

Annex

[English only]

A. Additional sources consulted for the Special Rapporteur's report

1. The Special Rapporteur would like to acknowledge the contributions of the following experts who provided inputs to the present report: Adelle Blackett (McGill University); Ryszard Cholewinski (ILO); Lance Compa (School of Industrial and Labor Relations, Cornell University); Thomas Cottier (University of Bern/ World Trade Institute); Charlie Fanning (AFL-CIO); Fay Faraday (Faraday Law); William Gois (Migrant Forum in Asia); Susan Mathews (OHCHR); Raúl Delgado Wise (International Network on Migration and Development, Global Coalition on Migration).

2. In addition to 12 country and follow-up visits undertaken, as well as insight gained from the Special Rapporteur's ongoing contributions to regional and international discourse on migration and mobility, the following sources were consulted:

- African, Caribbean and Pacific Group and the European Union, "Partnership agreement between the Members of the African, Caribbean and Pacific Group of the States of the one part, and the European Community and its Member States of the other Part" (2000), revised (2010) ("The Cotonou Agreement")
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- ASEAN, "ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers" (2007); "ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) Work Plan" (2008)
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- ASEAN, "Declaration on the ASEAN Economic Community Blueprint" (2007); "ASEAN Economic Community Blueprint 2025" (2015)
- ASEAN, "Protocol on Enhanced Dispute Settlement Mechanism" (2012)
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- Brookings Institution, "Understanding the Importance of the Tripartite Free Trade Area" (2015)
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- Caribbean Community, "Revised Treaty of Chaguaramas Establishing the Caribbean Community including the Caricom Single Market and Economy" (1973), amended (2001)
- Certain Employees of Sidhu & Sons Nursery Ltd. ("Certain Employees") & Sidhu & Sons Nursery Ltd. & United Food and Commercial Workers International Union, Local 1518, BCLRB No. B56/2014

- COMESA, “Treaty Establishing Common Market for Eastern and Southern Africa” (1994), amended (2009); Investment Agreement for the COMESA Common Investment Area (2007)
- Congressional Research Service, “International Investment Agreements (IIAs): Frequently Asked Questions” (2015)
- ECORYS, “Trade Sustainability Impact Assessment on the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States of America” (2014)
- EEA, “Agreement on the European Economic Area” (1994), updated (2014); “Annex V: Free Movement of Workers” (2016)
- EFTA, “Convention Establishing the European Free Trade Association”, amended (2013)
- EU, “Directive 2004/38/EC of the European Parliament and of the Council” (2004); “Corrigendum to Regulation (EC) No 883/2004 of the European Parliament and of the Council on the Coordination of Social Security Systems” (2004); “Regulation (EU) No 492/2011 on Freedom of Movement for Workers within the Union” (2011); “Consolidated Version of the Treaty on European Union” (2012); “Consolidated Version of the Treaty on the Functioning of the European Union” (2012)
- Global Migration Group, “GMG Issues Brief No. 2: Improving the Labour Market Outcomes of Migration” (2013)
- Government of Canada and the European Union, “Comprehensive Economic and Trade Agreement between Canada and the European Union” (*pending*)
- Government of Canada and the Government of the Republic of Colombia, “Free Trade Agreement” (2008); “Agreement on the Environment between Canada and The Republic of Colombia” (2008); “Agreement on Labour Cooperation” (2008)
- Government of Canada, Government of the United Mexican States and the Government of the United States of America, “North American Free Trade Agreement” (1993) (“Treaty establishing NAFTA”); “North American Agreement on Labor Cooperation” (1993)
- Government of Japan and Swiss Confederation, “Agreement on Free Trade and Economic Partnership” (2009)
- Government of the United States of America and the Royal Government of Cambodia, “Cambodia Bilateral Textile Agreement” (1999)
- Government of the United States of America and the Government of Guatemala, “Dominican Republic-Central America-United States Free Trade Agreement, Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala” (2013)
- Government of the United States of America and the Government of the Republic of Panama, “United States-Panama Trade Promotion Agreement” (2007)
- Ibero-American States, “Ibero-American Multilateral Convention on Social Security” (2007); “Agreement on the Implementation of the Ibero-American Multilateral Convention on Social Security” (2013)
- ILO, “A Case Study of Thai Migrant Workers Exploited in Sweden” (2012)
- ILO, “Bilateral Agreements and Memoranda of Understanding on Migration of Low Skilled Workers: A Review” (2015)
- ILO, “Convention No. 81, Labour Inspection Convention” (1947)

- ILO, “Convention No. 86, Contracts of Employment (Indigenous Workers) Convention” (1947)
- ILO, “Convention No. 97, Migration for Employment Convention (Revised)” (1949)
- ILO, “Convention No. 143, Migrant Workers (Supplementary Provisions) Convention” (1975)
- ILO, “Convention No. 189, Domestic Workers Convention” (2011)
- ILO, “Declaration Concerning the Aims and Purposes of the International Labour Organisation (Declaration of Philadelphia)” (1994)
- ILO, “Fair Migration: Setting an ILO Agenda” (2014)
- ILO, “ILO Multilateral Framework on Labour Migration” (2006)
- ILO, “International Labour Migration, A Rights-Based Approach” (2010)
- ILO, “Labour Provisions in Trade Arrangements: Current Trends and Perspectives” (2011)
- ILO, “Model Trade Union Agreement on Migrant Workers’ Rights” (2008)
- ILO, “Recommendation 86, Migration for Employment Recommendation (Revised)” (1949)
- ILO, “Recommendation 151, Migrant Workers Recommendation” (1975)
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 - OHCHR, “Issues Paper: Potential Human Rights Impact Assessment (HRIA) of the Continental Free Trade Area in Africa, 2015-2017” (2015)
 - Ontario (Attorney General) v. Fraser, 2 SCR 3, 2011 SCC 20
 - Republic of Mauritius and the Islamic Republic of Pakistan, “Preferential Trade Agreement Between the Republic of Mauritius and the Islamic Republic of Pakistan” (2007)
 - Republic of Turkey and Republic of Mauritius, “Preferential Trade Agreement Between the Republic of Mauritius and the Islamic Republic of Pakistan” (2011)
 - Republic of Turkey and Republic of Tunisia, “Free Trade Agreement between Turkey and Tunisia” (2004)
 - SADC, “Protocol on Trade in the Southern African Development Community (SADC) Region” (1996), as amended (2005); “Annex VI Concerning the Settlement of Disputes between the Member States of the Southern African Development Community” (2007)
 - Simon Walker, *The Future of Human Rights Impact Assessments of Trade Agreements* (2009)
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 - UNDESA, “Population Facts: Trends in International Migration” (2015)
 - UNICEF, “Free Trade and Children” (2006)
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 - World Bank, *Preferential Trade Agreements: Policies for Development: A Handbook* (2011)
 - World Bank, IOM and WTO, “Managing the Movement of People: What Can Be Learned for Mode 4 of the Gats” (2005)
 - World Economic Forum, “The Business Case for Migration” (2013)
 - WTO, “Database on Preferential Trade Agreements” (2016)
 - WTO, “Guide to WTO Law and Practice: General Agreement on Trade in Services” (2016)
 - WTO, “Regional Trade Agreements Gateway” (2016)

B. Model provisions for strengthening human rights and labour protections in trade agreements

3. As discussed in the Special Rapporteur's report, the proliferation of regional and preferential trade agreements, as well as bilateral mobility arrangements have reflected a diverse range of approaches to integrating human rights and labour considerations in trade relationships. Such protections have varied considerably, both in terms of content, scope and influence, as well as in actual implementation and enforcement.

4. The following may be referenced as examples of language or processes to be included when concluding trade agreements to strengthen human rights protections for migrant workers. Still, the Special Rapporteur would like to reiterate the importance of observing such provisions in a non-discriminatory manner, and one in which the human rights of all migrant workers are respected:

Freedom of movement for all classes of migrant workers

- COMESA, "Treaty Establishing Common Market for Eastern and Southern Africa" (1994), amended (2009)
- Economic Community of West African States, "Treaty of the Economic Community of West African States" (1975), art. 2(d) and art. 27; "Revised Treaty of the Economic Community of West African States" (1993), art. 3(2)(d) and art. 55(1)(ii.); "Economic Community of West African States' (ECOWAS) Protocol on Free Movement of Persons, Residence, and Establishment" (1979); "Supplementary Protocol on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment" (1985); "Supplementary Protocol on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment" (1986); "Supplementary Protocol Amending and Complementing the Provisions of Article 7 of the Protocol on Free Movement of Persons, the Right of Residence and Establishment" (1989)
- EEA, "Agreement on the European Economic Area" (1994), updated (2014), Part III; "Annex V: Free Movement of Workers" (2016)
- EFTA, "Convention Establishing the European Free Trade Association", amended (2013), art. 2(c) and Ch. VIII
- EU, "Directive 2004/38/EC of the European Parliament and of the Council" (2004); "Corrigendum to Regulation (EC) No 883/2004 of the European Parliament and of the Council on the Coordination of Social Security Systems" (2004); "Regulation (EU) No 492/2011 on Freedom of Movement for Workers within the Union" (2011); "Consolidated Version of the Treaty on European Union" (2012); "Consolidated Version of the Treaty on the Functioning of the European Union" (2012)

Labour cooperation and capacity-building activities, including against workplace-related discrimination

- African, Caribbean and Pacific Group and the European Union, "Partnership agreement between the Members of the African, Caribbean and Pacific Group of the States of the one part, and the European Community and its Member States of the other Part" (2000), revised (2010) ("The Cotonou Agreement")

- Government of the United States of America, Government of Costa Rica, Government of El Salvador, the Government of Guatemala, Government of Honduras, and Government of Nicaragua, “Dominican Republic-Central America-United States Free Trade Agreement (2007), Ch. 16
- Government of the United States of America and the Government of Guatemala, “Dominican Republic-Central America-United States Free Trade Agreement, Mutually Agreed Enforcement Action Plan between the Government of the United States and the Government of Guatemala” (2013)

Protection and promotion of economic, social and cultural rights and integration

Governance mechanisms

- Caribbean Community, “Revised Treaty of Chaguaramas Establishing the Caribbean Community including the Caricom Single Market and Economy” (1973), amended (2001), art. 10 and art. 17
- Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, art. 15

Portability of Social Security and other benefits

- Ibero-American States, “Ibero-American Multilateral Convention on Social Security” (2007); “Agreement on the Implementation of the Ibero-American Multilateral Convention on Social Security” (2013)
- MERCOSUR, “Treaty of Asunción” (1991)

Recognition of skills and qualifications

- MERCOSUR, “Annex to the Protocol on the admission of qualifications and university degrees for the exercise of academic activities in the countries of MERCOSUR” (1991)

Transparency and participation in trade negotiations

- Government of Canada and the Government of the Republic of Colombia, “Free Trade Agreement” (2008); “Agreement on the Environment between Canada and The Republic of Colombia” (2008); “Agreement on Labour Cooperation” (2008)

Protection of vulnerable population groups

- African, Caribbean and Pacific Group and the European Union, “Partnership agreement between the Members of the African, Caribbean and Pacific Group of the States of the one part, and the European Community and its Member States of the other Part” (2000), revised (2010) (“The Cotonou Agreement”)
- COMESA, “Treaty Establishing Common Market for Eastern and Southern Africa” (1994), amended (2009), art. 154
- Government of the United States of America and the Government of the Republic of Panama, “United States-Panama Trade Promotion Agreement” (2007), art. 16.2

Multi-stakeholder engagement

- ASEAN, “ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers” (2007); “ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW) Work Plan” (2008)
- Government of the United States of America and the Royal Government of Cambodia, “Cambodia Bilateral Textile Agreement” (1999)

Human rights impact and sustainability assessments

- ECORYS, “Trade Sustainability Impact Assessment on the Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States of America” (2014)
- OHCHR, “Issues Paper: Potential Human Rights Impact Assessment (HRIA) of the Continental Free Trade Area in Africa, 2015-2017” (2015)

General exception clauses

- COMESA, Investment Agreement for the COMESA Common Investment Area (2007), art. 22
- Government of Canada and the European Union, “Comprehensive Economic and Trade Agreement between Canada and the European Union” (*pending*), art. 28.3
- Republic of Mauritius and the Islamic Republic of Pakistan, “Preferential Trade Agreement Between the Republic of Mauritius and the Islamic Republic of Pakistan” (2007), art. 10

C. Model provisions for global mobility framework in trade agreements

5. In addition to the systemic inclusion of a range of human rights processes and provisions detailed in the report, the Special Rapporteur has also proposed the development of a comprehensive global mobility framework to be included in trade agreements.

6. The ILO has already identified several elements which States may consider in the context of a comprehensive global mobility framework in the *ILO Multilateral Framework on Labour Migration* (2006) and the *ILO Migration for Employment Recommendation (Revised), 1949 (No. 86)*, which includes the *ILO Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons*. A comprehensive global mobility framework would include provisions detailing, inter alia:

- Identification of the competent government authority
- Exchange of information
- Notification of job opportunities
- Pre-selection and final selection of candidates
- Medical examination
- Entry visas
- Residence and work permits
- Transportation and conditions of transport (both outgoing and return)

- Equality of treatment and non-discrimination
- Contracts of employment
- Terms of employment, including possibilities to change employment
- Working conditions, including occupational safety and health
- Trade union rights
- Social security
- Taxation, including measures addressing double taxation
- Accommodation
- Family reunification
- Education and vocational training
- Activities of social and religious associations
- Supervision of living and working conditions, including through labour inspection
- Remittances
- Dispute settlement procedures
- Return and reintegration
- Cooperation, usually through establishment of a joint commission/committee to monitor the implementation of the agreement, including resolution of disputes between the parties; propose amendments; and discuss follow-up.

7. In practice, most labour mobility arrangements are kept separate from trade agreements or they do not provide coverage for all of these areas. Further, some elements, such as social security and taxation, are subject to separate arrangements. Thus, a more comprehensive framework is required in trade regimes to govern mobility and protect the human rights of all migrant workers.