mechanisms and are further hindered by legal provisions in many countries which enable employers to have excessive control over employees, such as provisions preventing migrants from changing jobs or leaving the country without their employer's permission. This vulnerability is exacerbated when migrants work in occupations considered as informal, in sectors otherwise excluded from labour law, such as the domestic, agricultural, fishery sectors, or in small firms or remote workplaces. Women migrant workers are at particular risk of such abuses because of recruitment practices and the especially vulnerable occupations and working conditions in which they are employed, notably domestic work. Bans or restrictions on the migration of women for employment also often results in them migrating through irregular channels.¹⁴

19. On their return to the countries of origin, the relative lack of portability of social protection benefits leaves migrants vulnerable to poverty and social exclusion. Such systems in both countries of origin and destination have historically been designed for national coverage and have not yet adapted to address the international context of migrants. Few systems allow migrants to preserve the actuarial value of accrued pension rights when moving from one country to another. Thus, temporary labour migrants, who are rarely able to retire in countries of destination, often lack pensions in old age.¹⁵

20. A combination of demand for migrant workers in destination countries and a lack of regular channels for labour migration, or a perception that these channels are restrictive, expensive or inefficient, can result in irregular migration. Inefficient regular channels for labour migration also enable private recruitment agencies to dominate much of the process, sometimes to the disadvantage of prospective migrants. In addition to irregular migration having important implications for State sovereignty, this is a major human rights concern, as irregular migrant workers are at higher risk of abuse and exploitation given their precarious situation in the country of destination.

21. Governments have attempted to limit irregular migration through a combination of expanding regular migration channels and making them more efficient; providing amnesties or regularizing existing undocumented migrants; or strictly enforcing immigration and employment regulations.

22. International migration policies are sometimes formulated without adequate linkage to other development strategies. Those policies should be designed to contribute towards the achievement of the Sustainable Development Goals. In countries of origin and destination, labour force

¹⁴ Rebecca Napier-Moore, *Protected or Put in Harm's Way - Bans and Restrictions on Women's Labour Migration in ASEAN Countries* (Bangkok, ILO and United Nations Entity for Gender Equality and the Empowerment of Women, 2017).

¹⁵ Robert Holzmann and Johannes Koettl, "Portability of pension, health, and other social benefits: facts, concepts, issues", IZA Discussion Paper, No. 5715 (Bonn, IZA, 2011). Available from www.papers.ssrn.com/sol3/papers.cfm?abstract_id=1849470.

planning, including vocational training, skills development and other educational strategies, should consider international labour migration, both in terms of the impact of overseas employment of migrants and the reintegration of migrants upon their return.

23. Aside from examples noted below, countries in Asia and the Pacific have addressed labour migration either unilaterally or bilaterally, rather than through subregional agreements. As a result, their approaches tend to be limited and fragmented, rather than being comprehensive and based on mutual interest and complementarities.

II. International agreements addressing labour migration

24. Migrant workers enjoy equality in human and labour rights. Such rights include, but are not limited to, non-discrimination; the freedom to leave and re-enter the State of origin; the right to life; and the prohibition of torture, cruel treatment, slavery, servitude and forced labour. Children of migrants have the right to a name, registration of birth and a nationality, as well as access to education on the basis of equality of treatment with nationals of the State concerned.

25. To operationalize these principles, States have negotiated and approved multilateral agreements pertaining to international labour migration, principally the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The preamble to the Convention notes that it takes into account the principles embodied in the basic instruments of the United Nations concerning human rights as well as the relevant instruments of ILO, especially those pertaining specifically to international migrant workers. By restating these human rights, it is emphasized in the Convention that they apply to all persons, including migrant workers.

26. In Article 25 of the Convention, the long-standing principle that migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration, conditions of work and terms of employment is reiterated, and the principle that equality cannot be derogated in private contracts is stipulated.

27. In addition to these basic rights, the following is elaborated in the Convention: “other rights of migrant workers and members of their families who are documented or in a regular situation”. These include the rights to full information, temporary absence, liberty of movement and residence, participation in public affairs and equality of treatment with nationals in education, training, access to housing, health care and terms of employment.

28. ILO conventions can be categorized as those that pertain to all workers (including migrant workers) and those that refer specifically to migrant workers. Eight fundamental ILO conventions refer to all workers, as do the Private Employment Agencies Convention, 1997 (No. 181) and the Domestic Workers Convention, 2011 (No. 189). While these two pertain to all workers, they are particularly salient for international labour migration. Article 7 of the Private Employment Agencies Convention states that “private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers”, implying that employers are required to bear the costs of recruitment of workers.

Box

International frameworks of relevance to international labour migration

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- Migration for Employment Convention (Revised), 1949 (No. 97)
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
- Equality of Treatment (Social Security) Convention, 1962 (No. 118)
- Domestic Workers Convention, 2011 (No. 189)
- ILO Multilateral Framework on Labour Migration
- General principles and operational guidelines for fair recruitment (International Labour Organization)
- Migration Governance Framework (International Organization for Migration)
- New York Declaration for Refugees and Migrants (General Assembly resolution 71/1)
- Declaration on the Protection and Promotion of the Rights of Migrant Workers (Association of Southeast Asian Nations)
- Convention on legal status of migrant workers and members of their families of the State parties of the Commonwealth of Independent States
- Treaty on the Eurasian Economic Union
- SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution
- Kathmandu Declaration (South Asian Association for Regional Cooperation, 2014)

29. Because ratifying an international convention requires a country to bring its laws into conformity with the convention and be accountable under a supervisory mechanism, countries may be reluctant to do so. This can be the case even when a country's management of labour migration largely adheres to the principles of the convention. For this reason, in 2006, ILO developed the Multilateral Framework on Labour Migration. In this non-binding Framework, the sovereign right of all nations to determine their own migration policies is recognized, and the themes of decent work for all, governance of migration, protection of migrant workers, promoting migration and development linkages, and expanding international cooperation are addressed.

30. A key principle of the Framework, stated in subparagraph 9 (a), is that "all international labour standards apply to migrant workers, unless otherwise stated. National laws and regulations concerning labour migration and the protection of migrant workers should be guided by relevant international labour standards and other relevant international and regional instruments".¹⁶ Also called for in the Framework are measures to prevent abusive practices, migrant smuggling and trafficking in persons; establishing an orderly and equitable process of labour migration; licensing and supervising recruitment and placement agencies; and recognizing the contribution of labour migration

¹⁶ ILO, *ILO Multilateral Framework on Labour Migration: Non-Binding Principles and Guidelines for a Rights-Based Approach to Labour Migration* (Geneva, 2006).

to employment, economic growth, development and the alleviation of poverty. In addition, it is suggested that development and implementation of these measures be carried out in consultation with workers' and employers' organizations as key stakeholders in labour migration processes.

31. Also in the Framework, a suggestion is made to expand avenues for regular labour migration that take into account labour market needs and demographic trends and the value of establishing systems and structures for periodic, objective labour market analyses that take into account gender issues; establishing transparent policies for the admission, employment and residence of migrant workers based on clear criteria, including labour market needs; and, where appropriate, establishing policies and procedures to facilitate the movement of migrant workers through bilateral, regional or multilateral agreements are highlighted.

32. Member States of IOM have adopted the Migration Governance Framework. In this Framework, they have proposed a structure in which States and IOM can work together to address migration issues and presented the ideal version of migration governance to which States can aspire and for which IOM can provide support and assistance. Also, an ideal approach that allows a State to determine what it might need to govern migration well and in a way that fits its circumstances is provided.

33. The Framework is based on three principles and three objectives. The three principles are:

- (a) Good migration governance requires adherence to international standards and the fulfilment of migrants' rights;
- (b) Migration and related policies are best formulated using evidence and whole-of-government approaches;
- (c) Good migration governance relies on strong partnerships.

34. The three objectives are:

- (a) Good migration governance and related policy should seek to advance the socioeconomic well-being of migrants and society;
- (b) Good migration governance is based on effective responses to the mobility dimensions of crises;
- (c) Migration should take place in a safe, orderly and dignified manner.¹⁷

35. A set of indicators on policies governing migration are contained in the Migration Governance Index, developed by the Economist Intelligence Unit and IOM, with the intention to guide member States' compliance with broad policy objectives and the evaluation of their progress in the regulation of migration.

36. In addition to the international conventions and guidelines described above, several subregional intergovernmental organizations have adopted conventions and declarations related to international migration, as shown in the box. These include:

¹⁷ IOM, document C/106/40. Available from www.governingbodies.iom.int/system/files/en/council/106/C-106-40-Migration-Governance-Framework.pdf.

(a) The Treaty on the Eurasian Economic Union, which creates a space of free movement of labour between member States including Armenia, Kazakhstan, Kyrgyzstan and the Russian Federation;

(b) Agreements in the Commonwealth of Independent States, comprising the post-Soviet countries of North and Central Asia (except Georgia and Turkmenistan) on labour migration and social protection for migrants (1994), preventing irregular migration (1998) and the legal status of migrant workers (2008);

(c) ASEAN mutual recognition arrangements, allowing for freer movement of skilled professionals in engineering, nursing, architecture, dentistry, medicine, accountancy, tourism and quantity surveying and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.

37. As the interests of countries in the subregions are often complementary, and migration flows often have a significant subregional component, subregional organizations have the potential to strengthen migration management and the protection of the rights of migrant workers through providing forum for discussion, cooperation and agreement on principles, roles and responsibilities, based on mutual benefit and with strong political legitimacy.

38. For example, the Treaty on the Eurasian Economic Union provides a comprehensive framework for labour migration, addressing the free movement of migrant workers, but also clarifying issues such as migrants' access to social protection, mutual recognition of qualifications and the rights of migrants.

39. Through the adoption of the 2030 Agenda for Sustainable Development, the international community incorporated features of international migration into the global strategy for sustainable development, with a focus on facilitating orderly, safe, regular and responsible migration and protecting labour rights and promoting safe and secure working environments for all workers, including migrant workers, in particular women migrants.^{18,19}

40. The required elements of safe, orderly and regular labour migration have long been recognized and formally agreed upon by States, and later consolidated in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. General Assembly outcomes, ILO conventions, recommendations and guidelines; IOM frameworks; subregional conventions and declarations; and targets of the Sustainable Development Goals add further weight to the normative framework for international labour migration.

41. Going forward, the operationalization of this corpus of law and practice in the Asia-Pacific region through the global compact for safe, orderly and regular migration will be a challenge.

III. Intergovernmental processes

42. In the past decade, the intergovernmental machinery for addressing international migration, in particular labour migration, has undergone considerable development, incorporating United Nations initiatives, notably the High-level Dialogue on International Migration and Development, held by

¹⁸ General Assembly resolution 70/1.

¹⁹ For more details, see E/ESCAP/GCM/PREP/2.

the General Assembly in September 2006, which was the first meeting of its kind focused on international migration, and the State-led Global Forum on Migration and Development.

43. Following the first High-level Dialogue on International Migration and Development in 2006, several Governments established the State-led Global Forum on Migration and Development, which provides an annual forum for informal dialogue among countries on migration and development issues, to exchange good practices, identify gaps and establish partnerships between key stakeholders. It has helped build consensus among member States on international migration issues, addressing contentious issues in a pragmatic and solution-oriented fashion. The tenth summit of the Forum was held in Berlin from 28 to 30 June 2017, under the theme “Towards a global social contract on migration and development”.

44. The second High-level Dialogue on International Migration and Development, held at the General Assembly in 2013, adopted a declaration in which an international consensus on the contribution of migration to development set out. The importance of promoting and protecting “the human rights and fundamental freedoms of all migrants, regardless of their migration status, especially those of women and children, and the need to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability” was reaffirmed in the declaration. Also in the declaration, there was a call incorporating human mobility in 2030 Agenda.²⁰ The third High-level Dialogue will be held no later than 2019.

45. These international processes are supplemented by regional consultative processes on migration, which bring together representatives of States, international organizations and, in some cases, non-governmental organizations for informal and non-binding dialogue and information exchange on migration-related issues of common interest and concern. These processes permit an open discussion in contexts where negotiating formal agreements would be difficult, and have formed the basis for effective cooperation in the management of labour migration.

46. For example, the Regional Consultative Process on the Management of Overseas Employment and Contractual Labour for Countries of Origin in Asia, or the Colombo Process, focuses on labour migration. It has 12 participating States from Asia and 11 partner and observer States, which are destination areas for labour migration. The Process addresses the protection and provision of services to migrant workers; optimizing the benefits of organized labour migration; increasing remittance flows; capacity-building; data collection; and inter-State cooperation. The countries of origin in the Colombo Process meet with the key countries of destination in the Abu Dhabi Dialogue, namely Bahrain, Kuwait, Malaysia, Oman, Qatar, Saudi Arabia and the United Arab Emirates. The most recent conference was the Senior Officials’ Meeting and Fourth Ministerial Consultation, held in Colombo on 23 and 24 January 2017. These discussions have led to practical outcomes, including research on recruitment processes and pilot cooperation projects addressing mutual concerns of countries of origin and destination regarding skills development, certification upgrading and recognition.

²⁰ General Assembly resolution 68/4.

47. The ASEAN Forum on Migrant Labour is an initiative of the ASEAN Committee to advance implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers. Its members are the 10 member States of ASEAN as well as employers' and workers' organizations and civil society organizations. The Forum informally reviews the implementation of the ASEAN Declaration, shares good practices on identified themes and makes recommendations to advance implementation of the Declaration.

IV. National frameworks for the management of labour migration

48. Countries of origin and destination can address labour migration issues through national frameworks. A comprehensive policy framework should include an explicit policy document, the necessary legislation, a specified administrative structure and linkage with overall development strategies. The process to formulate policies and legislation should involve consultations with key stakeholders, including employers, trade unions and migrant organizations.

A. Policy documents

49. Comprehensive migration policy documents include those adopted by Bangladesh, Cambodia, Kiribati, the Russian Federation, Sri Lanka and Tuvalu. In Bangladesh, an updated expatriates, welfare and overseas employment policy was adopted in January 2016. The new policy contains provisions on promoting and ensuring safe migration, the security and welfare of expatriate workers and their families, the inclusion of migration in national development, proper management of labour migration and the migration of female workers.

50. The national labour migration policies of Kiribati and Tuvalu are designed to provide a coherent strategy for promoting overseas employment and protecting the welfare of nationals abroad, within the broader context of generating productive and decent employment opportunities for all citizens. Under the Kiribati policy, it is recognized that labour migration will become an increasingly important strategy for permanent migration and for limiting population growth. Also, in the policy, the provision of professional training to citizens to take up skilled labour migration opportunities in response to climate change threats to livelihoods is stressed. Tuvalu has set a policy based on the view that the fundamental requirement for the achievement of better labour migration outcomes for the country requires the application of a coordinated, whole-of-government approach to growing work opportunities overseas and to mainstreaming labour migration into its policies for national development.

51. In 2012, the Russian Federation approved a new concept paper on the national migration policy. In the paper, the country recognizes that foreign labour is needed for future sustainable development in the country; identifies shortcomings in existing procedures; and proposes steps to address these shortcomings through legislative, administrative and programmatic reforms.

52. Sri Lanka adopted its National Labour Migration Policy in 2008. Through this policy, the country addresses the governance of labour migration; protection and empowerment of migrant workers and their families; and links migration and development. Also, as part of the policy, there is a call for measures to prevent exploitation during recruitment, and Sri Lankan missions in host countries are required to develop systems to proactively ensure the

protection and welfare of migrant workers. Other elements of the policy include encouraging human resource development within the country in order to promote the deployment of more highly skilled workers and the establishment of a mechanism to promote local employment using the skills of returning migrants.

B. Legislation on labour migration

53. All countries have adopted legislation governing labour migration. Typically, under labour migration legislation, authority and responsibility for migration management are assigned to specific government agencies. The legislation contains provisions to protect migrant workers, including statements of their rights; requirements such as employment contracts, medical examinations and insurance; and measures to regulate private recruitment agencies. The legislation is usually broad or general, but the implementing agency is given the authority to make and enforce specific regulations within the scope of the legislation. The private sector should also be consulted in the development of such legislation, especially when it comes to issues such as employment contracts.

54. The Bangladesh *Overseas Employment and Migrants Act 2013* contains chapters on recruitment agencies; the registration of migrant workers and migration clearance; employment contracts; provision for bilateral agreements on migration; rights of migrant workers; and offences and penalties.

55. Under the *Act on Foreign Workers Employment, 2004*, the Republic of Korea established the Employment Permit System under which the country recruits lower-skilled migrant workers from other Asian countries. The Act is based on such principles as ensuring that foreign workers supplement the domestic labour market, rather than displacing Korean workers; non-discrimination against foreign workers; maintaining the temporary nature of migration; transparency in the recruitment process for foreign workers; and ensuring that hiring migrant workers is not an alternative to industrial restructuring. It sets out procedures for hiring foreign workers, requirements for contracts and measures to ensure return of migrant workers, as well as clarifying aspects such as employer responsibility for health insurance provision and conditions for migrants to change jobs.

C. Administrative structures for the management of labour migration

56. Some countries in the region manage international labour migration with ministries devoted to that purpose. Examples are the Bangladesh Ministry of Expatriates' Welfare and Overseas Employment, and the Sri Lanka Ministry of Foreign Employment Promotion and Welfare.

57. Most countries designate an agency or department within the labour ministry to be responsible for deploying workers abroad or for receiving foreign workers. This is the administrative structure in Cambodia, Myanmar, the Philippines, the Republic of Korea, Singapore, Thailand and Viet Nam, for example. In Malaysia, responsibilities are shared between the Ministry of Home Affairs and the Ministry of Human Resources.

58. Agencies responsible for labour migration in countries of origin may face a trade-off between efforts to promote overseas employment and efforts to protect the rights of migrants. Under the *Migrant Workers and Overseas Filipinos Act of 1995*, this tension was addressed by mandating the Philippine Overseas Employment Administration to manage the recruitment and deployment of migrant workers, while the Overseas Workers Welfare Administration deals with specific aspects pertaining to the welfare of workers.

59. Several countries have established government-owned recruitment agencies. Human Resources Development Service of Korea is an agency within the Ministry of Employment and Labour mandated to implement the Employment Permit System. The Republic of Korea recruits migrant workers only from countries that have established quasi-governmental agencies for recruitment to avoid the exploitation of migrant workers by private recruitment agencies.

60. Many countries in the region have bilateral agreements to provide a framework for labour migration management, often in the form of memoranda of understanding. ILO Recommendation No. 86 concerning Migration for Employment (revised 1949) includes a model for these agreements. These memoranda usually include concrete implementation, monitoring and evaluation procedures, though most are general in their wording, requiring the development of more detailed procedures and regulations for implementation. If these procedures become overly bureaucratic, time-consuming and costly, however, many migrants opt to move via irregular channels. A major benefit of memoranda of understanding is that they normally provide for meetings at least annually between labour officials of the respective Governments to address issues that have been identified.

61. In a global review of memoranda of understanding, ILO noted that a majority lacked normative foundations and respect for human rights based on international instruments. Most also lacked specific reference to equal treatment of migrant workers; wage protection measures; enforceable provisions regarding contracts and workplace protection; prohibition of confiscation of travel and identity documents; provision of health security; a pension on a par with local workers; and concrete mechanisms for complaints.²¹ Most of the memoranda were also developed without consultation with employers' and workers' organizations.

62. Many countries of origin create administrative machineries in places where large numbers of their workers are concentrated to provide assistance to them. Complaints mechanisms are often put in place and shelters for workers in distress can be provided. The Bangladesh *Overseas Employment and Migrants Act 2013* provides for the establishment of the labour welfare wing in Bangladesh missions abroad to protect migrant workers and to research into labour markets. The authorized officer of the labour welfare wing inspects places of employment of Bangladeshi workers, meets with employers and sends annual situation reports to the Government.

63. The Philippines has established Philippine Overseas Labour Offices in Philippine diplomatic missions to protect Filipino workers, provide on-site assistance to them and to seek new employment opportunities through market research on labour force requirements. Other functions of the Overseas Workers Welfare Administration are to handle the repatriation of workers during emergencies, operate a loan guarantee fund and ensure that workers are enrolled in life, accident and health insurance programmes.

D. Linkage with overall development strategies

64. International labour migration can best contribute to economic and social development when it is linked to overall development strategies and guided by the 2030 Agenda. As a result, labour migration policies should be consistent with human resource development, education and training, and

²¹ P. Wickramasekara, *Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review* (Geneva, ILO, 2015). Available from www.ssrn.com/abstract=2636289.

industrial policy, and vice versa. For example, it is advantageous for a country to send more highly skilled workers abroad because they will earn and remit more and also encounter fewer problems of exploitation and poor labour standards. Yet to do so requires that the general educational system as well as vocational and technical education take into account foreign labour markets.

65. Similar to this, countries of destination should avoid an overreliance on low-skilled migrants that would put downward pressure on local wages and provide a disincentive to investing in industrial restructuring, including automation. The Republic of Korea and Singapore have set annual low-skilled migration quotas by industrial sector based on an analysis of economic growth in those sectors, while Singapore also uses measures, such as quotas and levies, to ensure that low-skilled migration is not a substitute for employment of nationals or investment in productivity upgrades.

66. Bangladesh and Kyrgyzstan represent good practices in integrating migration and development policy, as the Governments of these countries worked with UNDP and IOM to mainstream migration into their national development strategies to ensure relevant policies were aligned, and to continually monitor and adjust their approaches to migration and development.

E. Role of the private sector

67. In destination countries, most migrant workers take up work in the private sector, where they often fill labour gaps and maintain competitiveness by accepting lower wages. In countries of origin, facilitating the recruitment of migrant workers has become an industry. The private sector is a key factor in complying with labour standards.

V. Conclusions and recommendations

68. International labour migration is an important element in the development of many countries of origin and destination in Asia and the Pacific. States have developed comprehensive legislation, regulations and government institutions for the management of this migration. Nevertheless, gaps in policy and legislation persist with respect to adherence to international standards and to the consultation process with key social partners.

69. Despite the attention that Governments have given to developing more efficient systems of managing labour migration, challenges persist in ensuring that it takes place in a safe, orderly and regular fashion. These include protecting the rights of migrant workers, reducing the high costs paid by migrants for their recruitment, achieving coherence between migration policies and other development strategies, and establishing regional agreements and mechanisms for international labour migration.

70. Intergovernmental conventions, treaties, declarations and frameworks exist to protect the rights of migrants and ensure well-managed flows of labour migration. These vary from legally binding conventions, to more general international norms, to statements of principle without monitoring or implementation mechanisms.

71. Despite these instruments and efforts by Governments, gaps in the management of labour migration remain. These include:

- (a) Loopholes and capacity gaps which permit recruitment agencies to exploit migrants;
- (b) Lack of attention to the role of employers and supply chains in the treatment of migrant workers;

(c) Practices, such as specifying that work permits of migrant workers are valid only for one employer, which hinder changes of jobs, reducing migrants' bargaining power in the workplace;

(d) Lack of coverage of key sectors, such as domestic work and agricultural work, by labour laws, excluding migrants in these sectors from the protective provisions of these laws;

(e) Limited portability of social protection benefits such as occupational accident insurance or pensions, even when migrant workers contribute to those systems in the host country;

(f) Few subregional standards or mechanisms on issues such as recognition of qualifications, portability of social protection and labour mobility.

72. In the light of the gaps in the management of labour migration identified above, the global compact for safe, orderly and regular migration should provide means for involvement of private sector and workers' organizations more directly in developing and implementing international agreements on labour migration. The global compact could also stress the importance of regional and subregional instruments governing labour migration.

73. Asian and Pacific countries will prepare a regional input to the negotiations for the global compact for safe, orderly and regular migration. The compact, which is expected to be adopted by an intergovernmental conference in 2018, is to be guided by the New York Declaration for Refugees and Migrants,²² which included 24 suggested elements for incorporation in the compact.

74. In preparing their regional input, countries should take into account the 2030 Agenda, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and the outcome of the second High-level Dialogue on International Migration and Development; they may also consider the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the *ILO Multilateral Framework on Labour Migration*, ILO standards and the IOM Migration Governance Framework.

75. The former Special Representative of the Secretary-General for International Migration in a report (referred to as the "Sutherland Report") has proposed an agenda for action, with recommendations on building opportunities for labour and skills mobility, which included addressing recruitment costs and abuses of migrant workers by:

(a) helping prospective migrants secure financing at non-exploitative rates;

(b) aligning national laws, policies and regulations, bilateral and multilateral agreements, and voluntary codes of conduct with ILO principles and guidelines;

(c) monitoring and enforcing compliance with recruitment regulations;

(d) promoting consolidation and professionalization in the recruitment industry.

²² A/RES/71/1.

76. The Special Representative also recommended strengthening the architecture to govern labour mobility by:

(a) Ensuring coherence at the national level between bilateral and regional agreements, national labour market policies and other relevant policy areas;

(b) Forming a global alliance of labour-sending States to advance shared priorities;

(c) Working towards a global framework for managing labour migration;

(d) Creating a multiagency support structure to facilitate labour mobility and advance consensus building ahead of 2018;

(e) Establishing a global multi-stakeholder platform on skills and mobility for employment.²³

77. The report and recommendations of the Special Representative could be taken as further guidance for formulating the global compact for safe, orderly and regular migration.

78. An additional overarching recommendation is for States to consider ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. States that have ratified this Convention should incorporate the Convention into their national legal structures.

79. To protect the human and labour rights of migrant workers, States could commit themselves to more rigorous inspection of the workplaces of migrant workers and enforcement of labour standards and employment contracts. Initiatives involving employers and their associations and buyers in supply chains should be expanded. Incentives should be created for employers to adhere to the principles of decent work. Governments should work with other stakeholders, including employers, workers' organizations and other civil society groups to improve the integration of migrant workers in host countries while they are employed.

80. Every migrant worker should be covered by legal labour standards, irrespective of their immigration status. Where labour standards do not currently cover the domestic, agricultural and fishery sectors and employment by small firms or by individuals, reforms should be made in line with the ILO Multilateral Framework on Labour Migration. Measures should ensure that migrants have a written employment contract that outlines work responsibilities and includes human rights and labour protection provisions, and that is written in a language that is understood by the worker.

81. States could also consider creating new or strengthening existing mechanisms that provide access to remedy for migrant workers whose rights have been violated, regardless of their migration status. As domestic workers are employed in private domiciles outside the scope of labour inspection, consideration should be given to alternate methods of oversight that provide greater access to remedies for such workers. These could include specific training for employers of domestic workers.

²³ A/71/728.

82. Countries of destination may wish to consider measures that allow workers, especially lower-skilled workers, to legally change employers, to reduce the vulnerability of migrants to exploitation that is associated with single-employer work permits. States may also wish to consider establishing sector-based work permits, which link a worker to a sector rather than an individual employer.

83. Government policies, regulations and programmes should be more gender responsive and inclusive of all stakeholders in their development. A high percentage of women migrant workers from Asia and the Pacific are domestic workers, resulting in greater vulnerability to abuse and exploitation for women migrants. Overseas missions and offices of countries of origin could strengthen mechanisms to monitor more closely the situation of domestic workers. Processes for developing laws in consultation with key stakeholders, such as employers and workers could help ensure that their interests are effectively taken into account.

84. Governments could explore alternative recruitment mechanisms to develop those that are more beneficial to migrant workers. Governments could also consider allowing employers to recruit workers directly with appropriate government oversight in cases in which it is not currently permitted. Governments could also set up offices to recruit workers directly for overseas employment. This could be fully governmental or the subsidiary of a government agency, as in the case of the Republic of Korea.

85. To ensure fair recruitment processes, countries should ensure that regulation of labour recruiters draws from existing international instruments, notably ILO Convention on Private Employment Agencies, 1997 (No. 181), further elaborated in General principles and operational guidelines for fair recruitment (2016) issued by ILO.

86. To control irregular migration, countries could give greater attention to the employers of irregular migrants and to the networks that recruit and find employment for them. Governments could streamline formal recruitment and deployment processes to increase incentives to move through regular channels. Governments could also provide more information about recruitment and deployment procedures. Governments could consider initiatives to regularize migrant workers in an irregular status in line with effective experiences witnessed in such countries as Malaysia and Thailand.

87. Migration policies could be mainstreamed in national development strategies to ensure that they are aligned with wider objectives. Labour migration could be taken into account in sectoral planning, especially education, vocational and skills training, and manpower planning. Labour market information systems could be strengthened with a specific focus on migration.

88. Governments, through bilateral agreements and subregional associations, could create the machinery for the portability of the earned social security benefits of migrant workers, especially accident insurance and pensions. Subregional associations could consider ways to expand and deepen their agreements on the mutual recognition of credentials. These intergovernmental organizations have the potential to establish rules addressing some of the gaps noted above, particularly the complexity of recruitment procedures, high recruitment costs, lack of labour protection for workers in the informal sector and the portability of benefits.