



THE ROLE OF CONSULAR STAFF IN PROTECTING THE RIGHTS OF MIGRANT WORKERS IN CRISIS SITUATIONS

With the increasing importance of diasporas, the role of embassies and consular offices is changing in many countries. They are often the first port of call for migrant workers in need and the first line of action for establishing trust between governments and their diaspora communities.

Through the creation of consular networks, it is possible to increase the reach of actions that support migrant workers, especially when the staff and offices available are few and concentrated in highly populated regions.

Consular staff, in accordance with the international conventions that govern their functions, have a vital role in protecting the rights of migrant workers. These functions are fundamentally grounded on two United Nations conventions:

- The Vienna Convention on **Diplomatic Relations of 1961:** establishes that one of the functions of diplomatic missions is to protect the interests of the sending State and its nationals in the receiving State.
- **The Vienna Convention on Consular Relations of 1963:** indicates that it is the responsibility of consular staff to protect the interests of the nationals of the State they represent in the

receiving State, to help and assist them and represent them before courts and other authorities.

Many consulates today offer free legal assistance, welfare support, passport assistance and other services to their nationals. But increasingly, they also organize cultural, business and trade events, and consultations with and among migrants' workers groups; provide information, guidance and training on integration and reintegration issues; and advocate with host governments for favourable immigration and diaspora policies. Through the creation of consular networks, it is possible to increase the reach of actions that support migrant workers, especially when the staff and offices available are few and concentrated in highly populated regions.



The Communique and Call for Action of the Regional Ministerial Forum on Migration (RMFM) on harmonization of Labour Migration Policies in the East and Horn of Africa – identifies key areas of interventions, among a large list of themes, such as:

- Promoting human and labor rights and related forms of protection of African migrant workers in destination countries;
- Establishing interstate collaboration on diplomatic and consular assistance for migrant workers in particular in countries where some states don't have diplomatic representation; while at the same time promote and support the role of diasporas in assisting migrant workers and protecting their rights in vulnerable situations; and
- Promoting access to justice by strengthening consular services and posting labour attaches, for effective protection of human rights of migrant workers in destination countries, as part of addressing impunity, provide remedies and ensure the rule of law.

MIGRANT WORKERS' RIGHTS: MAIN CHALLENGES

Seeking better job opportunities is the primary reason for global migration, for which the role of consular staff in defending and protecting the rights of workers is of essential importance. Many migrant workers may be in vulnerable situations because of various reasons, including not knowing the local language or customs of the country, among others.

Some employers take advantage of these situations and violate the rights of migrant workers, especially when they hold an irregular migration status.

Some of the most common challenges and violations identified include, but are not limited to:



Job segregation to highly dangerous industries in need of low-skilled labour (construction, agriculture, mining);



Lack of written contracts;



Unfulfilled overtime pay, vacation, and holidays;



Salaries below the minimum wage;



Limitations to free association;



Lack of social insurance and insurance coverage for workplace accidents;



The withholding of passports and/or other identity documents.



Many female migrant workers are unaware of their rights to maternity leave and breastfeeding time, and suffer sexual and other forms of harassment at work. Many of them work in highly unregulated industries, such as domestic work.



Limited resources makes it difficult for most African countries to deploy Labour attaché in their respective Embassies and consulates in general and in the GCC countries in particular. Hence, there is a need to strengthen the capacities of consular staffs on issues pertaining to labour mobility, migrants' workers assistance and protection.

In view of these occurrences, consular staff has great responsibility, and should develop preventive actions, and protect and defend migrant workers when these violations occur.



Actions that Consular Staff can take to Protect the Rights of Migrant Workers

- *Strengthen the capacities of consular staff on issues pertaining to labour mobility, migrants' workers assistance and protection.*
- *As the majority of migrants' workers from the region are recruited and deployed in the GCC countries, it will be important to map the region's countries with embassies and consulates in the GCC and establish the inter-state collaboration on diplomatic and consular assistance for migrant's worker, based on the findings.*
- *Ensure that returnees have access to justice and remedies and empower consular staffs to play the role of "legal adviser even legal referral"*

1. Learn and stay updated on:

- Labour laws and special regulations in regard to the work of migrants, as well as migration legislation of the country where they exercise their functions.
- Social programs available for migrants, such as housing vouchers, unemployment or emergency aid, and scholarships for children, among others.
- The requirements for obtaining recognition of certifications and titles.

2. Establish ties with key entities in order to understand their programs and appropriately refer cases. This will require:

- Establishing coordination with Ministries of Labour for information exchange, counselling and the referral of cases related to labour rights.

- Establishing ties with private entities that offer aid and free legal advising services to migrants, health organizations, and training and education programs with the purpose of knowing their requirements and making referrals.
- Contacting unions that have migrant members and defend their interests.
- Identifying and making alliances with diaspora communities and migrant organizations.
- Strengthening consulate networks in order to coordinate efforts.

3. *Inform nationals in receiving countries on:*

- The legal rights and obligations associated with the various forms of residence and employment status (and on administrative/criminal sanctions applicable in cases of irregular stay and work).
- The procedural rights in cases of arrest, detention and investigation (in particular, right to legal counsel).
- The existing migratory, labour, and social security agreements between countries.
- Their labour rights and the mechanisms to request inspections or report labour rights violations.
- The policies, programs, and mechanisms available for migrant workers to access labour justice.
- The available sources of aid.
- The non-governmental organizations which provide support, advice, and potential access to education, social security, and other services to migrants.
- Programs for migration regularization and procedures and requirements for these programs.

This information can be distributed through:

- Informational campaigns.
- Mobile consulates.
- National and local television channels, radio stations, and newspapers.
- The web pages of the consulate and its allied organizations.
- National holidays, cultural and health fairs, places where large numbers of migrants congregate (parks, certain communities).
- Social and training activities organized by the Consulate.
- Activities organized by diaspora communities.
- Social media, popular among migrants (esp. youth).

4. *Promote fair and ethical labour recruitment based on the General Principles and Operational Guidelines of the International Labour Organization for Fair Recruitment by:*

- Promoting the signing of bilateral labour agreements that include worker and employers' organizations consultations for their development.
- Registering and monitoring private employment agencies and the contracts of migrant workers.
- Creating networks among consulates in the same area or region.

5. *Safeguard the rights and working conditions of migrant workers, which involves:*

- Verifying working conditions when labour agreements with the receiving country exist; protocols and checklists can be developed for this purpose.
- Visiting workplaces with high concentrations of migrant workers, such as farms, in coordination with the national labour inspection authorities. These visits can be used to provide migrants advice and information about their rights.

- Giving legal assistance and representing migrants in judicial processes.
 - Coordinating with labour authorities to resolve conflicts and other issues.
 - Establishing safe channels for reporting cases of trafficking/exploitation (hotlines, mobile apps).
6. *Advise in processes of repatriation and/or return upon completion of work contracts, in areas like:*
- Legal formalities.
 - Paying for airline tickets.
 - Establishing contact with the country of return and providing information on sources of help finding employment.
7. *Cultivate a relationship with migrant communities in order to:*
- Build trust and inform them about the work and services offered by the consulate.
 - Support the integration of migrants, especially if the population is widely dispersed and there are few consular offices to cover the territory geographically.
 - Better identify problems faced by migrants and adjust the services provided to meet the changing needs.
8. *Some additional consular services that can be offered, which also enable the office to keep a record of migrant workers, include:*
- Creating a consular registry that records the persons who enter the labour market.
 - Creating consular ID cards as an additional means of protection, which will enable monitoring in case of emergency or in special circumstances.

As a significant proportion of migrants work as domestic workers, it is important to create strategies to inform them about:

- Existing associations or unions of domestic workers.
- Programs and mechanisms to report situations of violence, and harassment at the job.
- Programs and organizations that provide protection.
- Rights related to maternity (maternity leave, right to breastfeeding time, prohibition of dismissal due to pregnancy, among others).
- Existing childcare services.



9. *Contribute to the identification of opportunities for migrants within the labour market, which will require:*

- Identifying the demand for labour in the host country.
- Disseminating information on the needs of the labour market in the host country.
- Promoting the streamlining of the recruitment processes while protecting the rights of migrant workers.
- Identifying companies and sectors recruiting workers and sharing that information.

10. *Contribute to the improvement of migration policies and standards in the country of origin, which involves:*

- Systematizing useful information to give feedback on national migration policy in the area of labour, separated by sex.
- Promoting the development of migration policies under a human rights approach and that is gender-sensitive.

- Promoting exchanges of information and coordination between the host and origin countries.
- Promoting social dialogue on the topic of migration, organizing, or participating in forums on the topic, or other types of analysis and discussion activities.
- Promoting the ratification of bilateral and multilateral agreements on migrant workers.
- Establishing partnerships with ethical recruiters and employers and offering trainings to HR staff on ethical recruitment and employment standards.



