

Labour migration policy and management:



Training modules



International
Labour
Office

Labour migration policy and management: Training modules

Prepared for the ILO-Korea Partnership Programme on
“Enhancing National Migration Management in Cambodia,
Lao People’s Democratic Republic, Mongolia and Thailand”

ILO Subregional Office for East Asia
ILO International Migration Programme
ILO Mekong Subregional Project to Combat Trafficking in Children and Women

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“Nearly all countries today are affected by international migration, either as origin, transit or destination countries – and in many cases all these capacities. The rising mobility of people in search of opportunities and decent work and human security has been commanding the attention of policy makers and prompting dialogue for multilateral cooperation in practically every region of the world. The ILO’s mandate in the world of work as well as its competencies and unique tripartite structure entrust it with special responsibilities regarding migrant workers. Decent work is at the heart of this. The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration and can work towards eliminating identifiable detriments of labour migration in collaboration with other international organizations”.

Resolution concerning a fair deal for migrant workers in a global economy
International Labour Conference, 92nd Session, 2004,
Provisional Record 22

Workers in the Asian region are increasingly mobile, posing immense challenges and opportunities for the growth and development of countries of the whole region. At the ILO Regional Tripartite Meeting on Challenges to Labour Migration Policy and Management in Asia (Bangkok, 30 June – 2 July 2003), the labour authorities of the region’s major immigration and emigration countries and their social partners explored the underlying factors behind this rising mobility. They concluded that properly managed, with due respect for the rights of migrant workers, the cross-border movement of labour can contribute significantly to the continued dynamism of the regional economies. Migration provides the grease that allows for non-inflationary adjustments in labour markets to economic fluctuations while helping reduce the unemployment problems of countries with excess supplies of labour. At the same time, migrants’ remittances have become a valuable source of development finance.

While market forces drive labour migration, there are several factors that limit their operation: States still decide on how much, from where and what forms of migration to allow. And States control many of the instruments to enforce those decisions. Information is always less available about jobs and conditions of employment in foreign countries. Markets tend to be more and more segmented up the skills ladder. There also are social factors, such as racism and xenophobia, that invisibly obstruct the efficient employment of labour.

While migration offers many workers an avenue for improving their economic security, it also imposes costs: The growth of migration has been accompanied by a victimization of workers through deception and fraud, recruitment fees that verge on extortion, debt bondage, forced labour and sexual harassment. Because they accept hazardous jobs, migrant workers are more likely than national workers to suffer work-related illnesses and injuries. Labour exploitation through underpayment or non-payment of wages is not uncommon, especially among those with an irregular status. Women migrant workers face multiple forms of discrimination – as women, migrants and foreigners. The feminization of migration and human trafficking have aggravated this situation.

Experience suggests that government intervention in both sending and receiving countries through transparent and appropriate regulatory institutions and measures is essential if labour markets are to function in a way that is efficient and equitable. Cooperation among social partners as well as with migrants is

especially important to the development and implementation of sound migration policies. The effective administration of labour migration requires structures and mechanisms that are supported by competent and capable human resources and systems in all relevant ministries. Social dialogue on migration policy is necessary for meaningful involvement of employers' and workers' organizations. Mechanisms are necessary for consultations with civil society organizations and with migrant workers.

There is considerable concern within countries of the subregion about the need to improve policies on the management of migration for work. Thailand and its neighbouring countries of Cambodia, Lao People's Democratic Republic and Myanmar have signed memoranda of understanding (MOUs) for employment and trafficking. Mongolia has taken steps to introduce legislation to improve its administration of migration policies and to protect workers abroad and foreign workers in country.

In response to requests from constituents, the ILO Subregional Office for East Asia is implementing a project for labour migration management assistance through the ILO-Korea Partnership Programme for "Enhancing national capacity on migration management in Cambodia, Lao People's Democratic Republic, Mongolia and Thailand". Within that project and to work toward strengthening the capabilities of governments, employers and workers to create policies and manage migration programmes that maximize potential benefits while protecting migrant workers, the ILO Subregional Office organized a training workshop¹ in August 2004. In addition, the ILO developed training materials to support the process.

Despite the complexity and sensitivity of issues, the representatives of governments, workers and employers attending the training workshop reached a consensus on a plan of action for a "fair deal" for migrant workers. The Resolution they adopted at the International Labour Conference 2004 called for a rights-based approach to managing migration that also acknowledges the sovereignty of all States to decide their own policies on migration. The Resolution provided a framework for discussing migration issues and identifying good practices. This manual presents that framework and the ILO training materials to contribute further to the strengthening of labour migration management in the subregion.

Christine Evans-Klock
Director
ILO Subregional Office for East Asia
Bangkok
November 2004

¹ ILO Subregional Training Workshop on Labour Migration Policy and Management, Ayutthaya, Thailand, 2-6 August 2004.

The project on “Enhancing national capacity on migration management in Cambodia, Lao People’s Democratic Republic, Mongolia and Thailand” funded by the ILO-Korea Partnership Programme is a collaborative effort within the ILO, involving contributions from the Subregional Office for East Asia in Bangkok, the International Migration Programme in Geneva and the International Programme on the Elimination of Child Labour (IPEC) Subregional Project to Combat Trafficking in Children and Women.

Piyasiri Wickramasekara, Parissara Liewkeat and Sanchir Tugschimeg designed the project under the coordination of Pongsri Phantumvanit. Elizabeth Morris assumed leadership of the project and the training workshop in July, when several colleagues left the subregional office. Piyasiri Wickramasekara continued to provide technical backstopping from the International Migration Programme in Geneva. Thetis Mangahas and the ILO Subregional Project to Combat Trafficking in Children and Women provided both technical inputs and financial support.

A number of ILO officials contributed to the training materials and workshop presentations, including Manolo Abella, Anne Knowles, Jajoon Coue, Tim De Meyer, Nelien Haspels, Thetis Mangahas, Aya Matsuura, Elizabeth Morris, Raghwan and Piyasiri Wickramasekara. Jong-Kil Park served as liaison for the ILO-Korea Partnership Programme. Three ILO consultants from the Philippines – Teresa Soriano, Ricardo Casco and Ahmma Charisma Lobrin – helped draft the training modules and facilitate the workshop sessions. Kil-Sang Yoo of the Korea Labour Institute also contributed. Manolo Abella provided technical editing and Karen Emmons copy edited the final document. Elizabeth Morris provided the photos and designed the cover and format. Sutida Srinopnikom provided programme support. Erawan Printing made several important adjustments in the text and formatting. Teerasak Sirirattanothai served as support staff through many changes to the draft.

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ACIP	American Council on International Personnel
ASEAN	Association of South-East Asian Nations
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
DOL	Department of Labour (United States)
DOLE	Department of Labour and Employment (Philippines)
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ILC	International Labour Conference
ICCPR	International Covenant on Civil and Political Rights
IOM	International Organization for Migration
MOU	memorandum of understanding
NGO	non-government organization
OECD	Organization for Economic Cooperation and Development
OWWA	Overseas Workers Welfare Administration
PDR	People's Democratic Republic (Lao)
POEA	Philippine Overseas Employment Administration
SAR	Special Administrative Region
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
UNITAR	United Nations Institute for Training and Research

“It is necessary to build support for national and international policies that help ensure migration serves as a force for growth and development, not for exploitation and human rights violations ...”

Towards a fair deal for migrant workers in the global economy,
Executive Summary, Report VI, International Labour Conference,
92nd Session, June 2004

In response to a clamour from various Asian countries to improve the situation of overseas labour migration as a strategy for relieving unemployment pressures, earning valuable foreign exchange and promoting skills development, the International Labour Office in Bangkok developed the technical cooperation project for “Enhancing national capacity on migration management in Cambodia, Lao People’s Democratic Republic, Mongolia and Thailand”.

The objectives of the project, developed through the ILO-Korea Partnership Programme, are: (i) to improve the knowledge and understanding of migration-related issues, including international labour standards and overseas migration management, and to strengthen the capabilities of national labour administrations, social partners and human rights institutions in formulating and implementing sound labour migration policies suited to national conditions and to the protection of women and men migrant workers; (ii) to provide advisory services and technical assistance to strengthen migration management and promote regular forms of migration; and (iii) to identify areas for follow-up priority action and technical assistance from the ILO and other international agencies in responding to national circumstances, in line with the Resolution concerning a fair deal for migrant workers in a global economy, which was adopted during the 92nd Session of the ILO International Labour Conference 2004.

The conclusions of the primary conference discussion, *Towards a fair deal for migrant workers in a global economy*, called on the ILO to launch an Action Plan for:

- Developing a non-binding, multilateral framework for a rights-based approach to labour migration that takes account of labour market needs and proposes guidelines and principles for policies that are based on best practices and international standards;
- Identifying relevant action to be taken for the wider application of international standards and other appropriate instruments;
- Helping to implement the ILO Global Employment Agenda at the national level;
- Building capacity, raising awareness and providing technical assistance;
- Strengthening social dialogue;
- Improving the information and knowledge base on global trends in labour migration, conditions of migrant workers and effective measures to protect their rights; and
- Crafting mechanisms to ensure that the ILO Governing Body follows up on the Action Plan and that the ILO participates in relevant international initiatives concerning migration.

This manual aims to strengthen the rights-based management of labour migration in the context of the challenges it presents to policy makers and administrators in Asia. The manual begins with descriptions of the dimensions of migration for employment in the region and the problems and issues confronting migrants and national authorities in the countries they come from and go to. It raises decision-making issues typically encountered during the process of formulating policy or implementing it and provides comparative information, drawn from the experience of many countries, that should help in identifying options, assessing trade-offs and making optimal choices.

The training modules presented in this manual represent work in progress. They will be modified and adapted to countries in the subregion through national training workshops. Ultimately, they should prove to be an indispensable aid in training senior administrators responsible for managing labour migration in both the countries of origin and the countries of employment.

Session Guide

Objectives

At the end of the session the participants are expected to:

- Have a general understanding of the causes and consequences of migration;
- Have learned about current trends, issues and responses to global and regional migration; and
- Be familiar with the costs and benefits arising from labour migration and how it links with development processes.

Methodology

- Presentation
- Discussion

Duration

Three hours (two sessions for presentations and general discussion and half hour for review).

Session guide

- Start with a presentation on global and regional migration that includes topics on current migration flows, causes and consequences of migration, regional migration trends, migration development linkages, key issues and the Conclusions of the 2004 International Labour Conference.
- Discuss the relevance of key issues and the *Resolution concerning a fair deal for migrant workers in a global economy, adopted by the 92nd Session of the ILO International Labour Conference 2004* for their own countries.

Suggested reading and reference materials

- International Labour Office: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004).
- International Organization for Migration: *World migration 2003: Managing migration – Challenges and responses for people on the move* (Geneva, IOM, 2003).
- Philip Martin: *Migration and development: Towards sustainable solutions?* Discussion Paper 153/2004 (Geneva, International Institute for Labour Studies, 2004).
- United Nations: *World economic and social survey 2004 – International migration* (New York, United Nations, Department of Economic and Social Affairs, 2004).
- Piyasiri Wickramasekara: *Asian labour migration: Issues and challenges in an era of globalization*, International Migration Papers No. 57, International Migration Programme (Geneva, ILO, 2002) at <http://www.ilo.org/public/english/protection/migrant/download/imp/imp57e.pdf>.

1.1 What are the main trends in labour migration?

Migration is a central issue of our times. Each year, millions of men and women leave their homes and cross national borders in search of greater human security for themselves and their families. Most are motivated by the desire for higher wages and better opportunities, but some are forced to leave their homes due to famine and poverty, natural disaster and environmental degradation, and violent conflict or persecution. According to the ILO report, *Towards a fair deal for migrant workers in the global economy*, most migration is between neighbouring countries. But greater access to global information and cheaper transport means that geography now poses less of a barrier to people's movement. More and more countries are now involved with migration, either as origin, destination or transit countries, or all of these simultaneously.

The forces driving migration are many and complex. Poverty, wars, famine and repression are certainly among the major causes, but there are other factors as well: population pressures on scarce natural resources, wage or income inequality between the poor and rich countries, growing urbanization, reduction in the cost of transport and communications with increasing interactions among societies, civil conflict, the absence of human rights protection and the establishment of migration networks by previous migrants. Generally, the increasing differences between countries together with the lack of gainful employment, decent work, human security and individual freedoms in source countries are key factors in the increasing flow of contemporary international migration.

While international migration can be a productive experience for most people, many migrant workers suffer poor working and living conditions. Their terms of employment may be better than in their home countries, but they often endure conditions far inferior to those available to nationals in the host countries. Despite international standards to protect them, their rights as workers are too often undermined, especially if they have an unauthorized presence in the host country.

For these and other reasons, migration presents a major challenge everywhere to social and economic policy. Few issues have generated as much controversy and debate at national and regional levels as policies on the admission of foreign nationals, their numbers and origin, their inclusion and participation in economic and social life, their rights and entitlements and the permanence of their stay. Experience with the governance of migration has not been marked by many successes in almost any part of the world and States are still constantly in search of instruments with which to influence its course.

Module 1 serves as an introduction to the manual by reviewing the general dimensions of the migration phenomenon, first at the global and then at the regional or Asian level, and raises issues for the management of labour migration by briefly reviewing some of its common causes and consequences.

1.1.1 Dimensions and patterns

What we know about the global dimensions and the growth of international migration largely comes from population census reports tabulated and analysed by the United Nations Population Division (UNPD). In its most recent report, the UNPD estimated that at the turn of the century there were 175 million migrants in the world. Over the past four decades, migration grew unevenly, with periods of

relative stability followed by periods of rapid growth. For example, between 1965 and 1985, the number of migrants rose by 30 million – only 1.5 million a year. However, between 1985 and 1995, the growth rose to almost 5.9 million a year. There was indeed rapid growth during that period, but part of the “spurt” in numbers was due to the remarkable 10 million a year increase between 1985 and 1990, a period during which many States were split up following the collapse of the Soviet Union and millions found themselves living in a country where their status had become uncertain.²

Table 1 is drawn from UNPD statistics and shows the growth of migrant populations around the world since 1965, based on census counts, and in comparison to the growth of the total world population. These are estimates of stocks at one point in time rather than flows over a period of time, such as one year.

Table 1: Growth of world migrant population, 1965-2000

	Migrants (millions)	World population (billions)	Migrants as per cent of world population	Annual change (millions)
1965	75	3.3	2.3	
1975	85	4.1	2.1	1
1985	105	4.8	2.2	2
1990	154	5.3	2.9	10
1995	164	5.7	2.9	2
2000	175	6.1	2.9	2

Migrants are defined as persons living outside their country of birth or citizenship for 12 months or more. The estimate for 1990 was raised from 120 million to 154 million, largely to reflect the break-up of the Soviet Union.

Source: United Nations: International migration report 2002, ST/ESA/SER.A/220 (New York, United Nations, Department of Economic and Social Affairs, 2002).

Migrants still represent a small proportion of the world’s population – less than 3 per cent in 2000 (see Table 2). However, they already account for 8.7 per cent of the population of the more developed regions. Indeed, the presence of migrants is very much felt in many parts of the United States, Canada and Australia and in many of the world’s capitals, such as London, Tokyo and Paris.

Who are considered international migrants? For statistical purposes, the United Nations defines migrants as “persons outside their country of birth or citizenship for 12 months or more”.³

How many migrants are not captured by census counts because of the way migrants are defined? How can these estimates be improved? In Asia, is it likely that many migrants would not be counted in population censuses that are only carried out once every ten years? Discuss.

² The migrant estimate was raised from 120 million in 1990 to 154 million in 2002, largely to reflect the break-up of the Soviet Union, which increased the number of people crossing borders, e.g. Russians returning to Russia, and added to the stock of migrants even with no movement, as in the case of Russians who became foreigners in the newly independent Baltic States.

³ Only a few countries have adopted these recommendations due to the lack of required data.

Table 2: Migrants in the developed and less-developed regions, 2000

Country or area	Total population (in thousands) 2000 (1)	Migrant stock	
		Number (in thousands) 2000 (2)	Per cent of population 2000 (3)
World	6 056 715	174 781	2.9
More developed regions	1 191 429	104 119	8.7
Less developed regions	4 865 286	70 662	1.5
Least developed countries	667 613	10 458	1.6

Source: United Nations: *International migration report 2002*, ST/ESA/SER.A/220 (New York, United Nations, Department of Economic and Social Affairs, 2002).

From the UN and a variety of other sources, we know that the following are happening:

Migration is “globalizing” and expanding geographically. Most of the world’s 200+ countries are either countries of destination, origin, transit, or all at the same time. Cosmopolitan centres have migrants from every corner of the world. *Is it possible that migrant numbers are rising simply because there are now more borders to cross than before?*

South-North migration is rapidly rising. Almost half of the world’s migrants move from one developing country to another, but the growth of South-North movements (from less to more developed regions) appears to have accelerated over the past two decades, compared to South-South movements. North America and Europe have increased their absorption of migrants significantly over this period.

Irregular migration is increasing. Currently, there are an estimated 20-30 million irregular migrants worldwide, and the number continues to rise, partly due to the gap between tightened immigration policies in destination countries and growing emigration pressures in countries of origin, to the difficulty of controlling migration and to increasing activities of international crime syndicates who smuggle migrants over borders.

Highly skilled migration is rapidly growing. Recent data on admissions to the Organization for Economic Cooperation and Development (OECD) countries reveal a clear pattern of increasing entry of more skilled or educated cohorts of immigrants, both temporary and permanent. This trend is consistent with observed structural changes in the economies of the rich countries where growth is now driven by rapid developments in knowledge industries.

1.1.2 Labour migration

From the UN estimates of the total migrant population in each country, the ILO calculated that more than 86 million people are economically active, including asylum seekers and refugees. The ILO also estimates that some 54 million migrants work in the world’s developed regions.

How large are migrant worker populations in Asia? Asia is estimated to account for 25 million migrant workers, or about 29 per cent of the global total. This population includes workers who are employed in neighbouring countries, such as Afghans in

Pakistan, Nepalese and Bangladeshis in India, Burmese in Thailand and Indonesians in Malaysia, as well as the millions of South Asians and South-East Asians working in the Gulf States.

What do we know about the movements of people over a time period, say, over a year? Administrative reports from ministries of labour provide some idea of the flows. Over the period 1995 to 1999, an average of 2 million Asian workers reportedly left their countries every year under temporary contract to work within the region and outside. At least another 600,000 should be added to that average to take into account those who left without registering because they were not required to (as is the case with professionals in India), those admitted as “trainees”, those who left for tourism or business but became employed abroad (based on numbers who overstayed their visas) and those who crossed borders clandestinely but later registered when offered the chance to be documented through an amnesty programme. More than 1.2 million of those 2.6 million (about 46 per cent) Asian workers originated from a South Asian country. Another 1.3 million migrant workers came from South-East Asia, notably Filipinos, Indonesians, Thais, Burmese and Vietnamese.

Is labour migration equally important to the Asian countries mentioned in Table 3? What would be a good indicator of the relative significance of labour migration to these countries? How mobile are Asian workers compared to those in other regions? Discuss.

The estimates of migrant workers presented here do not include those who emigrated with the intention of settling more or less permanently in other countries. Over the past few years, the United States, Canada, Australia and New Zealand have received about 400,000 Asian immigrants, among whom perhaps as many as half are workers.

A comparison of migration with population tends to suggest that smaller countries are relatively more mobile. *Is this true?*

In large countries such as China or India, the rising mobility of labour is mostly contained within their borders.

Note that over the past decade, movements to destinations within the region became more prominent. What are the factors driving these migration flows? Which countries in Asia have active policies to admit temporary migrant workers? Being more remote from the East Asian migration hubs, workers in the Indian subcontinent still largely migrate to Saudi Arabia, Kuwait and other Gulf States. Have there been notable shifts in their destination countries in recent years? Discuss.

The following appear to be the main trends of labour migration in the region:⁴

- *Changing destinations.* Migration in Asian countries has shifted from a predominantly Middle East-bound flow to an intra-Asian flow during the past two decades due to rapid economic growth of countries in East Asia and the rise of newly industrializing economies, such as Malaysia and Thailand. There were about 4.3 million foreign workers in 2000 in eight Asian countries or

⁴ This section is drawn from Piyasiri Wickramasekara: *Asian labour migration: Issues and challenges in an era of globalization*, International Migration Papers No. 57, International Migration Programme (Geneva, ILO, 2002).

territories: Japan, Republic of Korea, Malaysia, Singapore, Thailand, Brunei Darussalam, Hong Kong Special Administrative Region and Taiwan (Province of China). The Gulf States remain the main destinations for workers from South Asia, but more and more are finding their way as far east as the Republic of Korea and Japan.

- *More source countries.* Over the past decade, labour emigration from Indonesia, Bangladesh, Viet Nam and Sri Lanka grew very rapidly while the flows from traditional sources, such as India and Pakistan, grew much more moderately. However, the lack of data on clandestine movements makes it very difficult to assess the true size of movements. *How many are moving from China? From Nepal?*

Table 3: Estimated annual emigration of labour from Asian countries, circa 1995-1999

	Population in 2000 (in millions)	Recorded average annual labour emigration ¹ (in millions)	Adjustment ⁵ required for excluded or undocumented flows	Main destination countries/regions
South Asia				
India ²	1 008	0.400	+0.200	Gulf States, United States, East Asia
Bangladesh	137	0.263	+0.053	Gulf States, South-East Asia, India
Pakistan	141	0.127	+0.025	Gulf States, United States, Western Europe
Sri Lanka	19	0.163	+0.016	Gulf States, Singapore
Nepal	23			India, Hong Kong SAR, Republic of Korea
South-East Asia				
Indonesia	212	0.288	+0.014	Malaysia, Gulf States
Philippines	76	0.426 ³	+0.128	South-East Asia, Gulf States, United States, Europe
Thailand	63	0.193		Taiwan (Province of China), Japan
Viet Nam	78	0.032	+0.120	Thailand, Singapore, Australia, Europe
China	1 275	0.102 ⁴	+0.100	Japan, Republic of Korea, South-East Asia, United States

¹ From records of workers registering temporary employment contracts with authorities before departure. The statistics do not include those emigrating for permanent settlement in foreign countries, students who work, undocumented workers leaving under guise of tourism, business or other non-work purposes.

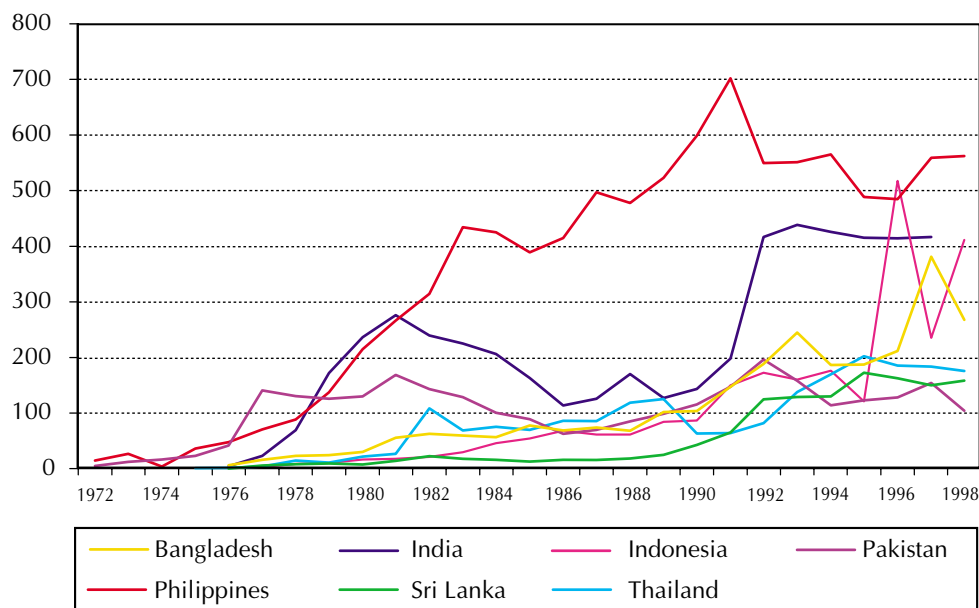
² India: Data includes only those registered by Protector of Emigrants; graduates of tertiary education are not required to register, nor those with previous experience working abroad.

³ Philippine law requires all departing migrant workers to register with authorities, including those who have previously registered and are renewing contracts. The figure shown is based on "new hires" only in order to avoid counting again an average of 136,000 re-hired workers every year.

⁴ As of end November 2001, it was reported that Chinese contracting companies had 460,000 employees working abroad. From this stock data, an annual outflow of 92,000 migrant workers is estimated. To this, add a reported annual placement of 10,000 by authorized overseas employment service agents.

⁵ Adjustments are based on several sources, including destination country data on foreign nationals admitted on temporary work visas, such as the H-1B in the United States, the numbers "overstaying" their visas, registration by undocumented foreign workers (e.g. in Thailand and in Malaysia) and estimates of undocumented foreign workers in other regions.

Source: Manolo Abella: "Driving forces in Asian labour migration", in *World migration 2003: Managing migration – Challenges and responses for people on the move* (Geneva, IOM, 2003).

Figure 1: Reported labour migration flows from Asian countries, 1972-1998

- Temporary migration of labour.* Most workers leave on fixed-term contracts of one to two years. Except for a small number of them availing of opportunities for more permanent residence opened by Singapore and Malaysia for those who are highly skilled, almost all labour migration in the Asian region is classified as temporary. In this regard, there has been no change from the past. In Ireland, a foreign national admitted as a regular “guest worker” can apply for citizenship after working for at least five years. *Why are no such policies adopted in Asia?*
- A migration flow dominated by semi-skilled and unskilled workers.* A very large number of occupations and skills are involved in labour migration from and within Asia, but flows remain dominated by low-skilled or semi-skilled workers, such as those in construction and domestic service. Unlike skilled workers and professionals who move with foreign capital and enjoy more bargaining power, these low-skilled and semi-skilled workers encounter numerous problems in the migration process and in destination countries.
- Growth in irregular migration.* The informal movements across borders are historical, especially in Asia. For centuries people have hopped from one island to another in South-East Asia or crossed rivers and mountain borders in the Asian continent as they adjusted to economic hardships or calamities. What has changed is the attitude of States to such movements and their capacity to monitor and do something about the migrants when they become more successful economically, vis-à-vis their neighbours. The recent amnesty and regularization campaigns in Thailand and Malaysia reflect the growing consciousness of the need to put these movements under control. Irregular migration does cause many problems, not least because workers without legal status in the host countries are vulnerable to considerable abuse and exploitation. Unscrupulous elements have been able to profit from smuggling people and this raises concerns about national security and public order.
- Feminization of migration.* Another phenomenon has been the growing share of women workers going abroad on their own for overseas employment. Of the 184,000 workers who left Sri Lanka for foreign employment in 2001, more than two out of every three were women. Most of the women migrate for

low-wage occupations, such as domestic work. Hong Kong Special Administrative Region and Singapore are the major destinations of domestic workers in Asia, while a significant number migrate to the Middle East, especially Saudi Arabia and Kuwait. Entertainers going to Japan also are an important group of women migrants. Given the type of jobs they hold, women migrants are the most vulnerable group in all countries.

- *Commercialization of recruitment.* The share of public employment services in sending workers overseas has fallen drastically, giving way to a thriving industry of intermediaries in both sending and receiving countries. Some are large firms, while a sizeable number are small enterprises that are unregistered. There is evidence that the recruitment industry has been responsible for an increase in various malpractices and a rise of irregular migration in the region. *How can bilateral agreements help deal with such problems?*

1.2 What are the forces driving migration?

“If you look at the global economy from the perspective of people, its biggest structural failure is the inability to create enough jobs where people live”.

*Juan Somavia
ILO Director-General*

In developing countries, decent jobs are not being created fast enough to absorb the growing numbers of people joining the labour force every year. Threats to their security – natural calamities, external economic shocks, rapidly declining agricultural commodity prices, privatization and downsizing of state enterprises, currency devaluations and bank failures – force families to make hard choices that may mean sending family members to work abroad.

Push and pull factors. In the case of the migration of workers, we tend to look at the economic factors that explain movements. These have been simplified by various authors to the so-called “pull” and “push” factors. Pull factors are those that can be traced to an excess demand for labour in foreign countries, while push factors are generally traceable to excess supply of labour at home and manifested in low wages and high unemployment.

Pull factors are clearly at work in some countries. In Taiwan (Province of China), that experienced rapid economic growth and transformation, labour shortages in many sectors emerged in the 1980s. In 1989 its construction firms requested foreign labour for high-priority national infrastructure projects, and the Government approved the entry of 44,000 foreign construction workers. The limit was gradually raised and extended to other sectors, such as manufacturing and domestic services. By 2004, more than 300,000 foreign workers in Taiwan (Province of China) were employed in manufacturing, construction and services. The numbers actually peaked at 330,000 in 2000, but the Government took drastic measures to reduce admissions.

Network factors. Once migrants have established themselves in a foreign country, they naturally tend to encourage relatives and friends to join them. This gives rise to the so-called “network” factors that become important over time. For example, the eastern border regions of Myanmar have long been in conflict with the central government, and poverty there pushed many people to cross the border into Thailand. From the border provinces, they eventually moved to Bangkok and elsewhere in Thailand and helped others still in Myanmar to cross over and find

work in construction, services and fishing. While extraordinary push factors were evidently important at the beginning, over time, the network factors that include the strong value people attach to staying with their families tend to become the more significant determinant of migration flows.

Supply creates its own demand. Migration is one phenomenon that demonstrates that “supply creates its own demand”. Once started, it creates conditions for its continuation and expansion. This is as true of the demand for the services of domestic workers as the demand for workers in factory assembly lines. The availability of foreign workers at low wages allows labour-intensive industries to survive without undergoing restructuring. This is particularly true of small-scale, low-technology industries that governments are loathe to disregard because they usually make up a large sector of the economy and can exert a lot of pressure on policy makers. In some countries, the small-scale sector has strategic importance because it provides a buffer for fluctuations in export markets. As subcontractors to large enterprises, which have little flexibility to lay off workers during periods of slump in demand, small enterprises become the “shock absorbers”. Over time, small enterprises become dependent on foreign workers in Taiwan (Province of China) and the Republic of Korea, unless the government intervenes to restructure industries to bring about more automation or a shift to new product lines.

1.3 How are origin countries affected by labour migration?

What do we know about the impact of labour migration? Although the phenomenon has not been carefully assessed, national authorities in most developing countries of origin seem to have concluded that, at least in the short term, migration has a favourable net effect on their countries. The ILO in its 2004 report to the International Labour Conference identified several consequences – both positive and negative – for countries of origin:

- *Reducing population pressure and unemployment.* Large-scale emigration may ease population pressures on scarce resources. The net impact on unemployment is more ambiguous and depends on what happens to overall economic growth. However, it is possible that the loss of highly skilled workers through migration may discourage investments and thus reduce growth.
- *Emigration of skilled persons – the brain drain.* The impact of “brain drain” on sending countries is still unclear. It obviously varies according to the characteristics of the country of origin, such as size of the workforce and level of a country’s development, the type of sector or occupation concerned, the mode of financing education (e.g. public or private) and whether migration is temporary, circular or permanent. Receiving countries seek out the highly trained and educated through recruitment drives and by adopting selection criteria that facilitates their entry.
- *Student migration.* This flow is becoming more and more a precursor to brain drain. The OECD reported that in 2000 some 1.5 million foreign students pursued studies in member countries, of which more than half came from non-OECD countries.⁵ A significant proportion ends up staying as permanent migrants. To lure back the thousands of Chinese PhD graduates in foreign countries, the Chinese Government now is providing universities with subsidies with which to raise salary offers.

⁵ See OECD: *Student mobility between and towards OECD countries* (Paris, OECD, 2001).

- *Exchanges of capital and know-how.* The migration of more highly skilled people also can affect capital movements, as migrants may leave with assets as well as education. However, returning migrants do bring back skills and work experience from abroad. They transfer knowledge, technology and investments to the countries of origin. A central challenge for developing countries is how to engage in the exchange of skills taking place in the global labour market without harming their own development potential.⁶
- *Social costs.* Labour migration entails costs that accrue, not to individuals but to others and to society as a whole (the so-called “social costs”). To the individual, the cost of migrating usually includes his or her investments in obtaining a job abroad, the pain of leaving loved ones behind and opportunities missed at home. The act of migrating may, however, include adverse consequences for others. For example, migration that causes “brain drain” has a social cost in terms of reducing overall productivity of enterprises and industries and can lead to the loss of employment for other workers. Some consequences may be more social than economic, such as when migration leads to an increase in the number of broken families.
- *Flow of remittances.* A recent World Bank study highlighted the fact that remittance flows are the second largest source of external funding for developing countries, next only to foreign direct investments.⁷ That remittances are much more stable than foreign investments makes them particularly valuable as a source of development finance.
- *Transnational communities and home country development.* Migration is viewed positively in origin countries because it improves the economic conditions of migrant families and their communities and because migration and return migration are conduits for new ideas and new ways of doing things. They also serve as a window to the outside world. In addition to sending remittances, migrant communities abroad now are seen as investors, welfare providers, knowledge communities and technology harbingers to the home countries.
- *Return migration.* The large-scale return of migrants rarely takes place before conditions at home have improved sufficiently to make it attractive. Individual migrants, however, do return even when the conditions at home have not changed, either because their contracts abroad have expired or because they have other reasons for going home. In addition to those who return permanently, there are people who regularly move back and forth from their countries – in this case, instead of brain drain there can be more of a circulation of know-how.
- *Migration and trade.* Economists see trade and migration as substitutes because goods have labour embodied in them. By importing products that require a lot of labour to produce, a country reduces its own demand for labour. By the same token, the growth of exports in a country of origin tends to reduce emigration pressures. Some recent studies cast doubts on this theory and the debate continues. Migration and remittances may, in turn, have a perverse impact on trade. Where remittances raise the exchange rate of the currency for countries of origin, the consequences may be to reduce export and increase imports. Migration also may affect trade by establishing stronger links between

⁶ See Lindsay Lowell and Alan Findlay: *Migration of highly skilled persons from developing countries: Impact and policy responses*, Synthesis Report, International Migration Papers No. 44, International Migration Programme (Geneva, ILO, 2002).

⁷ See Dilip Ratha: “Workers’ remittances: An important and stable source of external development finance”, Chapter 7 in *Global Development Finance 2003* (Washington, D.C., World Bank, 2003).

the source and destination countries, but this impact has not been very significant. For example, in spite of the large numbers of Pakistani workers in the Gulf States, Pakistan's exports to the region remain small. The same applies to India, Sri Lanka, Bangladesh, Indonesia and the Philippines, which all send workers to the Gulf States.

- *Migration and overall economic performance.* Most policy makers in developing countries conclude that any losses in human capital are more than offset by the gains through remittances and other linkages. At present, there is not much positive evidence that countries receiving large quantities of remittances have better economic performance. A similar mixed picture emerges when economic performance is compared with net migration rates. Poorly performing economies tend to have higher net emigration, while higher performing countries have lower net emigration rates. However, this crude comparison does not show the direction of causality – are people leaving because the economic situation is difficult, or does their departure cause deterioration in economic performance? At best, emigration serves as a safety valve, allowing more productive use of workers who otherwise would have been unemployed or underemployed or whose departure opens up employment opportunities at home.

1.4 What are the consequences of labour immigration on host countries?

Immigration has equally profound consequences for receiving countries. The immediate effects are to rejuvenate the population and increase the workforce. It also may allow faster economic growth without raising wage-cost pressures. However, these positive contributions often are overshadowed by the social adjustments that receiving societies have to make to immigrants from different ethnic origin, whose values and customs may differ considerably from their own.

- *Impact on employment and wages.* It is commonly assumed that during times of economic expansion, immigrants bring net benefits. This can come about, for example, by meeting general labour shortages, helping prevent inflation and by providing particular skills that are in great demand. The impact of migration on wages and employment depends on initial conditions in the labour market and the skill levels of migrant workers admitted. Generally, immigration tends to reduce the wages of national workers with similar skills. If those affected are mainly the low-skilled workers, then migration can worsen income distribution. Migration can have a negative impact on unskilled wages but may actually raise the real wages of the more skilled workers because of the increased supply of products from the low-wage sector. There is much controversy as to whether or not immigration causes higher unemployment among national workers. The OECD examined the experience of several countries between 1984 and 1995 and concluded that there was no evidence of a negative impact. One such study shows no relationship at all between unemployment rates and immigrant arrivals. Others indicate that immigration has led to an increase in employment as a result of an expansion in production.
- *Fiscal impact of immigration.* A major concern in some countries is that immigrants become a burden on host societies because they extract more from public services and welfare payments than they contribute in terms of taxes and social security contributions. In Denmark, the Netherlands, Belgium, France, Austria and Switzerland, welfare dependency of immigrants is significantly higher than that of nationals. This appears to be correlated with the amount of

benefits granted under the welfare systems. The risk of serving as “welfare magnets” has caused a number of countries to limit the welfare benefits that new immigrants can claim. The fiscal impact of immigration would evidently depend on the age at which immigrants arrive in the host country. Those who come at working age are likely to make a greater contribution to public finances and social security. A study by the United Kingdom Home Office showed that immigrants make a significant net positive contribution to the fiscal budget. In Asia, the question of welfare dependency does not arise because temporary migrant workers are generally not allowed to bring their families with them. They are not given access to training, and being mostly young, they also tend to have minimal demands on health and related services.

- *Social consequences of immigration.* Migration, whether permanent or temporary, often has a profound impact on host societies beyond economic consequences. The entry of new migrants, especially those from very different ethnic origins, entails adjustments in society as the newcomers may have very different values, language, religion and ways of doing things. In some instances the reaction may be negative, bringing about xenophobia and racism. But the increasing pluralism of many societies is evidence of generally successful adjustments. Where migrants are admitted to fill only low-skilled jobs, an undesirable segmentation of the labour market may result. National workers will tend to avoid occupations and sectors dominated by migrant workers. Extreme segmentation has occurred in some Gulf States where immigration and labour policies are such as to make conditions of employment depend not on the work but also on the nationality of the worker. Faced with rising unemployment, these States are having great difficulties replacing migrant workers with native workers.

1.5 Is there a clear link between migration and development?

Would it be correct to assume that migration will foster faster development? There are “virtuous circles” such as the case of Indian information technology – workers leaving and then returning to find work at home. On the contrary, there are also “vicious circles”; one example is the migration of health care workers, which robs a country permanently of scarce skills and undermines the capacity of the public health system to deliver basic services. One way to look at the links between migration and development is the “3-Rs” – recruitment, remittances and return. There is evidence to suggest that *recruitment* of migrants eventually creates networks linking particular communities in the sending countries with specific labour markets in the receiving countries. These networks can be a valuable support to migrant workers and serve to perpetuate the migration process.

Box 1: “3-Rs” of migration

- Recruitment – Who goes: the unemployed or the employed? For what jobs? How do they go abroad: under bilateral agreements, MOUs or informally?
- Remittances – How much and how are they used?
- Return – Who returns and what do they do when they come back?

Source: Philip Martin: “Enhancing national capacity for migration management”, ILO Subregional Training Workshop on Labour Migration Policy and Management, Ayutthaya, Thailand, 2-6 August 2004.

Migrants' *remittances* bring significant benefits not only to migrants' families but also to their immediate communities and to the country as a whole. The benefits are spread when migrants spend for locally grown foods or locally produced goods or when these are put into savings instruments that allow financial institutions to invest them. All such expenditures have multiplier effects that could stimulate faster economic growth, although inflationary pressures may arise when supply is limited. *What about when remittances are used to buy land?*

For developing countries that have little capacity to export manufactured products, labour migration provides the main means for earning foreign exchange.

Return, in general, is seen as the natural "end product" of the migration cycle. Ideally, migrants return from abroad with additional capital and acquired skills that can be productively invested in their country of origin. However, except for highly skilled migrants, the evidence suggests that this is not typically the case.

One recent review of the links between migration and development concluded that it is still an issue that remains "unsettled and unresolved". Whether or not emigration will contribute to development will vary according to many factors, including the ability to channel remittances into productive investment and employment opportunities. This depends on whether the conditions for development are already in place. A recent World Bank study of 74 low-income and middle-income developing countries suggests that the proportion of remittances in gross domestic product is statistically significant in explaining poverty reduction. Appropriate policies can maximize remittances and their impact:

- **Maximizing remittances** – through appropriate exchange rates, economic policies, banking systems and market competition.
- **Maximizing impacts** – through the multiplier effect where one dollar of remittance spending can generate more economic activity and thus incomes.
- **Maximizing investments** – through sound economic policies rather than special migrant programmes.

1.5.1 Costs and benefits of migration

Given the complex consequences of the migration process on individuals, their countries of employment and their origin countries, it is not easy to discern its benefits. It is unlikely, however, that any government has much choice in the matter. Mobility across borders is a phenomenon that is an inevitable part of democratization, of trade, investment, tourism and communications transactions and of development and modernization. The challenge to policy is how to influence migration in ways that maximize the potential benefits and mitigate its possible costs. Table 4 shows the potential advantages and disadvantages of emigration and immigration for individual migrants, for enterprises and for the countries of origin and of employment.

Which of these are relevant to your country? How can the disadvantages be minimized through appropriate policies? How can the advantages be increased? Discuss.

Table 4: Potential advantages and disadvantages of emigration and immigration

	Emigration from country of origin		Immigration to destination country	
	Potential advantages	Potential disadvantages	Potential advantages	Potential disadvantages
For migrants	Employment	Bad working conditions	Services that free women to enter labour force	Competition for jobs
	Greater income	Poor living conditions	Cheaper goods and services	Lower local wages
	Training or education	Lower status work	Opportunities to move up to supervisory jobs	Competition for training slots
	New cultural experiences	Racism or discrimination	Richer cultural life	Strange languages and customs
	Meeting new people	Separation from family; adverse impact on children	Learning about other countries	Creation of immigrant ghettos
For enterprises	Skills of returning migrants	Losing skilled workforce	Meeting labour shortages	Need to give language or other training
	Lucrative business for the recruitment industry	Labour shortages that drive up wages	Cheaper, more flexible labour	Dependence on foreign labour for certain jobs
	Extra business for communications and travel firms		Larger markets and economies of scale	
For the country as a whole	Reduced population pressure	Losing younger people	Rejuvenating the population	
	Lower unemployment	Coping with sudden returnees	Lower inflation	Slowing technological innovation
	Foreign currency remittances	Loss of potential tax income; increasing inequality	Capital brought by immigrant investors	Loss in balance of payments from remittances
	Knowledge and skills of returnees	Brain drain and loss of better workers; loss of investment in human capital; reduced R&D	Gaining people already educated	Costs of language and other training
	Building transnational communities	Social disruption and a culture of emigration	More diverse and energetic population Tax income from younger workers	Social friction Cost of social services

Source: International Labour Office: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004).

1.6 Conclusions

Each year, millions of men and women cross national borders looking for work, higher wages, better conditions and greater human security for themselves and their families. Current migration patterns are said to be linked to the larger processes of change, such as the global integration of markets for capital and goods. Huge improvements in modes of travel and communications and the widening gaps in incomes and lifestyles, no doubt, boost the pressure that encourages migration.

Historically, migration has been economically beneficial to host countries as well as to migrants. Scholars find little evidence to support allegations that immigration increases unemployment in receiving countries. However, the social consequences may be significant. Linkages between migration and development are not clear, but there is some evidence that suggests higher remittances contribute to poverty reduction in sending countries. Other advantages to countries of origin are increased foreign exchange and reduced levels of unemployment. Migration also facilitates the sharing of skills and technology. On the down side, emigration can lead to the loss of skilled workers and young people and a reduction in tax revenues and national output.

At the same time, there is cause for concern about the increase in migration for work. The growth of irregular migration, including trafficking, threatens human rights and creates disturbing challenges. Growing numbers of migrant workers are in vulnerable positions due to their irregular status and work situation. Many experience discrimination. Racism and xenophobia have added to the difficulty of integrating migrant workers into host societies.

Recent trends in Asia show that more workers are finding jobs in other Asian countries. Most migration is temporary, with flows dominated by unskilled and semi-skilled workers. There has been an explosive increase of migrant workers in irregular status. In addition, there is an increasing share of women workers seeking overseas employment, although women migrants are especially vulnerable to exploitation and abuse. Most find employment as domestic workers, caregivers and in the entertainment industry.

Review

Having completed Module 1, each participant should feel confident that he or she can discuss the following:

- How the rising mobility of Asian workers reflects underlying structural changes in the region's economy.
- How low-skilled labour makes up most of the contemporary migration flows in the region.
- How the evidence for the positive impact of labour migration on the development of countries of origin is still ambiguous.

Session Guide

Objective

At the end of the session, the participants are expected to:

- Have a clear understanding of what characterizes sound migration policies;
- Identify the policies and structures needed when countries decide to admit foreign workers; and
- Identify the policies and functions that governments must carry out when organizing the emigration of their nationals for employment abroad.

Methodology

- Presentation of general issues
- Case study of Philippine system

Duration

Three hours (two sessions – one for presentation and one for general discussion of case study; half hour for review).

Session guide

- Start with a discussion of the national aims of emigration policy and its characteristics.
- Review key migration functions and ask participants to assess the relevance to their respective country situations.

Suggested reading and reference materials

- Manolo Abella: *Sending workers abroad: A manual for low- and middle-income countries* (Geneva, ILO, 1997).
- W.R. Böhning: *Employing foreign workers: A manual on policies and procedures of special interest to middle- and low-income countries* (Geneva, ILO, 1996).

2.1 Why is there a need for migration policy?

Before the emergence of nation-states, what we refer to today as migration policy had no meaning – the only barriers to movement were natural ones, such as the oceans, mountains or barren deserts. It was only when societies were organized into nation-states that boundaries were defined and movements across them controlled. People's ability to move far and wide became dependent upon which State they belonged to; citizenship became the means for exclusion or inclusion.

The basic rationale for a State's migration policy remains the need to protect the interest of those who belong to that State. People, however, can have different views on what would protect their interests. Some argue that migration policy must be designed to serve as a filter or a sieve, letting in only those foreign nationals who contribute most to the country's welfare, such as artists and scientists, and keeping the rest out. Others argue that migration policy should serve to solve problems in balancing the labour market, and this may mean increasing the supply of workers willing to perform dangerous or menial jobs. On the other hand, for many countries with excess supplies of labour, migration policy is aimed at protecting the rights and welfare of their citizens to settle or work in foreign countries. The objective of migration policy is thus the same: to protect citizens. But the content of that policy differs, depending on whether the country plays host to migrants or is a source of workers.

The aims of migration policy and their importance vary from one country to another. In some countries, migration policy is the core of nation-building as, for example, in the major immigration countries – United States, Canada and Australia – where immigration is viewed, at one time or another, as a way of enriching a country's cultural make-up or bringing in new creative energies to sustain growth. Migration policy also may aim to maintain a country's ethnic balance (such as the "white Australia" policy before it was abandoned in the early 1970s), or it may aim to reunify a people separated by wars and forced relocation, as what happened to ethnic Russians sent to Central Asia during the Stalin regime. In other countries, migration policy may be seen simply as an instrument for meeting needs of the economy, such as for foreign workers during peak periods of construction activity.

Public policy is almost always what emerges out of bargaining and compromises among different groups that have conflicting interests. Migration policies are no exception. They are shaped by balancing different and, at times, conflicting interests and objectives. For example, small industries may want the government to relax restrictions on the admission of low-skilled workers because they have a hard time retaining national workers, but trade unions may oppose more immigration because the cheap foreign workers are bound to displace national workers. A compromise usually emerges that allows for more immigration but makes new admissions conditional on not having the effect of replacing national workers. Family reunification remains an important value underlying the immigration policy of most countries, but it also has to be balanced with employers' demands to give priority to skills in demand in the labour market. Temporary foreign worker programmes are established to meet cyclical labour shortages, though the way to sustain such policies may involve an unacceptable limitation of workers' rights. The admission of highly skilled foreign workers may be considered an imperative in maintaining global competitiveness in certain industries or as a means to stimulate growth, but it may be opposed by national workers whose wages may be depressed.

2.2 What are the elements of sound migration policy?

Coherence, transparency, broad public support and good governance characterize sound migration policies according to the ILO report entitled *Towards a fair deal for migrant workers in the global economy*.

However, a common problem with national migration policies is the lack of coherence. Policy coherence means ensuring that policies and programmes on migration and other areas do not undermine each other, either directly or through unintended consequences. A policy, for example, to reduce dependence on foreign labour is not consistent with a policy to make it cheaper for employers to hire foreign rather than national workers. In a country of origin, a policy aimed at protecting workers against exploitation in foreign countries is not coherent with the absence of similar policies at home. Some governments may demand that foreign countries employing their nationals adhere to the principle of equal treatment when they themselves fail to guarantee such equal treatment to foreign nationals working in their territories.

What examples are there in Asia of inconsistency between migration policy and other policies? Discuss.

Box 2: Policy coherence

Lack of policy coherence is often a reflection of the conflicting pressures on political leaders who are nervous about losing the support of key constituencies. One consequence is the contradiction between political pronouncements and what happens on the ground. For example, a government may play up its opposition to the use of unskilled foreign labour and its determination to stop irregular migration, while in practice actually subsidizing and protecting sectors, such as agriculture, that absorb unskilled foreign labour. It also may fail to regulate wages and working conditions, giving some employers an incentive to hire irregular workers to save on labour costs or allow firms, quite legally, to pay below-minimum wages to foreign “trainees” who are, in fact, workers. Politicians who fail to develop clear policies on migration run the risk of appearing hypocritical and losing public support, leaving policy at the mercy of extremist pressure groups. In many countries, it is still an open question as to whether or not a more liberal immigration platform can be a vote winner.

Source: International Labour Office: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004).

Where the shortage of labour is a structural problem or one that is likely to persist, sound economic policy dictates that industries be encouraged to restructure, to abandon labour-intensive sectors and to shift to higher value-added product lines. However, such changes are not without heavy costs and risks. To avoid negative impacts, some governments opt for slower adjustments involving the establishment of foreign worker programmes. In such cases, governments should support legal migration and ensure that foreign workers receive wages that are not lower than those of national workers by using sanctions and other means to discourage the employment of irregular workers. Failing to take such measures, governments face the risk of prolonging the structural adjustments and allowing the build up of coalitions to oppose the policy.

Over the past four decades, Singapore metamorphosed from being a commercial port city to a highly successful centre for professional services, finance, trade, tourism and cutting-edge research in biotechnology. Migration management played a big role in engineering such a transformation.

A second important characteristic of sound migration policy is transparency. The policy must have clearly stated objectives that people can understand and must be implemented through instruments and measures that are likely to produce the desired outcomes. An amnesty programme for migrant workers in an irregular situation announced as a measure to give legal status is unlikely to succeed if there is a well-grounded suspicion that it is meant to bring them out to the open for purposes of subsequent expulsion. In a country of emigration, a policy to foster more responsible recruitment is not transparent if licenses to recruit are issued liberally without considering the technical and financial capacity, as well as previous performance.

A related feature of good policy is broad public support. A policy's lack of transparency often betrays a lack of previous efforts – or failure – to win acceptance from the political constituency. Immigration is a delicate political issue in many countries and lack of careful studies of impact and consequences have left the debate to proponents of extreme positions. It is clear that for almost all countries there can be no policy of completely opening, nor completely closing, doors to migration. There is, however, a broad scope for negotiating sensible compromises among stakeholders and the political constituents at large. Some countries, such as Switzerland, have evolved a method for ensuring popular support for government policy through the system of public referenda. Proposals, for example, for raising or lowering the quota on immigration are debated for a number of weeks or months and then subjected to a popular vote. In Asia, on the other hand, immigration laws give governments ample latitude for discretion in deciding the levels, if not the categories, for admission. There are a few examples where some interest groups have won a major role in such decisions. In the Republic of Korea, for instance, the Federation of Small Business implements the country's "foreign trainee programme", which until recently was the only legal way that low-skilled foreign workers could be admitted into the country.

In Asian countries, what role is played, if any, by workers' and employers' organizations in the development of popular support for migration policy? Discuss.

Finally, sound policies must be based on good governance. Good governance is a very broad concept that cannot be developed here in full but the key ideas are simple: In the case of labour migration, good governance starts with having policies based on respect for human and fundamental labour rights and also requires the appropriate legislation to support such policies, along with the financial and technical resources required, and having an effective and efficient administrative machinery for implementation. A country cannot have good governance of migration if the implementing policy measures used are contrary to basic international principles such as non-discriminatory treatment or violation of workers' fundamental right to organize.

In the Asian region, how many countries have ratified the ILO Conventions on migrant workers (No. 97 and No. 143)? How many have ratified the 1990 UN Convention on the Rights of Migrant Workers and Members of Their Families? Do most countries, regardless of ratification, honour the principles they contain? Discuss.

Good policies cannot go very far where little capacity exists to implement them. Very often, the rhetoric of politicians gets confused with the reality of what commitment really exists to the policy. That commitment may be measured by how adequate are the budgetary resources allocated to the task, vis-à-vis what the task actually requires. For example, a country may have legally imposed sanctions on employers who hire foreign workers without valid work permits but may not have a programme of inspections to check systematically on compliance. A government may claim to be doing everything possible to protect workers going abroad but may not have equipped its labour attachés with sufficient resources to carry out their difficult task.

Good governance requires the coordinated action of many actors, agencies and others to maximize the efficiency of policy administration and to ensure that they do not act at cross purposes with each other. It is not uncommon to find agencies not only duplicating each other's functions but, worse, undermining each other's effectiveness. In the real world of bureaucratic politics, organizations are constantly endeavouring to expand their powers and domain. Coordination is difficult to achieve where agencies compete for domain and where the leadership fails clearly to establish priorities and to decide on jurisdictions. In some countries it may not be clear if the final responsibility for issuing work visas lies with the interior ministry or with the labour ministry.

On matters of immigration, how much coordination exists between the labour ministries and interior ministries in Asian countries? Discuss.

2.3 Policies and structures for employing foreign workers

There are many reasons for a country to open up to foreign workers. Among them are the following:

- *Meeting a temporary demand for workers.* There is a belief that the labour demand-supply gap is only temporary and will be subsequently filled by local workers, including students who are currently in training.
- *Supporting strategic industries.* Some labour-short industries have a strategic value that might be lost if the industry relocated abroad, or expanded more slowly because of a lack of labour.
- *Building a global workforce.* There is a need to train foreign workers for branches or subsidiaries abroad as part of a global workforce.
- *Avoiding inflation.* This would serve to curb wage inflation in one industry, occupation or area that could have spill-over effects in other labour markets or could lead to rising consumer prices.

Most countries admit migrant workers for temporary periods or under temporary foreign worker schemes. As stated earlier, most schemes require that the skills involved are not available at home. To identify scarcities in the labour market, governments either determine what skills are in excess demand in different sectors and establish them as preferences or they employ simple labour market tests and allow agencies considerable latitude in administering migration policies. Another approach is more laissez faire: leaving it largely to employers to specify what skills should be accepted as a reason for entry. Most countries have a combination of methods and policies, usually with restrictions on low skills but facilitating the admission of the highly skilled.

Two traditional immigration countries, Canada and Australia, not only allow temporary admission of foreign workers sought by employers but also have a system for accepting immigration applicants who pass their qualification criteria. Points are assigned to each element of the criteria that favour people who are likely to integrate easily into their societies. The emphasis is on long-term integration rather than meeting transitory imbalances in the labour market.

Some countries discourage the employment of migrant workers by imposing a levy or tax on employers. In other countries, such as the Czech Republic, Kazakhstan, Poland, Senegal and Slovakia, employers are required to pay migrant workers a premium over wages offered to national workers. A common way to prevent migrant workers from being used as cheap labour is to require that migrants are paid at least the same as nationals. Some countries establish quotas. These can be applied to particular parts of the country or to certain occupations and specific sectors. Only a few countries have quotas that also specify the countries from which the workers may come – usually as a consequence of bilateral agreements, such as in Algeria, the Czech Republic, Guatemala, the Republic of Korea, Singapore, Slovakia, Spain and Switzerland.

A receiving country must consider the “2-Ds” – distortion and dependence. An example is fishing in Thailand where an investor takes a loan on a boat, assuming that there will be migrant workers available to go out to sea for three to nine months at a time. Thai workers do not generally want these jobs. The availability of cheap migrant labour causes a distortion that prompts the investment. At the same time, employers become dependent on cheap foreign labour. *So how can countries introduce policies to reduce the “2-Ds”?*

One way is to “get the economics right”. For instance, it will be wise to raise the cost of employing foreign labour by establishing minimum wage standards for contracts, imposing foreign workers’ levies on employers and including participation of migrants in the social security systems of receiving countries (as long as there are arrangements for enjoying the benefits even after they go back to their country of origin). This means that migrants are not automatically cheaper than nationals.

To deal with the “3-Rs” for sending countries and the “2-Ds” for receiving countries, there is also a need to think creatively about the incentives. What incentives can be used? Discuss.

2.4 Policies and functions for sending workers abroad

Countries of origin in the Asian region have developed policies and programmes for sending workers abroad that are not found in other parts of the world. India, Pakistan, Philippines, the Republic of Korea and Thailand were among the first in the region to take specific measures regarding the protection of their nationals who were offered employment in foreign countries. Very soon they were followed by Bangladesh, Indonesia and Sri Lanka and, still later, by China and Viet Nam. The Republic of Korea was among the first countries to send construction contractors to foreign countries, taking with them Korean workers to build major housing and infrastructure and then bringing them back home. At the same time, the Government also established a state corporation, the Korea Overseas Development Corporation (KODCO), which recruited Korean workers for foreign employers. These Asian countries of origin progressively put in place migration policies that had certain elements in common:

- Establishment of minimum standards for work contracts and requirement that migrant workers obtain approval of their contracts by a designated national authority prior to departure;
- Licensing and regulation of private fee-charging recruitment agencies, including limits on fees charged to the workers; and
- Restrictions on direct recruitment by foreign employers or their agents.

Why did these countries find a need to take such measures? Are there significant differences in their approaches? Would they have taken such measures if their nationals were recruited for employment in Europe? In the United States? Discuss.

In countries of origin, the questions typically addressed by policy are:

- Should the State intervene in decisions of individual citizens to enter into contracts of employment, locally or abroad?
- Should the State assign to a specialized agency of government the task of regulating the contracting of nationals for employment abroad?
- When would it be justified to restrict nationals from accepting employment abroad?
- If the State is to intervene, what minimum standards should be set?
- How should migration of workers be organized? What are the options – government monopoly, private monopoly or government regulation of private agencies?
- Should the migrant workers be covered by social insurance? If so, how?
- How can the State see to it that the rights and interests of their nationals working abroad are protected?

While most governments do not restrict the right of nationals to accept employment abroad, most perform regulatory functions, including:

- Setting, monitoring and enforcing standards in national constitutions, laws and regulations;
- Providing public employment services;
- Regulating and supervising private recruitment agencies;
- Adopting and applying model employment contracts;
- Taking specific measures against trafficking and smuggling;
- Arbitrating in disputes between migrant workers and their foreign employers;
- Creating national and regional institutions for enforcing human rights; and
- Regulating the employment of migrant workers and managing migration flows between and among countries through multilateral agreements.

2.4.1 Typical functions for organizing labour emigration

Various measures are aimed at the objectives of promoting employment, protecting and promoting the well-being of migrants and maximizing the development impact of labour migration.

To achieve these objectives, countries in the Asian region have found it necessary to undertake a large range of specialized functions, including:

Promote employment

Foreign market development

- Establishing diplomatic relations;
- Strengthening placements services – public and private;
- Undertaking promotions and marketing missions;
- Compiling market information and conducting research; and
- Entering into bilateral agreements.

Labour supply management

- Establishing a labour registry on skills available for employment abroad;
- Arranging corporate export of services; and
- Introducing restrictions or policies to address the problem of “brain drain”.

Protect and promote the well-being of migrants

Standards setting and enforcement

- Requiring that employment contracts meet minimum standards;
- Using exit controls to check if migrants have satisfied emigration regulations and measures;
- Entering into bilateral agreements, including on social security; and
- Introducing restrictions on the exit of selected categories of workers, especially minors and young women.

Supervision of private recruitment

- Licensing recruitment firms;
- Using performance guarantees and penalties;
- Setting limits on recruitment fees; and
- Taking measures against illegal recruitment and irregular migration.

Support services

- Compiling information and providing counselling services prior to departure;
- Providing labour attaché services on site;
- Providing social insurance;
- Establishing community facilities and centres for workers abroad;
- Offering support services for families left behind;
- Providing returnee training and employment assistance; and
- Arranging emergency evacuation and repatriation.

Maximize positive impact on development

Remittances

- Pursuing foreign exchange policies; and
- Encouraging banks to provide efficient and cheap facilities for migrants' remittances and to offer services to migrants through branches abroad.

Migrants' savings and investments

- Offering migrants special financial instruments to encourage savings;
- Providing information and support services to small investors; and
- Developing housing programmes for migrants and their families.

Return of talents and skills

- Offering special placement services and incentives;
- Arranging bilateral training agreements; and
- Mobilizing transnational communities.

Only a few governments in the world have programmes that cover all, or nearly all, of the functions just listed. Governments in origin countries in Asia have been more advanced than in other regions in this respect. What functions a government assumes depend very much on the problems arising in that country's course of labour migration.

Why is it that Asian countries of origin have found it necessary to pursue these functions? Do they make a difference to the conditions of employment of their nationals working abroad? How much budgetary resources actually go into performing these functions? Is the budget commensurate with the importance of labour migration to the country? Discuss.

In the following section, the structure and functions of the Philippine overseas employment programme are discussed. It was chosen because the Philippines is widely regarded to have developed a model of how foreign employment should be supervised by the State. In considering this model, look at how the system evolved the way it did because of the specific circumstances in which labour emigration took place in the country over the past three decades. Labour emigration from the Philippines acquired a significant dimension in the mid 1970s when United States and European contracting companies needed third-country foreign workers for their construction projects abroad, notably in the Persian Gulf region where the oil price boom triggered an unprecedented scale of investments in the modernization of infrastructure.

What took place has been popularly labelled as "project-type" migration, one very atypical of the usual forms of migration in many parts of the world, and indeed even for the Philippines, which also sent workers, mostly medical workers, to the United States, Islamic Republic of Iran and the Pacific island countries and territories such as Papua New Guinea and Guam during the 1970s. In the Gulf region, almost all Filipino migrant workers were contracted to work in construction projects for short periods ranging from six months to one year, depending on the projects involved. They were taken to work camps where they lived and worked almost

completely isolated from the national communities. Prior to the spurt in labour emigration, there were already private or commercially motivated agencies licensed by a small unit within the Department of Labour, but the scale of the new demands for labour prompted the launching of new initiatives.

The Government established the Overseas Employment Development Board (OEDB), patterned after the Korea Overseas Development Corporation (KODCO), to serve as the main channel for recruiting and placing Filipino workers abroad. It was envisaged to serve as the central authority empowered to negotiate labour agreements with foreign employers, with respect to workers other than seafarers. The latter were to be the concern of the National Seamen Board, which also had the authority to oversee the training for seafaring and to issue seafarer's certificates. The OEDB proved incapable of meeting the growing demand for placement services. Under intense pressure from private business, the Government decided to give the larger space to private recruitment agencies, with supervision by a new agency, the Philippine Overseas Employment Administration (POEA). The POEA was given greater powers to regulate recruitment and protect migrant workers. The OEDB subsequently was abolished, with all its functions and personnel absorbed by the POEA.

The following is a brief description of the Philippine model as it looks today.

2.5 The Philippine model

Given the scale of labour migration that the country has experienced, the functions and responsibilities related to it pervade almost the whole government, from the diplomats who represent migrant workers' interests in foreign countries to the police in a village who must report illegal recruitment to higher authorities. There are functions imposed on (i) education and training authorities who must regulate the proliferation of private training schools responding to demand for skills needed abroad, (ii) immigration authorities who must check on the validity of travel documents carried by departing migrants, (iii) justice authorities who must look into the prosecution of illegal recruiters and (iv) central banks that must create a financial environment conducive to the transfer of savings through formal banking channels. The issues and problems created by labour migration have challenged many agencies and instruments of the Government, along with civil society organizations, which have evolved their own responses. However, the central responsibility is still assigned to the labour policy administrators, represented by the labour minister, and the specialized bureaus and agencies under them.

2.5.1 Governance structure

The Philippines has a structure for migration management in which the Department of Labour and Employment (DOLE) takes core responsibility, with certain functions shared with the Department of Foreign Affairs (where implementation is outside the country). There are two key agencies responsible for labour migration policy and administration under the DOLE: the Philippine Overseas Employment Administration and the Overseas Workers Welfare Administration (OWWA). Both of these agencies are governed by tripartite boards. Workers' organizations sitting on the boards of these two agencies represent seafarers, land-based workers and women migrant workers.

Philippine Overseas Employment Administration (POEA)

The POEA is the key regulatory body governing the employment of Filipino nationals abroad. Its mandate includes:

- Licensing and monitoring recruitment agencies;
- Accrediting foreign employers and evaluating employment offers;
- Reviewing employment contracts to ascertain compliance with minimum standards;
- Adjudicating disputes concerning employment contracts and recruitment standards;
- Worker registration and job placement facility;
- Programme to combat illegal recruitment;
- Pre-departure documentation and briefing of workers;
- Market research and development;
- Developing recruitment and employment standards; and
- Legal and welfare assistance to distressed migrants.

No one can legally operate within the Philippine territory to recruit workers for jobs in foreign countries without prior authorization from the POEA. The POEA is mandated by law to set minimum standards, regulate recruitment for work abroad and issue permits or licenses to recruit foreign and Filipino employers and private employment intermediaries or job brokers. This is its most critical function, as workers need protection against fraud and other malpractices that have come to characterize labour migration processes. The POEA's regulatory powers were strengthened after Philippine law made the recruiter jointly and severely liable with foreign employers for any damages suffered by migrant workers. It was also granted the power to require applicants for recruiting licences to post large guarantee bonds in designated banks as a security against fraud and non-payment of wages to migrants by their foreign employers. The administration also complemented these measures with various programmes to encourage good practices. The POEA monitors and rates the performance of licensed recruiting agencies and grants annual awards to the best performers. Those agencies that meet the criteria for good performance are guaranteed speedy contract review procedures, including batch approvals by electronic means.

Over the years the POEA has enhanced its capacity to respond to a variety of demands for its intervention and services. It adjudicates disputes between workers and intermediaries or agents and between workers and their foreign employers. It has the power to draw on guarantee bonds posted by the agents if it finds the workers' claims to be justified or valid. At the same time, it actively engages in market development, sending frequent promotional missions to countries offering attractive terms of employment to foreign workers and taking part in international trade fairs where major member organizations are companies employing foreign workers.

More significant than its given powers and functions is the way the POEA has carried out its tasks. It has created a migration governance system that emphasizes efficiency and partnership with responsible private recruitment agencies. The POEA processes more than 800,000 contracts for employment every year and is, in

principle, responsible for responding to demands for assistance by millions of Filipinos working at any given time in foreign countries. These demands can range from complaints that agencies have charged fees above allowed rates to calls for legal representation of migrant workers accused of committing some crime in a foreign country and to requests for help in repatriating workers incapacitated by an accident or illness.

Without a capable management structure in place, the whole system can easily collapse from the weight of its responsibilities. This reality has challenged the POEA to find innovative approaches to its work that have made it a model for others to follow. Among the innovations has been a “one-stop” processing centre where all government agencies concerned with travel documentation, such as passports, tax and police clearance and social insurance membership, are grouped together in one building. With the support of the Office of the President, the POEA presents yearly Presidential Awards to meritorious foreign employers. In 2003, the POEA introduced an e-card documentation system that makes all records of workers accessible electronically and gives each worker a handy ID card containing all necessary information about his or her job and qualifications. It also serves as an ATM card to facilitate remittance transfers through certain Philippine banks and their correspondent banks abroad.

The following case study describes the structures and functions of overseas employment administration in the Philippines.

Box 3: Structure of overseas employment administration in the Philippines

Office of the Administrator

Deputy Administrator: Adjudication and Employment Regulation Division

This unit evaluates applications, recommends licenses and renewals and monitors the performance of licensed agencies. It provides airport assistance services to workers prior to their embarkation. It assists victims of illegal recruitment, conducts surveillance of suspected illegal recruiters and assists in the prosecution of cases. The unit handles disciplinary cases and the adjudication of cases arising from violations of recruitment regulations; it conducts legal research and operates a system for watch-listing of contract workers charged with violating employment terms and of erring foreign employers and principals.

Branches:

- *Licensing Branch*
- *Anti-illegal Recruitment Branch*
- *Employment Regulation Branch*
- *Labour Assistance Counter*
- *Adjudication Branch*

Deputy Administrator: Employment and Welfare Division

The Pre-Employment Services Office accredits principals, verifies and approves job orders, processes employment contracts, issues overseas employment certificates, develops employment standards and conducts market research and promotional activities.

(continued on page 31)

Structure of overseas employment administration in the Philippines

(continued from page 30)

Branches:

- *Employment Contracts Processing Branch*
- *Balik-manggagawa (Returning workers) Processing Division*
- *Accreditation Branch*
- *Marketing Branch*

The Welfare and Employment Office provides welfare assistance services to contract workers and their families, maintains a human resources registry and facilitates hiring needs of foreign governments and other employers who desire to negotiate with a government placement entity. It evaluates and processes the employment documents of workers who secured jobs without the help of any licensed agency. It conducts pre-employment orientation seminars for prospective applicants for overseas jobs as well as the pre-departure orientation seminars for workers prior to their departure.

Branches:

- *Government Placement Branch*
- *Workers' Education Division*
- *Welfare Assistance Division*
- *Manpower Registry Division*
- *POEA Action Centre*

Deputy Administrator: General Administrative and Support Services Division

This unit oversees policy research and programme planning as well as education programmes of the POEA and manages the information system as well as the fiscal and administrative responsibilities.

Branches:

- *Planning Branch*
- *Human Resources Development Division*
- *Finance Branch*
- *Records Division*

Office of the Legal Counsel

Regional offices

The regional centres are located in La Union for Luzon region, Cebu for the Visayas region and Davao for the Mindanao area. Regional Extension Units are in Baguio-Cordillera Administrative Region, Iloilo, Cagayan de Oro and Zamboanga while satellite offices are located in Pampanga, Calamba, Laguna, Legaspi, Bacolod and Tacloban.

Source: Christina Boswell, Silvia Stiller and Thomas Straubhaar: *Forecasting labour and skills shortages: How can projections better inform labour migration policies?* Hamburg Institute of International economics (HWWA), Paper prepared for the European Commission, DG Employment and Social Affairs, 2004.

2.5.2 Overseas Workers Welfare Administration (OWWA)

The other agency under the DOLE rubric is the Overseas Workers Welfare Administration, which administers a trust fund created with fees paid by registered migrant workers and provides a host of welfare services for overseas Filipino workers and their families. Each migrant worker registering with the POEA is required to be a member of the OWWA for a one-time fee of US\$25. The OWWA invests the fund largely in safe bonds and interest-earning deposits with government banks. In 2004 the trust fund value reached an estimated 4 billion pesos (about US\$74 million). Fee collections and the investment earnings provide the Government with resources needed to respond to various contingencies involving its nationals employed abroad. OWWA's biggest programme is the operation of Overseas Filipino Worker Welfare Centres under the umbrella of Philippine missions in host countries which provide the following services:

- Counselling and mediation services;
- Coordination with host country authorities in addressing the needs and complaints of workers;
- On-site visits to workers;
- Temporary shelter to workers in distress, crisis or with special needs;
- Airport assistance and repatriation of distressed or deceased workers; and
- Social activities and facilities.

At home, the Overseas Workers Welfare Association operates programmes aimed at departing workers, the families left behind and returning migrants, including:

- Pre-departure loans;
- Transit shelter and airport transfer;
- Counselling services;
- Livelihood and entrepreneurship training for returning migrants;
- Scholarships for migrant workers' children; and
- Life insurance and death benefits.

2.5.3 Department of Foreign Affairs (DFA)

The Department of Foreign Affairs maintains an Office of the Undersecretary for Migrant Workers Affairs that attends to all programmes requiring diplomatic intervention, such as:

- Cooperation with host country governments in amnesty and regularization programmes for irregular workers;
- Legal assistance and representation for overseas Filipino workers (OFWs) with labour complaints or cases of crimes in host country courts;
- Visitation of detained OFWs;
- Coordination with host country authorities on police cases involving OFWs; and
- Bilateral negotiation with host country authorities on labour matters.

It is important that in negotiations over labour issues that the DFA coordinates with other concerned national authorities at home and that labour is treated as an integral part of overall diplomacy. This also should cover negotiations for bilateral labour agreements or understandings, access to employment markets, services and grievance machineries, fair treatment and other quid pro quo agreements. The DFA works with the departments of labour, trade and industry and others that have a critical role in the migration process. According to Philippine law, a team approach must be the guiding principle for embassies and consulates abroad – especially the labour attachés and welfare officers.

An important lesson from the Philippine model is that there must be coordination – both formal and informal – among different government agencies and other sectors to consolidate their respective share of roles in managing labour migration in the mainstream.

Within the Department of Labour and Employment, all bureaus and agencies whose programmes have a bearing on migration concerns are clustered together under the supervision of a senior official (usually at the rank of an Assistant Secretary) to ensure that operations are coordinated. Various other government departments or agencies that supervise programmes related to migration are represented on coordinating committees and inter-agency task forces whenever necessary.

The DOLE runs its preventive information campaign against illegal recruitment, including the surveillance and prosecution of illegal recruiters, in close partnership with the police, the National Bureau of Investigation and the courts.

The Philippine Overseas Employment Administration and the Overseas Workers Welfare Administration, together with partner non-government organizations, recruitment agency associations and the public employment service offices in the provinces and the regions, conduct orientation programmes for migrant workers. Agencies dealing with education, training and certification work together to give Filipino workers the skills and certification they need to meet the demands of the global economy. This means ensuring the integrity and efficiency of certification as well as the relevance of curricula for education and training.

The Philippines also has a system to respond to crisis situations, such as war, acts of terrorism and natural calamities that threaten the safety of overseas Filipino workers. The Philippines National Security Council, under the Office of the President, oversees a national preparedness team from among government institutions serving migrant workers, including Philippine missions abroad. Responsibility covers the prevention and awareness about HIV/AIDS, severe acute respiratory syndrome and other communicable diseases that the Department of Health responds to with inter-agency committees or task forces.

Government services and programmes for overseas employment are made more accessible to people living far from the capital through three regional centres and ten provincial offices of the POEA.

2.5.4 Approaches to generating resources

The process of developing a structure for managing migration does not take place overnight. In the Philippines, this model evolved over the years through consultation, research, legislation, experimentation, refinements, consolidation and replication. This requires substantial government resources, especially for migrant services and

labour attachés, market research, crisis management and new technology for the management structure. One approach the Philippines has used to generate resources is a “Welfare Fund”.

Another method for pooling resources is to give the private sector certain responsibilities. For example, private recruitment agencies in the Philippines are jointly responsible with foreign employers of migrant workers for the terms of an employment contract. This is a precondition for granting a license to operate. While agencies recruiting land-based workers are allowed to charge a maximum of one month salary as a placement fee, they are obliged under Philippine law to answer for all the contingent obligations of defaulting foreign employers to the workers. Even in times of crises requiring mass repatriation of Filipino workers, the recruitment agencies have an obligation to shoulder the cost of repatriation.

Involving the banking industry in pre-departure orientations is another example of working with the private sector. By providing such services, banks can attract depositors and become the conduit for migrant remittances. In addition, telecommunications and airline companies that benefit from the business of migrant workers can make contributions to public services, including useful advertisements, crisis hotlines and migrant facilities.

Other schemes to ensure resources for developing and implementing programmes for migrant workers include the international organizations that offer technical assistance or expert guidance in migration management. It is important, however, that government authorities have the will, share the resources, act efficiently and establish a moral high ground by providing complementary resources.

Review

Having completed Module 2, each participant should feel confident that he or she can discuss the following:

- What basic challenges does labour migration impose on public policy in countries of origin? In countries of employment?
- Explain the Philippine model for managing labour migration and its relevance to other labour-surplus countries in Asia.

Session Guide

Objectives

At the end of the session, the participants are expected to have:

- A better understanding of the various actions that States may take to organize orderly labour migration; and
- A deeper understanding of the questions and issues that countries of origin typically face in regulating recruitment.

Methodology

- Presentation and discussion
- Exercises (Exercise 1 to be accomplished individually before the presentation)
- Group discussion

Duration

Four hours (one session of presentation and general discussion; one session for Exercise 2; one hour for group discussion; and half hour for review).

Session guide

- The session follows up on some of the issues already raised in the previous modules by going more deeply into specific areas of State action to organize migration.
- Participants are divided into groups and asked to undertake two exercises.

Suggested reading

- Manolo Abella: *Sending workers abroad: A manual for low- and middle-income countries* (Geneva, ILO, 1997).
- Philip Martin: *Merchants of labour: Agents of the evolving migration infrastructure* (Geneva, International Institute for Labour Studies, ILO, 2005).
- Ronald Skeldon: *Migration and migration policy in Asia: A synthesis of selected cases* (London, Department for International Development, 2003).

Over the past three decades there has been a very significant growth in the cross-border movements of Asian workers. These were largely voluntary, autonomous movements motivated by opportunities for higher wage employment in other countries. For the most part, workers were recruited by foreign employers or by their recruitment agents without the active participation of their governments. In recent years, however, there has been much greater government consciousness about the significance of labour migration, especially poverty alleviation, employment and the balance of payments. Also, governments have taken a more proactive stance in promoting and facilitating the employment of their nationals in foreign countries. This module aims to enhance the understanding of what this involves in terms of major decisions that need to be taken, the specific measures that could be made to support such decisions and how effectiveness can be assessed.

3.1 What are the objectives of a foreign employment programme?

There are many objectives behind the establishment of programmes to promote foreign employment. Some advocates see in labour migration potential contributions to the development of the countries of origin, such as in reducing unemployment, generating greater foreign exchange income, increasing the rate of savings or simply increasing the rate of return to investments in education. Social objectives also are among the most important aims behind state intervention in labour migration. These include improving wages and conditions of employment for nationals working abroad, reducing the cost of emigration by curbing recruitment abuses, providing safety nets for migrants and their families, stopping undocumented migration and making migration processes more orderly.

What other objectives are important in your country's programme?

Exercise 1

A checklist of conditions that must be satisfied before promoting employment of nationals abroad

Instructions:

Each participant is asked to indicate whether his or her government takes the following into account in adopting policies for employment of nationals abroad. Remember that governments need not actively promote or facilitate the employment of their nationals abroad. Different answers can be discussed during group discussions or in the plenary session.

	Yes	No
Are opportunities for decent work being offered in foreign countries?	_____	_____
In countries where such opportunities are available, are there labour laws that adequately protect the rights of foreign workers?	_____	_____
Are the migrant workers likely to be employed in places where their safety is at risk?	_____	_____
Is there a serious problem of discrimination against women in the countries of employment?	_____	_____
Is there adequate diplomatic representation in the target countries of employment to assist nationals taken there for work?	_____	_____
Do the target countries of employment have adequate diplomatic representation in origin countries to respond to employment questions and to issue visas for migrant workers?	_____	_____
Are the target countries of employment willing to negotiate bilateral agreements covering the employment conditions of the workers?	_____	_____
Will the placement of nationals in jobs abroad increase overall employment?	_____	_____
Does the country have a surplus of skills for which there is demand abroad?	_____	_____
Do the countries of employment give due recognition to the skills and qualifications of the workers?	_____	_____
Will the migration drain the country of needed vital skills?	_____	_____
Are there administrative units of government capable of assuming responsibility for the orderly recruitment and placement of the workers in foreign countries?	_____	_____
Are migrant workers' needs for services in receiving countries recognized?	_____	_____
If policies are more restrictive, will workers face more serious risks of exploitation, as they may resort to clandestine migration or other recruitment malpractices?	_____	_____

3.2 In what ways do States try to influence labour emigration?

Where foreign employment is recognized as a legitimate area for intervention by the State to protect individual citizens or to promote development through migration, the State may pursue policies and programmes in several areas:

- Developing foreign markets;
- Managing the supply of human resources;
- Setting and enforcing standards;
- Supervising private recruiters;
- Providing support services for migrants and their families;
- Facilitating or reducing the cost of remittances;
- Encouraging migrants' savings and investments; and
- Encouraging return, especially among the talented and skilled.

Developing foreign markets. This may simply involve using the media to advertise the capacity of the country to supply foreign employers with skilled and hard-working people, or it may involve much more difficult processes of negotiating bilateral labour-supply agreements with foreign governments or government bodies such as ministries of health, which run hospitals, or ministries of public works, which build infrastructure.

Managing the supply of human resources. This may involve establishing a computer-based registry of workers interested in working abroad who use free public employment services, or it may go beyond registration to actually ensure that migration does not create skill shortages at home by facilitating more training in occupations of high demand.

Sending abroad low-skilled, as opposed to highly skilled, workers often creates problems of protection. But the emigration of low-skilled workers involves less potential loss of productivity for the country of origin than if the migrant workers were skilled. *Should States then facilitate the employment abroad of the less skilled rather than the more skilled workers?*

Resources are always scarce and there are competing needs. *Should States subsidize the training of people for skills in demand abroad?*

Setting and enforcing standards. The more difficult functions are those related to enforcing minimum standards and regulating and supervising recruitment.

Should the State impose minimum wage standards for each country of employment? How can it enforce those standards? Should it allow private agencies to charge fees to migrant workers? If so, should it set certain limits? If private agencies are allowed to operate, should the State adopt a licensing system? What should be the qualification criteria for licenses? Technical capacity is essential but should financial capability be an important criterion as well? Discuss.

The experience in Asia shows that unscrupulous people easily recruit for foreign employment to make money on many who wish to work abroad. The difficulty the national authorities face is that many more people want to work abroad than there

are jobs on offer. To be considered first, many are willing to pay job brokers beyond the regulated amount brokers are permitted to charge. Some recruiters have found it very easy to make money by offering more jobs than they actually have to offer. It is not difficult to fool people because information about foreign job markets is not easy to obtain.

What strategies need to be developed to deal effectively with malpractices in recruitment? What sanctions should be imposed against fraud in recruitment? Discuss.

Support services. Because migrant workers are employed in foreign countries, are subject to laws and regulations they may not be familiar with, are separated from families for long periods and because communications may be difficult and at times costly, countries of origin have found it necessary to develop programmes in support of migrants and members of their families. Governments have to come to the rescue of workers who find themselves in foreign countries without jobs due to fraud or because their employers claim that they lack the skills they were supposed to possess. Others may be in trouble with police authorities due to violations of local regulations or because of more serious charges of crime. Others still may stop communicating with their families at home and those families may need assistance to find them. There are many circumstances like these that national authorities are expected to address, and they must develop systems for rendering services efficiently and promptly.

How far should States assume these responsibilities? What basic services must the State provide? Who should pay for the services? Discuss.

Exercise 2

Preparing to negotiate a bilateral labour agreement

Instructions:

You are to work in a tripartite country team for 40 minutes. Pretend that your team will be involved in a bilateral negotiation that you will initiate. Choose a country with whom you will negotiate. You are to identify the subject(s) and modality of bilateral consultations that you will adopt in the process. Your team will then report back to the plenary session. You can use the following worksheet as a guide.

Country with whom to negotiate:

Reason for choosing this country:

Subject of negotiation:

Reason for choosing this subject:

Mode of bilateral negotiation:

Reason for choosing this mode:

Negotiation points:

What did you hope the other side would agree to?

How did you propose these points to the other side?

What strategy did you employ?

What arguments did you present to support your case?

What position did the other side take?

What agreement did you eventually reach?

What lessons did you learn from these negotiations?

3.3 Managing labour emigration

The policy and administrative structures appropriate for managing labour emigration depend on the circumstances confronting a country of origin. Where nationals go to work in countries with well-paid foreign workers whose rights are protected, there may be little need for state intervention. The same is true if the workers are all highly skilled professionals hired to perform highly paid jobs abroad. In the case of Asian countries of origin, the responsibilities taken on by governments reflect the problems their citizens encounter in countries of employment. Because their citizens found employment in countries where laws regarding foreign labour do not provide equal treatment and where labour institutions, including trade unions, are not yet well developed, they have had to create policies and programmes that help defend those workers against possible abuse and exploitation. Few countries of employment have been willing to enter into bilateral agreements on the joint management of labour migration. In this situation, authorities in the countries of origin have no levers of control that go beyond their borders, making it extremely difficult to enforce rules and standards that should govern employment relationships.

What are the most common functions associated with foreign employment programmes? Discuss.

Box 4: Limits to sovereignty – the dilemma of origin countries

The opening up of the labour market in Taiwan (Province of China), one of Asia's most successful industrializing economies, in the mid 1980s illustrates the dilemma of origin country authorities: The country wanted to bring in thousands of "guest", or temporary, migrant workers for jobs in construction and manufacturing industries. Wages were among the best in the region and attracted much interest. For a number of years, employers in that country could not recruit foreign workers directly; they had to go through locally licensed recruitment companies that literally "sold" the jobs to recruitment agencies in the origin countries. As a result, the migrant workers ended up paying enormous sums, often the equivalent of three months' salary, to get their jobs. These fees greatly exceeded the ceiling set by the origin countries but could not be enforced without the help of the government of the country of employment. The situation only improved when the government allowed the direct hiring by employers, following pressure from the countries of origin.

In most countries, the private sector often is left to find jobs and the State devotes its attention to protecting citizens against recruitment fraud, trafficking and exploitative employment. Countries differ on how far they have elaborated the protection functions – from regulating recruitment to negotiating agreements for social security.

- *Regulating recruitment.* Who are allowed to recruit and in what area or region; what is the limit to fees collected from workers; what are their responsibilities toward the recruits; what practices must they avoid and penalties must they pay if they are found violating the rules; and how should they advertise job vacancies?
- *Regulating employment.* In what countries are nationals prohibited to work; what jobs are they not allowed to take; what is the minimum wage or salary they must accept; what working conditions are not acceptable; what are their entitlements to leave and vacations?

Because little capital is needed to enter the business of recruitment, national authorities often find it extremely difficult to regulate the activity. Measures that are too rigid and strict tend to drive the activity underground. Being too lax legitimizes many unscrupulous practices. Policy makers always have to walk a thin line in providing some degree of control over recruitment.

The ILO Convention No. 181, which deals with private recruitment agencies, prohibits them from charging fees to migrating workers. One of the biggest problems confronting national authorities in origin countries is how to stop recruiters from dealing with foreign employers who are unwilling to shoulder the costs of recruitment and instead pass the fees on to the workers.

Self-regulation by the industry is often the most effective means of producing the desired outcome, namely efficient and ethical recruitment. Policies to encourage the formation of an industry association and promoting its close partnership with the government are usually essential steps in this direction. In some countries, the associations have adopted “codes of practice” to guide their members and assist the government in pursuing errant and unlicensed recruiters.

In attempting to regulate employment, origin country governments often find themselves without effective instruments with which to pursue their policies. This is typically for two reasons: (i) In democratic societies, citizens are free to decide on the terms of employment they would accept and to leave their countries; and, (ii) limits to sovereignty mean that governments can only control what takes place within their countries, not outside. The cooperation of authorities in the countries of employment is critical for enforcing employment contracts, placing an effective check on recruitment malpractices and settling disputes between workers and their employers.

3.3.1 Supervising recruitment

Unless recruitment is properly regulated, many workers will fall victim to fraudulent practices: non-existing jobs abroad, job contracts that differ from actual conditions of employment, exorbitant fees or forced labour in foreign countries. Similar risks exist in domestic employment but limited knowledge of foreign country situations, language barriers, and distance from people and organizations that can lend assistance and support make the problem more serious in the case of foreign employment.

Policy makers and administrators have to make many important decisions in the regulation and supervision of recruitment.

Should unknown foreign employers be allowed to recruit workers directly? Should there be controls on advertising foreign jobs in the media? Should the authority to recruit be restricted, and if so, on what grounds? Discuss.

Competition may be good to improve services and lower service fees, but the experience of many countries has shown that those who find good jobs and terms of employment tend to be the companies with technical competence, links with reputable employers abroad and who have substantial financial resources. On the other hand, many of the complaints of recruitment fraud, excessive fees and bad employment conditions are against small recruitment agencies that have few contacts abroad and little financial capital sunk into the business. Policies must aim to

promote responsible recruitment and support firms that have a potential to do well by following regulations. Unfortunately, many countries have policies that do not encourage a long-term commitment in the business. Unlike licenses for other businesses, those for recruitment tend to be restricted to a short period, such as one year. There often are restrictions on the nationality of ownership even where there are evident advantages in having firms with close tie-ups to large multinational companies in the same business.

3.3.2 Liability of recruiting agents

How far are recruiters liable for violations of employment contracts by the foreign employers? One of the innovations introduced in the Philippines to instil more discipline in recruitment is a law that made recruiters “jointly and severely liable” with the foreign employers they represent. This has put the burden on recruiters to select carefully the foreign employers for whom they recruit. The measure has been complemented with a requirement that licensed recruiters put up a guarantee bond issued by a commercial bank to meet claims of workers for unpaid wages and other damages that the national authority may later find to be valid.

3.3.3 Promoting overseas employment

Governments can take the initiative to develop foreign markets for their workers if the private sector is incapable of doing so. This is often the case where little migration has taken place before, when not much is known about job situations in foreign countries and private capital is reluctant to take risks. Governments may negotiate for more countries to establish a diplomatic or consular presence, to send goodwill missions to prospective countries of employment, to hire foreign promotions companies to take care of advertising the country as a source of skilled labour or to finance the participation of the country in trade fairs abroad.

However, unless they are well planned with provision for immediate follow-up through job placement, costly government initiatives may bear little fruit. It is not uncommon to hear of ministerial-level promotional missions hailed as very successful because of the interest generated among employers in foreign countries. But many of them remain only as promising possibilities, with nothing happening afterwards. The ideal situation is one where concrete plans exist for following up on opportunities identified during government goodwill missions.

Having diplomatic relations with destination countries is an essential condition for successful promotion. Because most countries already have extensive diplomatic relations with others, there is usually little more to do on this matter. But it is important because there are practical problems, such as access to facilities for obtaining visas. Nepalese workers, for example, incur high costs in obtaining visas to many countries because the nearest consulates are in New Delhi.

3.3.4 On-site services for nationals working abroad

More mature labour-sending countries have found it necessary to provide on-site services for their large workforces abroad. These often include representation of the interests of workers before local authorities, legal assistance to those in trouble with the law, counselling, information and, in some instances, remittance transfers and skills training. The most common service is the posting of officers to major countries of employment with specific duties to attend to the needs of their nationals

working there. In addition to the usual diplomatic personnel posted by the foreign ministries, there may be those posted by labour ministries to serve as labour attachés.

What are the usual functions of labour attachés? What do they need to be effective in performing their functions? Discuss.

The Philippines has labour attachés posted in 33 offices in 27 countries (8 in Asia, 11 in the Middle East and North Africa, 3 in North America, and 5 in Europe). These labour attaché centres provide various services to migrant workers, including information, counselling, training for new skills and temporary lodging for those in need of urgent assistance.

3.3.5 Settling disputes

Some arrangement must be made for a unit of the labour ministry to attend to cases of disputes likely to arise between workers and their agents or the foreign employers. In normal circumstances, disputes with foreign employers will be brought to the attention of labour administration authorities in the countries of employment. But the issue may be important as well to authorities in countries of origin, as many workers make their complaints and claims only upon their return and because it is important to prevent future recruitment in case some foreign employers are found to be unreliable or treat workers unfairly. In the majority of cases, the disputes are between workers and recruiters over payment of recruitment fees.

It is best that disputes are resolved through administrative methods such as conciliation (mutual agreement to settle the dispute bilaterally) or even arbitration (leaving the decision to an impartial third party) rather than through judicial procedures that take time and cost the workers money.

3.4 Policy-making bodies and administration

In many countries, regulating recruitment and employment are an integral part of the labour ministry or department responsibilities. In India, for instance, it is the responsibility of the Office of Protector of Emigrants in the Ministry of Labour, an administrative unit with a history dating back to the time when Indian workers were sent to far-off British colonial plantations and needed protection. The Office of Protector has branches in major cities, discharges the function of registering migrants before departure and sees that they possess employment contracts that satisfy minimum requirements. In Pakistan, the Ministry of Labour was renamed the Ministry of Labour and Overseas Pakistanis in the early 1980s to emphasize its expanded responsibilities over labour emigration. The Bureau of Emigration, under this ministry, takes responsibility for registering migrants and their contracts. In Thailand and Indonesia, the same functions are performed by a specialized bureau within the Ministry of Labour and the Department of Manpower, respectively.

Depending on the dimensions of labour migration, there may be a need for a specialized organization dedicated to dealing with the multiple issues it raises. In the Philippines and Sri Lanka, specialized semi-autonomous organizations were created to take full responsibility for all aspects of labour emigration. They have tripartite boards chaired by the Minister of Labour. In 2002, Bangladesh went further by creating a new ministry – the Ministry of Expatriates – and transferring to it the functions that used to be performed by the Bureau of Manpower, Employment and Training within the Ministry of Labour.

Coherence and effectiveness of policy often suffer when different agencies of government appear to act at cross purposes with each other. The labour ministry, for instance, may be promoting the employment of nurses abroad when the health ministry struggles with critical shortages of nurses, especially in rural areas. It is clear that foreign employment policies need to coordinate with training and education authorities, with major employers in the public and private sector, with health authorities, with those in charge of foreign policy, with local governments and with the police. To do so, some countries have found it necessary to establish coordinating councils or bodies that include senior officials from different ministries and representatives of employers' groups, trade unions and civil society.

A concrete demonstration of coordination is the establishment of a "one-stop shop" where several ministries involved are represented in the same centre or locale to make it convenient for applicants who want to register.

3.5 Management information

For good administration, relevant, reliable and timely information must be accessible to decision makers. However, many organizations fail to appropriate enough resources for information functions, and as a result, avoidable mistakes are made by those decision makers. For example, those who grant recruiters' licenses need information on previous records of the applicants including possible complaints against them. For those who adjudicate the adequacy of wage offers, information must be available on average levels of wages and cost of living in countries of employment. Few countries of origin regularly monitor changes in wage offers for different occupations that otherwise should be easily available from registered employment contracts. While some information is difficult to obtain, in many circumstances the necessary information lies somewhere in administrative records that need to be organized for easy access and then properly interpreted.

Another essential but neglected procedure is the standardizing of information systems to allow for the proper organization of data. A common example is the need for an occupation classification system that can stand up to the large variety of job descriptions coming from employers. Failure properly to classify registering workers easily leads to inexplicable differences in wages and salaries.

For a full discussion of management information, see Module 10.

Review

Having completed Module 3, each participant should feel confident that he or she can discuss the following:

- Why States must intervene to regulate the processes of labour migration so as not to leave workers at the mercy of the market.
- How to manage labour emigration effectively with States accepting the obligation to establish specialized organizations with appropriate authority.

Session Guide

Objectives

At the end of the session, the participants are expected to have:

- A better understanding of different models for employing foreign workers; and
- A better understanding of the process of negotiating arrangements for employing foreign workers.

Methodology

- Presentation
- Discussion
- Exercises

Duration

Six hours (two sessions of presentation and general discussion; one hour for Exercise 3 and 2 hours for Exercise 4; half an hour for review).

Session guide

- The session will start with a comparative presentation of three models of host government policy and programme responses to foreign workers.
- The participants will work on exercises in small groups to share country experience and to learn more about foreign labour markets and basic negotiation skills.
- The session will end with a plenary discussion.

Suggested reading and reference materials

- W.R. Böhning: *Employing foreign workers: A manual on policies and procedures of special interest to middle- and low-income countries* (Geneva, ILO, 1996).
- International Labour Office: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004).

4.1 To employ or not to employ foreign workers: Choosing a policy direction⁸

Balancing different, and at times conflicting, interests and objectives shapes migration policies. For example, family reunification remains an important value underlying the immigration priorities of most countries, but it has to be balanced with employers' interest in a policy that gives priority to meeting labour shortages. Temporary foreign worker programmes are established to meet cyclical labour shortages, but the way to sustain such policies may involve an unacceptable limitation of workers' rights. The admission of highly skilled foreign workers may be considered essential in maintaining global competitiveness or a means to stimulate growth, but it may encounter opposition from national workers whose wages may be depressed by the entry of foreign workers. Because policies have significant long-term implications that go beyond their intended effects, the direction chosen is of critical importance. Two countries may confront similar situations but differ remarkably in choosing the solutions. Both Germany and Japan, for instance, faced similar emerging labour scarcities as a result of rapid economic recovery in the 1950s. But each pursued a different strategy. Japan decided not to open her doors to foreign labour and instead used a variety of policy instruments to press Japanese firms to adopt labour-saving processes and eventually to use direct foreign investment to relocate production to lower-wage countries. Germany embarked on the famous *Gastarbeiter*, or guest worker, programme to employ foreign labour.

Two factors are crucial in assessing whether to open doors to foreign workers:

Labour shortages. This is an important issue that has proven very controversial and very difficult to reach agreement. To an economist, a shortage is a short-run condition that can arise when an economy is at full employment and further growth leads to wage inflation. In the long run, the economy will adjust through industrial restructuring – shifting to the production of goods and services that require less labour, substituting imports for what used to be produced at home and moving to more capital-intensive modes of production, unless more workers are brought in through immigration. In current debates on immigration, labour shortage is, however, interpreted more liberally to include situations where an economy has not yet reached full employment. Böhning draws a distinction between “absolute” and “relative” shortage. An absolute shortage means that a country does not have, or will not have, in the near future the required population and skills relative to its given technological and production possibilities. In the face of comprehensive pressures of a global economy and given levels of technology, absolute shortages can be satisfied by employing foreign labour. Otherwise, the country would fail to attain desired levels of production and the distribution of the gains that could be derived from it.

⁸ This module draws largely from W.R. Böhning: *Employing foreign workers: A manual on policies and procedures of special interest to middle- and low-income countries* (Geneva, ILO, 1996) and International Labour Office: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004).

Box 5: Estimating the need for foreign workers

Boswell, Stiller and Straubhaar have analysed the reasons for labour shortages and suggest an approach to estimating the need for labour immigration. They say it requires at least three steps:

- (1) Understanding the causes of current and potential labour and skill shortages;
- (2) Estimating and projecting their scale; and
- (3) Evaluating the appropriateness of different policy responses for reducing shortages, including migration policy.

Within this definition, there are two types of shortage – aggregate labour shortage and shortages due to mismatch in the labour market:

- (1) *Aggregate labour shortage*. This occurs where there is (near) full employment and a general difficulty in finding workers to fill vacancies.
- (2) *Mismatch in the labour market*.
 - *Qualitative mismatch*. This arises when the qualifications of workers and the qualification profiles of vacancies are not matched. Qualitative mismatch also can be referred to as skills shortage, describing a labour market situation in which there is a lack of people with the qualification, skills or experience necessary to carry out the jobs in question.
 - *Regional mismatch*. This occurs where unemployed persons seeking work and firms offering suitable jobs are located in different regions, and the jobs and/or workers are immobile.
 - *Preference mismatch*. This refers to a mismatch between the types of jobs that unemployed people are willing to take on and existing vacancies in the relevant region. Those out of work are unwilling to take up certain types of jobs because of inadequate remuneration, working conditions or status, despite the fact that such jobs match their qualifications and skills profile or are located in the relevant geographical region.
 - *Mismatch due to information deficits*. In this case, there is no aggregate shortage of labour or skills but supply does not meet demand due to lack of information. Unemployed workers do not acquire information on relevant existing vacancies because of inefficiencies in the labour market; and firms do not have the information necessary for finding persons with adequate qualifications. It is important to note that shortages due to mismatch on the labour market can co-exist with substantial levels of unemployment.

There is also a need to be clear about what is meant by shortages. Here it is useful to distinguish between different degrees of acuteness. This is not just a question of how quantitatively significant shortages are at a given point in time but also whether they persist over time and how far they are responsive to changes in the strategies or behaviour of firms and workers (in other words, what might be called “frictional problems”, bottlenecks or “tightness”, rather than absolute shortages). In some cases, the problem of hard-to-fill vacancies may be addressed by offering more attractive salaries or conditions, through more effective recruitment practices or by lowering the qualifications necessary for the job. Alternatively, shortages could be addressed by restructuring the current workforce within a firm, increasing the hours worked by current employees or further training or retraining staff. On the supply side, even where employers do adjust conditions (for example, by offering more competitive wages), there may be a lag in workers’ responses to these changes.

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Estimating the need for foreign workers

(continued from page 47)

In these cases, more flexibility on the part of employers or the workforce could ease tightness and it may not be appropriate to talk about shortages. This is especially likely to be the case for labour mismatches, although less so for skills shortages.

However, the degree to which one expects or requires labour demand or supply to be more flexible will of course depend on a number of other considerations. On the demand side, institutional rules or narrow profit margins may make it impossible for employers to offer more competitive wages. Making do with less qualified staff may lower productivity or result in lower quality products or services. On the supply side, it may not be socially or politically acceptable to expect unemployed workers to take lower-status or lower-paid jobs or to relocate to other areas. If this is the situation, it may indeed be more appropriate to talk about shortages. There are also some jobs, especially in the higher skills categories, for which workers are simply unavailable. Certain required skills may either be unique to those with knowledge of foreign markets and technologies, or relevant training and education measures to increase the supply of qualified domestic workers may only kick in in the medium term.

Source: Christina Boswell, Silvia Stiller and Thomas Straubhaar: Forecasting labour and skills shortages: How can projections better inform labour migration policies? Hamburg Institute of International Economics (HWWA), Paper prepared for the European Commission, DG Employment and Social Affairs, July 2004.

Relative shortages occur when full employment has not yet been reached but vacancies remain because there are no workers willing to take the jobs being offered by employers at current wages. Generally, these vacancies tend to be in certain sectors (low-wage industries, services or plantations), occupations (work that is very unpopular), regions (economically unattractive or remote areas), employers (those whose enterprises are small in size and operate at the margin of profitability or that offer below-standard wages and working conditions). In general, in more developed countries where welfare benefits are generous, workers are in a position to shun low-wage, dead-end jobs and work in better-paying jobs or get by through other means.

4.2 Why is there a need for social dialogue on migration?

Social consensus among representatives of those who stand to gain and those who stand to lose from migration is the best guarantee that a policy will be sustainable. Decisions reached through consultation are more likely to be implemented because they will receive the support of the social partners. This has been the experience wherever employers' and workers' organizations form an integral part of the policy-coordinating mechanism.

In your country, are workers' and employers' organizations formally consulted on labour immigration policies and regulations? Are there established tripartite structures for the purpose? Discuss.

At the level of individual enterprise or industries, employers and workers might want to agree among themselves on the maximum number and composition of foreigners to be admitted and the defined period of employment, depending on their own assessment of the labour demand. Consultation does not necessarily result in agreement, but it leads to a higher degree of commitment on the part of the social partners to help make the policy work.

4.3 Ensuring policy coherence

What is needed to ensure coherence of a country's foreign worker policy? How can its implementation be effectively coordinated with other branches of government? Discuss.

Policy coherence means ensuring that policies and programmes in both migration and other sectors do not conflict, either directly or through unintended consequences. Because employing workers involves many government agencies, it is necessary to bring various actors together under a coordinating body and agree on the specific role to be played by each institution. Policy coherence must ensure that migration policies meet foreseeable long-term requirements for the economy and society and remain in place regardless of changes in government.

Usually the agency that is responsible for employment is the one best suited to oversee and implement policies for foreign workers because it typically would be closely monitoring conditions in the labour market. Where the responsibility is given to a department specifically dealing with immigration, there still will be a need closely to link its work to that of public employment services. It is usually these services that determine whether labour shortages exist in occupations or sectors where employers want to hire foreign workers. Technical coordinating bodies, as well as regional ones, also may be advisable in certain countries.

4.4 How should the recruitment of foreign workers be organized?

In general, there are three available alternatives with which a country can organize the arrival and employment of foreign workers: The first one is through its public employment or immigration service in an exclusive operational capacity. The second one would be by permitting the private sector – either employers directly or recruitment agents – to undertake the functions of matching demand and supply, with the public employment or immigration service acting only in a supervisory capacity. The third approach would be a combination of the first two.

If the second option is pursued, supervision would involve the following tasks:

- Verify the actual need for a foreign worker;
- Oversee the granting of requisite authorizations to enter and stay or reside, as well as the requisite permission to work; and
- Regulate the activities of recruitment agents as a way to combat malpractices and abuses.

Because recruitment malpractices tend to be more prevalent in the low-skilled rather than the high-skilled end of the labour market, the government may want to provide its public employment services to low-skilled employment and to assume merely a supervisory role for the upper end of the skills range. This might be an option where unskilled workers are needed on a massive scale, while highly qualified workers are likely to represent fewer individual cases.

Private employment agencies are defined as service enterprises under private law that undertake, under contract and in exchange for financial compensation, such as a fee or a subsidy, operations on behalf of individual clients or client enterprises

with the aim of easing or speeding up access to employment or career progression or filling a vacancy with a foreigner.

In regulating the activities of the private employment agencies, government supervision should focus on several questions:

Who should carry out the supervision of private recruitment? Should it be entrusted to the public employment service or immigration bureau? Discuss.

Public employment or immigration services are required to interact with private agencies in the spirit of both competition and understanding. To avoid justifiable criticism for being both judge of the case and party to it, the two should not be given a supervisory function.

Regulating private agencies can focus on tools and methods for reducing the fees charged to prospective migrant workers, preventing fraud, minimizing mistakes in matching workers to jobs, checking the veracity of job offers appearing in the press, recognizing the acquired rights of workers recruited by agencies in the event of such agencies defaulting and controlling enquiries made by agents into the candidate's private life before a recruitment decision is made.

A licensing system

Should private employment agencies be required to obtain a license from the public authorities before being allowed to engage in the activity of recruitment? Discuss.

The basic rationale for licensing is to restrict participants in an activity to those who are likely to contribute to meeting the policy objectives. More specifically, a licensing system provides the following advantages:

- It allows the government to identify agents operating in the market;
- It makes it easy to collect information by linking approvals to a provision of data, on a regular basis, on the way private agents carry out their activities;
- It ensures close monitoring of the application of regulations; and
- It provides a legal basis for excluding those who commit fraud or unscrupulous practices and for penalizing them.

On the other hand, there are possible disadvantages in setting-up a licensing system:

- It is costly and constraining;
- It generates suspicion between private agents and public authorities; and
- It discourages individuals or enterprises from drawing up long-term strategies and making investments when licenses have to be renewed each year.

Regulation is vital for a market that is under constant pressure from profiteers and speculators. In this situation, the government must enforce approval restrictions. Such measures can be relaxed depending on how the markets develop.

4.5 How can labour migration be jointly managed?

Migration is best managed if the governments of the countries of employment and of origin agree to cooperate in organizing the various migration processes, from recruitment to return. There are at least two ways of formally reaching such arrangements:

- Through a *framework agreement* that implies establishing a broad understanding with another country under which two governments pledge to cooperate, with the aim of getting one country's labour employed in another country and with possible references to favourable treatment, questions of return and so forth without specifying procedures.
- Through an *operational bilateral recruitment agreement* that is an elaborate version of a framework agreement. This uses in the preamble the kind of wording found in a framework agreement and then lays down, article by article, how to regulate the flow of labour and how to treat migrant workers.

Box 6: Contents of an operational bilateral recruitment agreement

Irrespective of whether a government has sole or shared responsibility for the recruitment of migrant workers, certain points should be considered for inclusion when an agreement aims to facilitate large-scale migration. This may be for training programmes or contract migration to ordinary industrial work or service jobs or for facilitating the seasonal employment of migrant labour.

The most basic and typical questions that should be dealt with and resolved in an operational bilateral recruitment agreement suited to the circumstances of a wide range of middle- and low-income countries are the following:

- *Competent authority.* Which agency is responsible for what in the sending and in the receiving country? Should one country's agency establish an office in the other country? If so, who bears the costs of the premises?
- *Exchange of information.* Should general information on working and living conditions be transmitted from the origin to the destination country and vice-versa, such as information on wage systems, social security contributions and tax deductions, as well as information not exclusively relevant to the work situation, such as cultural habits and religious doctrine.
- *Migrants in irregular status.* Should the status of migrants whose entry, stay or employment is illegal be regularized? If so, under what conditions? Should migrants be returned? Would the sending country have an obligation to re-admit them?
- *Vacancy notification.* How should vacancies be made known to the sending country? What details should be included regarding the job and the qualifications required?
- *List of candidates.* How should sending countries list job seekers who desire employment in another country? Should lists contain details of their trades, past employment and the kind of work they are looking for? Should their marital status be specified?
- *Pre-selection.* Is the competent authority of the sending country to be responsible for pre-selecting candidates deemed suitable for notified vacancies?
- *Final selection.* Is the competent authority of the receiving country to have the final say on who is actually permitted to migrate?

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Contents of an operational bilateral recruitment agreement

(continued from page 51)

- *Designation by employers.* Should employers or their agents be permitted to request specific workers by name?
- *Medical examinations.* Should candidates' health be examined before selection? Which country's doctors should carry out the examination? Who bears the costs? Should danger to public health be a reason for excluding candidates for seeking employment abroad? If so, who determines the criteria for assessing what constitutes a danger to public health in the receiving country? Or should there be joint determination?
- *Entry documents.* Which identity cards, visas, passports or other documents are required for the movement?
- *Residence and work permits.* Should the agreement cover both employment and residence permits? Are migrant workers to be obliged to obtain permits to stay and work in the receiving country? Should the permits be granted before arrival or should the worker be responsible for obtaining them after arrival? What are standard conditions of renewal?
- *Transport.* Which kinds of transport should generally be envisioned? Who should pay for it? If the worker has to return to his or her home country – prematurely or after the expiry of his or her contract – who should pay for the journey?
- *Employment contract.* Should a general or model employment contract be appended to the agreement? Should it be in several languages, including a language the migrant can understand? Should the domestic employer and the foreign worker sign a contract before the migrant's move takes place? Should the agreement contain provisions for the normal duration of contracts for seasonal or ordinary jobs? Should it set out general guidelines for the renewal of contracts and for what happens if an employer wishes to terminate the employment relationship or goes bankrupt before the expiry of the contract? How should the contract provide for cases where an employer finds a worker unsuitable after arrival?
- *Terms and conditions of employment.* Should the agreement specify that terms and conditions for migrant workers be the same as those in force for comparable national workers? Should migrant workers be given the freedom to change employers?
- *Grievance and dispute settlement.* Should the agreement stipulate that migrant workers have the right to submit any grievance to an appropriate procedure within the enterprise or as provided for in collective agreements? Should they have the right of recourse to a labour court or other judicial authority of the immigration country?
- *Right to organize and bargain collectively.* Should the migration agreement reiterate the principle that all workers, regardless of status, have the right to establish and, subject only to the rules of the organization concerned, to join an organization of their own choosing without previous authorization?
- *Social security.* Should the agreement provide that foreign workers be given equal social security benefits as national workers receive? Should there be a separate agreement regarding rights in the course of acquisition, the maintenance of acquired rights and the payment of benefits abroad?
- *Remittances.* Should the migration agreement lay down the principles and limits for the transfer of earnings and savings of migrant workers?
- *Accommodation.* Who is to be responsible for finding accommodation when the worker moves to the receiving country? Is a foreign worker entitled to publicly supported housing schemes upon arrival?
- *Family migration or reunification.* Which principles and conditions should apply for a worker to be accompanied or joined by a spouse, children and other family members?

(continued on page 53)

Contents of an operational bilateral recruitment agreement

(continued from page 52)

- *Welfare or religious organizations.* Should the welfare or religious organizations in sending countries be allowed access to migrant workers in the receiving country? Should the relevant organizations in host countries be designated as normal contact points?
- *Joint commission.* Should the sending and receiving countries agree on establishing a commission whose purpose would be to oversee the implementation of the agreement and to resolve general problems that may arise in the course of its application?
- *Validity and renewal.* Should the agreement be valid for a defined duration and then lapse or become automatically renewable unless either of the two parties expressly denounces it?
- *Jurisdiction.* In case of a dispute arising out of the application of this bilateral recruitment agreement, should the matter be settled through the legal system of the country to whose territory the dispute relates? Or should it be settled by an arbitration or court procedure outside the jurisdiction of both parties?

4.6 What are the steps in properly organizing the employment of foreign workers?

The main issue is how to assess an employer's need for a non-national worker. *What will be the basis for either granting or refusing an employer's request for foreign labour?*

To test whether the need is legitimate or not, specific criteria have to be set up and utilized. Ascertaining labour scarcity for each and every occupation at specific points in time and for each region within the country is difficult. Governments inevitably use economic needs tests, the most of common of which are the vacancy test and the seasonal migrant labour scheme.

4.6.1 Instituting a vacancy test

Administrators have resorted to practical ways to establish that a specific job can be offered to foreign workers.

One approach is the imposition of a *waiting period* during which time the vacancy is publicized. The aim is to find out whether suitably qualified unemployed or inactive nationals or someone who wishes to change jobs would be interested in the job. How long is the waiting period and whether the advertisement of the vacancy should be confined to a particular region, sector or occupation may be specified by law; but more often than not, these decisions are left to the discretion of the administrators.

Another approach involves requiring the employer to provide evidence that the job has already been offered to one or several nationally available workers but was declined. This obliges the employer not only to look for workers in the domestic labour market but also to offer sufficiently attractive conditions to local workers for them to become interested. If no such evidence is provided, labour exchange officials can refuse the employer's request to be allowed to bring in migrant workers from abroad.

A third approach recognizes the operation of market forces by requiring an employer to raise the salary offered by a certain percentage. The argument is that if the employer merely offers the going minimum wage rates or the lowest salary compatible with the prevailing collective agreement, locally available workers might be unwilling to take the job; they might, however, take the job if the remuneration were improved noticeably. Only when the test is found to be unsuccessful after exhausting all the possible options should the employer be permitted to engage the migrant worker. However, there is no administratively simple way by which to determine the appropriate increase in salary to offer.

4.6.2 Organizing a migrant labour scheme

Once the need for migrant workers is established, either through the vacancy test or other economic needs test, the next step is to determine the control measures and appropriate authorizations for the entry, economic activity and stay or residence of foreign workers.

In practice, these measures take the form of work or employment permits and visas. Through them, the government tries to regulate or control:

- Entry of non-nationals into the country;
- The economic activity in which they may legally engage; and
- Duration and conditions of their stay or residence.

Once inside the country and employed, foreign workers admitted under various foreign worker programmes would then be covered by national labour laws and in some cases by special arrangements between the source and the destination country. For example, under the seasonal agricultural worker agreement between Canada and Mexico, a Mexican official is posted in Canada to monitor conditions, assist the Mexican workers in dealing with various problems and ensure that they comply with national laws and regulations, including those on income taxation.

4.6.3 Visas, permits and authorizations

Admission of foreign workers is usually based on labour immigration policies and programmes. These, in turn, are implemented through a system of visas, unless there are agreements with other States regarding the free movement of labour. The United States, being the largest immigration country in the world, has one of the most complex systems with a large variety of visas for admission. However, most countries only have a few broad categories. The usual distinctions are by duration (between those admitted as immigrants and those admitted for temporary periods) and by skill (between professionals and manual workers). There may be a number of categories within each group, usually depending on the kind of programmes developed to meet the demand for labour. There may be special programmes to attract information technology workers or medical doctors and nurses or special schemes with neighbouring countries for seasonal labour in agriculture. Other programmes may be designed to allow multinational corporations to rotate their personnel around the world under the so-called “intra-corporate transferee programme”.

Visas may cover both entry and subsequent employment, but usually the entry visa is different from the work permit. Both may be granted by the visa-issuing authority (foreign ministry or interior ministry), but the latter is usually based on applications

submitted by employers to the labour ministry that then makes its decision to endorse or reject the application. It is common in the Gulf States for work permits to be issued to the employer (so-called block visas) and not to the individual workers.

Would it make a difference to the protection of workers' rights if the work permit is issued to the employer rather than to the worker? Discuss.

Most countries associate the type of visa as well as the work permit granted to the rights that can be enjoyed by the migrant worker. Someone admitted as an immigrant would usually be entitled to most rights enjoyed by citizens after a certain period. Those on temporary worker visas seldom have the same status. Among those with temporary visas, some may be entitled to change their status after a period of time while others (usually the less skilled) are excluded from ever changing their status. Visas also may indicate whether or not family members can accompany the migrant worker.

The ILO Conventions on migrant workers, which ask ratifying States to give regular migrant workers equal treatment as national workers, do not make these distinctions. They do recognize that existing national legislation may be in conflict with the equal treatment principle and thus allow ratifying States some time to adapt their laws accordingly.

4.6.4 Establishing quotas and similar limitations

Admission controls and procedures typically follow decisions on the number of migrant workers to admit for any given period of time. Few countries will allow an unlimited number of foreign workers, no matter how justified it may be from an economic standpoint. To discourage employers from asking for more foreign workers, some countries tax employers for every foreign worker employed. This at least has the advantage of relating admissions to labour productivity, as employers are unlikely to employ more foreign workers if they cannot recover the costs. Societies, however, seem more comfortable with a ceiling or cap placed on the numbers of foreign workers admitted, no matter how this is determined.

Quotas may be expressed in absolute numbers or as a percentage of the total population, total labour force or employment in a given sector or enterprise. How the quota is set varies from country to country. Legislation may set the actual quota or may empower the government to change it periodically, depending on the economic situation. This makes the process more complex, as vested interest groups may see the situation differently from each other. Governments will need to be armed with a good analysis of the labour market to generate consensus among interest groups on the quota or ceiling.

What should be the subject of quotas? Discuss.

Quotas can be fixed for the following dimensions:

- *Country as a whole.* This is the simplest but also the least satisfactory option insofar as it forces government authorities to take the responsibility of distributing entitlements according to some economic criteria. Allocation should be the responsibility of the market rather than of the bureaucrats.
- *Various regions or administrative districts of the territory.* Quotas can be allocated to each region or district, proportionate to its economic importance or population size.

- *Sectors of the economy.* Quotas can set a specific limit in certain sectors. The advantage of setting targets for different sectors is that the intake of migrant labour can be closely attuned to actual industry requirements. Governments use them as a control mechanism to make certain that migrant labour is used for jobs that go unfilled by nationals. Quotas seek to satisfy different needs.
- *Specified occupations.* National workers in some professions want to protect their earnings by limiting the supply of migrant workers. In this case, governments are pressured to introduce small quotas and require strict equivalence in foreigners' qualifications.
- *Individual employers or enterprises.* Quotas also can be allocated to individual employers. There are two major disadvantages of this type of quota system: (i) They tend to cause hoarding of foreign labour in enterprises that do not really need that labour. (ii) They tend to perpetuate industrial structures, work organizations and low productivity in enterprises that regularly use quotas to the full.

Box 7: Some advantages and disadvantages in setting quotas

Advantages

- Quotas provide an understandable framework for the debate on immigration policy and offer a clear benchmark and a transparent guide for administrators, planners and employers and for the public at large. It is reassuring for ordinary citizens to know the upper limit for the number of foreign workers to be hired, even if people do not agree with the figure or fear that it will be undercut by illegal inflows and irregular employment.
- The numbers or percentages are yardsticks that can be controlled. Inflows from abroad can be curtailed or stopped when the targets have been attained. Complementary measures can be taken to facilitate inflows, in line with the target.

Disadvantages

- Numbers may be viewed as entitlements.
- Quotas may not respond easily to business cycles.

Source: W.R. Böhning: Employing foreign workers: A manual on policies and procedures of special interest to middle- and low-income countries (Geneva, ILO, 1996).

Political bargaining is always present both in the process of deciding on an overall quota number and on how it is to be allocated to employers. The overall number has to be split up among industries or sectors, in different geographical areas and eventually among firms. Where the quota determination follows a “bottom-up” approach (from enterprises to industries and then for the whole economy), the distribution is more straightforward. In any case, steps should be taken to see that the allocation of quotas meets the present and future needs of employers. It may be wise to decentralize such distribution functions to encourage commitment to the quota system.

4.6.5 Imposition of fees

Another form of regulating or restricting admissions is through fees.

Administrative fees are charged to employers wishing to employ migrants. Fees should cover all, or most of, the costs incurred by public authorities for assessing

claims, processing documents or even establishing and running recruitment offices at home and abroad. Governments may also oblige employers of migrants to pay fees to cover the overall cost of public administration associated with adding foreigners to the workforce. Problems may arise in connection with the imposition of fees.

Box 8: Problems associated with imposing fees

- Fees typically are passed on to the migrant worker. Governments must be vigilant about employers' temptation to ask the foreign workers to cover these costs. If this results in lower take-home pay, it will go against internationally enshrined principles of equal pay for equal work. And it will undermine the very purpose of the government's policy to minimize dependence on foreign workers.
- Employers may bypass official channels and resort to the illegal employment of irregular migrants. The government again should be vigilant, using labour inspectors and whatever means may be appropriate to curb this phenomenon, including administrative, civil and penal sanctions.

Source: W.R. Böhning: *Employing foreign workers: A manual on policies and procedures of special interest to middle- and low-income countries* (Geneva, ILO, 1996).

By charging fees, public authorities may seek to dissuade employers on its territory from:

- *Hiring foreigners generally.* This would call for a uniform fee to be imposed on all employers, reflecting the numbers of foreigners to be engaged. The level of the fee could vary, in line with changing conditions in the economy or in society as a whole.
- *Hiring manual or unskilled workers.* The reasons for this kind of measure would be to reduce the continued use of unskilled workers that might slow down structural changes in the economy.
- *Hiring foreigners in certain sectors or specific areas.* Under this approach, differential fees are used for employing foreign workers in certain sectors and/or regions of the country to pressure them into adopting labour-saving technologies.

4.6.6 Placing value on monitoring and statistics

Statistics play a critical role in the government's effort to know whether its policy works and what resources it needs to implement or modify its policies. Information is needed for the numbers and characteristics of migrants and the impact of migration policies. The government also needs information about working and living conditions of migrants. Statistics should provide coverage that is complete and representative of the subject matter and should be reviewed in terms of reliability and timeliness.

4.7 How should foreign workers be treated?

ILO Convention No. 143 calls every ratifying member State to pursue a national policy to promote and guarantee, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect to employment and occupation for persons who, as migrant workers or as members of their families, are lawfully within its territory. The Convention unfortunately has not been ratified

by any member State in the Asian region. This perhaps is a reflection of how policies and laws of countries in the region allow national and foreign workers to be treated differently.

4.7.1 Access to employment other than that for which a migrant was recruited

Allowing foreign workers access to employment other than that for which they were recruited always presents a challenge to migration policy. Lawfully employed migrants may lose their jobs involuntarily because of illness, because the employer goes bankrupt or because the employer simply wishes to terminate the employment relationship. In other instances, a migrant may aspire for a different job or a different employer. Migration policies must take account of such possibilities.

There are questions of equity and fairness as well as economic efficiency in allowing migrant workers to choose their jobs or their employers. It may be fair that an employer who invests in bringing in foreign workers should be assured of the services of the workers for a reasonable period of time, assuming that they live up to their end of the employment contract. Under ILO Convention No. 143, ratifying States must allow migrant workers free choice of employment after having been legally employed for two years. The two-year rule is considered reasonable. It is, however, also meant to protect the right of the migrant worker to seek better terms of employment, something difficult to do when immigration rules tie the worker to one employer.

There are sound economic reasons in allowing free choice of employment that can redound to the benefit of the host society as a whole. Can you cite some of these economic benefits in allowing free choice of employment? Discuss.

It is generally accepted that migrant workers who lose their jobs for reasons outside their control should be allowed to remain in the receiving country and look for alternative employment rather than be asked to leave immediately. Workers make considerable investments in the migration process but cannot recoup them if they are not allowed to work for the period that they were contracted.

4.7.2 Freedom of association

Regulations and contract provisions that limit the right of migrant workers to organize or to join trade unions violate the fundamental principles of the ILO. The Freedom of Association and Right to Organize Convention, 1948 (No. 87) and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98) prohibit discrimination on the basis of nationality or irregularity of status regarding both the membership in workers' organizations and in establishing a trade union. ILO Migrant Workers Recommendation, 1975 (No. 151) clearly states that migrant workers should enjoy effective equality of opportunity regarding the exercise of trade union rights and eligibility for office in trade unions and labour management bodies.

4.7.3 Occupational safety and health

It is commonly the case that foreign workers are permitted into countries for dangerous jobs that national workers no longer want to perform. In Japan, for instance, they are said to take up "3-D" jobs, referring to dirty, dangerous and demeaning work. Thus, migrant workers are always considered a group "at risk" in

matters of occupational safety and health. Fully recognizing this fact, ILO Recommendation No. 151 asks member States "... to take all appropriate measures to prevent any special health risks to which migrant workers may be exposed". These include training in health and safety measures and information in a language they can understand, appropriate labelling of harmful products, warning symbols and other signs relating to safety at work.

4.7.4 Social security

The ILO social security standards basically aim to ensure the most effective equality of treatment that can be instituted. ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118) provides for equality of treatment in each of the nine branches of social security and also emphasizes social security agreements that maintain acquired rights and rights in the course of acquisition. The maintenance of acquired rights entails the payment of benefits outside the receiving country. The maintenance of rights in the course of acquisition is a principle that caters to situations where migrant workers or their family members move between two or more countries without completing the qualifying periods for several social security benefits. Methods or schemes should be developed to facilitate such processes.

4.7.5 Housing

Suitable housing is a cornerstone of productive work but is seldom paid much attention by employers, especially those with small enterprises. In granting work permits, ministries of labour must take into account the capacity of employers to provide adequate housing. *How much space is allocated for each worker? Are rooms adequately ventilated? Do families proposing to employ a foreign domestic helper have an adequate room and toilet facility?* Foreigners are greatly disadvantaged when they move to another country, especially unskilled seasonal workers receiving low wages. If employers do not organize accommodation on arrival, migrants are at the mercy of private landlords or at the bottom of waiting lists for public housing.

4.7.6 Return

Return is an inherent assumption in temporary foreign worker programmes, but it has been the source of policy conundrums. As one observer put it, "There is nothing more permanent than temporary workers". The root of the problem is the huge wage differentials that continue to exist between some countries of destination and the countries of origin. Unless development in origin countries proceeds at a speed that allows a real "catching-up" with the more developed destination countries, workers will always be motivated to stay, often even preferring to go into irregular status in a labour-short economy with higher wages rather than going back home where labour is not as well compensated. To address this problem, some receiving countries have imposed various requirements on the employers and on the workers. Some require employers to post a bond as a guarantee that their migrant workers will return. Typically, such costs are passed on to the migrant workers. Other countries require incoming migrant workers to have a return ticket or to make a deposit equivalent to the return fare. In the United States, one of the features of the programme to bring in agricultural workers from Mexico (Bracero Programme) from the 1940s to the 1960s was the requirement that part of the Mexican workers' salaries be kept in designated banks under a special account as forced savings. The workers could only get back their savings upon their return to Mexico. It violated, however, the ILO Protection of Wages Convention, 1949 (No. 95).

Some forms of incentives have worked better than others in promoting orderly and voluntary return. In Canada's seasonal agricultural workers programme, participants who are employed for eight months a year do return to their home countries at the end of the harvesting or the planting season. They do so because they are assured of being employed again the following year.

Loss of occupation through illness or injury may lead to the involuntary return of the migrant worker. Article 56 of the 1990 UN Convention on migrants' rights strictly stipulates that "expulsion shall not be resorted to for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit ... in considering whether to expel a migrant worker or a member of his or her family, account should be taken of humanitarian considerations and of length of time that the person concerned has already resided in the State of employment."

4.7.7 Support services required for a user-friendly policy

There are several basic supplementary measures and support services that should be put in place to implement policies for receiving foreign workers:

- *Forms.* Forms should be developed that can provide data needed for the evaluation of policies.
- *Planning and monitoring.* Qualitative and quantitative data analysis systems should be put in place to inform policy makers about trends and developments that may require political decisions or changes in implementing procedures.
- *Training administrators.* It is useful to train administrators, especially those involved in the public employment or immigration services, about migration management and how to combat irregular migration and human trafficking.
- *Equal opportunity training.* This kind of training aims to reduce discrimination among a wide range of government officials dealing with migrant workers.
- *Language training for migrants.* Language training is an obvious need for foreign workers and their dependants.
- *Preparing local schools.* Children of migrant workers need access to schools and possibly adaptations to the curricula.
- *Complaint and redress mechanisms.* Mechanisms to handle complaints and settle disputes should be open to migrant workers, including access to courts, membership in unions and links to embassies and consulates.
- *Other integration assistance.* Steps can be taken to improve the societal integration of migrant workers and their families, such as training social workers, using radio and television to raise awareness in receiving countries and informing migrant workers about host societies.

Review

Having completed Module 4, each participant should feel confident that he or she can discuss the following:

- Employing foreign workers is only one of the ways that a country can deal with shortages of labour.
- The principle of equal treatment means that foreign workers should also be allowed mobility in the labour market.

Exercise 3

Checklist for policy measures on employing foreign workers

Directions

Check the appropriate box to indicate whether the following measures have been done, are being done, will be done or are not appropriate or possible in regard to employing foreign workers in your labour market.

	Done	Being done	To be done	Not appropriate or possible
Formulating a policy				
Introduce policies on employing foreign workers				
Establish a policy coordinating mechanism				
Allow private agents to play a role in seeking, selecting, recruiting and transporting foreign workers to be employed				
Allow direct hiring by employers				
Establish links with migrant sending countries through either a framework agreement or an operational bilateral recruitment agreement				
Admissions policy				
Establish quotas, dependency ceiling or similar limitation on:				
Unskilled workers				
Skilled workers				
Professionals				
Establish an admission system through work permits, visas or authorizations				
Conduct a vacancy test				
Organize a seasonal migrant labour scheme				
Improve the system for administration and fees				
Create a monitoring system to see how the policy works and generate statistical data				
Post-admission policies				
Grant access to employment other than that for which a migrant was recruited				
Grant freedom of association in the field of work				
Afford equality in terms and conditions of employment for both foreign and national workers – access to social security, housing, health care, occupational safety and health and other				
Give both foreign and national workers access to supplementary measures and support services to implement user-friendly policy (i.e. equal training opportunities, language and training for migrants, complaints and redress mechanisms, other integration assistance, etc.)				
Allow family reunification or migration				

Exercise 4**Request offer exercise for negotiations between sending countries and receiving countries****Directions**

Participants will work in small groups. Within each group, select half to represent sending countries and half to represent receiving countries. Both “sending countries” and “receiving countries” list requests to be made regarding migrant workers. For example, these might include a greater quota, simplification of requirements and/or lifting of restrictions. Then think of what can be offered in return. Present the results of the “negotiations” in the plenary.

Request	Offer

Session Guide

Objectives

At the end of the session, the participants are expected to:

- Be aware of the specific ways in which the rights of migrant workers may be violated at different stages of the migration process;
- Have an understanding of the ILO Conventions and principles that are meant to protect those rights; and
- Be familiar with the ILO mechanisms and procedures for ensuring that ratified Conventions are respected.

Methodology

- Presentation and general discussion
- Group work

Duration

Six hours (three sessions of presentations and general discussion; one hour group work; half hour for review).

Session guide

- The session starts with a general discussion of the problems migrant workers encounter at different stages of migration
- Presentation of ILO Conventions and the complaints set forth in the ILO Constitution
- Group discussions of a case brought before the ILO

Suggested reading

- International Labour Office: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004).
- International Labour Office: *Summary of conclusions*, Report of the ILO Regional Tripartite Meeting on Challenges to Labour Migration Policy and Management in Asia, Bangkok, 30 June – 2 July 2003.
- International Labour Office: *General survey on migrant workers, Report III(1B)*, International Labour Conference, 87th Session (Geneva, ILO, 1999).

5.1 Why do migrant workers need protection?

Migration is driven by differences between countries. For some people, the difference is as basic as physical security. They may face persecution in their own countries or the level of violence of political conflict may be such as to endanger the health and safety of their families. However, for the large majority of contemporary migrants, the important difference is in the level of economic security. Many cannot receive at home the wages and salaries they can earn abroad. Unfortunately, migration also involves risks, and such risks are greatest among those least able to protect themselves. The highly skilled will likely find work that is well compensated and in countries where his or her rights are respected. But the risk of exploitation and abuse is high in low-skilled occupations that tend to be concentrated in the informal economy.

In the Asian region, migration still largely refers to low-skilled migrant workers who face a myriad of challenges, starting from recruitment abuses to exclusion from many of the rights and entitlements enjoyed by nationals of receiving countries, as the following examples illustrate:

5.1.1 Before leaving

Inadequate access to pertinent, accurate and reliable labour market information. Potential migrants often lack enough information to allow them to make well-considered decisions and adequate preparations for jobs abroad. Inadequate labour market information also gives rise to mismatches where migrants accept jobs that do not fit their credentials and experience.

High cost of documentation, credentialing and placement. These steps are often complex and consume considerable time, energy and money, forcing migrants to rely upon “fixers” to handle the arrangements for a fee.

Inefficiency and corruption of concerned government agencies. Bureaucratic red tape, corruption and graft within public service institutions add to the costs of regular migration and exacerbate irregular migration flows.

Recruitment malpractices. Migrant workers are vulnerable to exploitation and abuse by recruitment agencies, such as in the fees charged, the conditions promised or even in the actual job guaranteed.

Testing. Health authorities often subject migrant workers to compulsory and non-confidential examinations. Testing positive for pregnancy or HIV/AIDS can serve to disqualify individuals from obtaining employment abroad (and also result in the loss of jobs and expulsion from the host country), in contravention of international labour standards and codes of conduct.

5.1.2 While in transit

Ignorance of transit procedures and requirements. Without undergoing a proper orientation, migrant workers may encounter administrative difficulties in transit countries.

Trafficking. In some instances, migrant workers being trafficked may be deliberately routed through transit points.

5.1.3 During employment

Arrival adjustments. Orientation services and briefings are often necessary to aid migrant workers in the often-difficult task of adjusting to a foreign country. Adjustment-related needs of migrant workers include language training and aid in finding accommodation.

Employment contract substitution. One of the most grievous abuses suffered by migrant workers is the practice where employment contracts previously approved by government authorities prior to departure are substituted for ones containing less favourable terms and conditions of employment, such as lower wages.

Non-payment of wages, delayed payment of wages and withholding of monies. These abuses arise at times out of financial difficulties being experienced by the employer but more often are deliberate. The practice of delaying the payment of wages is used to discourage workers from leaving or may even be aimed at forcing them to go into debt.

Coverage by labour legislation. Migrant workers are frequently excluded from the scope of labour legislation governing matters such as conditions of employment, minimum wages and social security.

Freedom of association. Only a few countries have laws that deny migrant workers the right to organize, but in practice most migrants, in particular those on temporary contracts, do not enjoy such rights. Those who attempt to organize risk losing their jobs or their employment may not be extended. There are obstacles to migrant workers' voice and representation stemming from other factors such as ignorance of rights, lack of effective protection against anti-union discrimination by employers and occasional reluctance by trade unions to organize migrants or include them in their membership.

Job security and residency status. Restrictions on the free choice of employment by regular migrant workers and the often-related risk of losing residence status as a direct result of loss of employment constitute important reasons why regular migrant workers remain in their jobs in spite of exploitative work situations.

Physical and sexual abuse. Women domestic workers and children are particularly vulnerable to these forms of abuse. Cases of corporal punishment – a practice that has been qualified as torture – have also been documented.

5.1.4 Upon return

Difficulties in economic reintegration. Many migrants, particularly those who have spent their peak productive years outside their home country, lack the appropriate skills or know-how necessary for finding suitable employment in their home country. Some migrants, by virtue of their absence from the home country, find themselves ineligible for unemployment benefits and re-employment assistance upon return.

5.2 What are the rights of migrant workers?

Migrant workers possess fundamental rights that have been given expression in a number of ILO Conventions and other human rights instruments that embody the internationally elaborated consensus on the treatment migrant workers are to be accorded. To this essentially moral position may be added the complementary

assertion that applying international standards, in respect to migrant workers, benefits both national and migrant workers of the receiving country. National workers will not be displaced if foreign workers are paid equal wages. Enterprises will make the necessary adjustments to stay competitive. And the social problems that come with exploiting certain groups can be avoided.

The following sections provide an outline of the normative framework governing the treatment of migrant workers, in order to:

- Detail the specific procedures migrant workers, through their representative organizations, can use to protect their rights under the relevant conventions; and
- Lay out the rights of migrant workers under the ILO migrant worker Conventions, that also provide guidelines on how to protect those rights.

5.2.1 What is the ILO mandate?

The Treaty of Versailles, which laid the basis for establishing the ILO in 1919, already identified the need for migrant workers to be protected by law. The Preamble to the ILO Constitution intones the obligation to improve the “protection of the interests of workers when employed in countries other than their own”. One of the nine “methods and principles” considered “of special and urgent importance” at the time reads:

“The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.”

The Declaration concerning the aims and purposes of the ILO and known as the *Declaration of Philadelphia*, adopted in 1944 and incorporated into the ILO Constitution, also makes specific reference to the problems of migrant workers in Paragraph III(c):

“The Conference recognizes the solemn obligation of the International Labour Organization to further among the nations of the world, programmes which will achieve: ...the employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being; ...the provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement.”

5.2.2 Why is the ILO Declaration on Fundamental Principles and Rights at Work relevant to migrants?

In 1998, the International Labour Conference adopted the *Declaration on Fundamental Principles and Rights at Work and its Follow-up*, which bound all member States of the ILO to promote and realize the principles concerning fundamental rights:

- Freedom of association and the effective recognition of the right to collective bargaining;
- The elimination of all forms of forced or compulsory labour;

- The effective abolition of child labour; and
- The elimination of discrimination in respect of employment and occupation.

The Preamble to this Declaration called upon the ILO to:

“Give special attention to the problems of persons with special social needs, particularly the unemployed and migrant workers, and mobilize and encourage international, regional and national efforts aimed at resolving their problems, and promote effective policies aimed at job creation.”

5.2.3 The ILO core Conventions

Eight international labour Conventions elaborate upon the fundamental principles and rights expressed in the 1998 Declaration:

- Forced Labour Convention, 1930 (No. 29);
- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87);
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98);
- Equal Remuneration Convention, 1951 (No. 100);
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Minimum Age Convention, 1973 (No. 138); and
- Worst Forms of Child Labour Convention, 1999 (No. 182).

These Conventions are among the most widely ratified instruments of the ILO. They articulate the fundamental rights of *all* workers, including migrant workers. Nationality is not included in the types of discrimination formally prohibited by Convention No. 111 and ratifying States can deny a person access to its labour market on the basis of nationality. However, migrant workers are protected by this standard insofar as they are victims of discrimination on grounds formally prohibited by Convention No. 111 – race, colour, sex, religion, political opinion, national extraction or social origin.

An ILO member State that has not ratified any of the eight fundamental Conventions is still bound by the ILO Constitution to realize in good faith the principles they embody.

5.2.4 Are most ILO standards relevant for protecting migrant workers?

To date, the ILO has adopted a total of 185 Conventions and 195 Recommendations. With the exception of the instruments relating to migrant workers and other special categories of workers, the Conventions and Recommendations adopted by the International Labour Conference are of general application, i.e. they cover all workers *irrespective of nationality*. The Committee of Experts (see 5.3.1) therefore has specifically included the concerns of migrant workers in monitoring the implementation of a wide array of international labour standards, including the following Conventions:

- Minimum Wage-Fixing Machinery Convention, 1928 (No. 26);
- Labour Inspection Convention, 1947 (No. 81);

- Employment Service Convention, 1948 (No. 88);
- Maternity Protection Convention (Revised), 1952 (No. 103);
- Indigenous and Tribal Populations Convention, 1957 (No. 107);
- Workers' Housing Recommendation, 1961 (No. 115);
- Employment Policy Convention, 1964 (No. 122);
- Human Resources Development Recommendation, 1975 (No. 150);
- Occupational Safety and Health Recommendation, 1981 (No. 164);
- Termination of Employment Convention, 1982 (No. 158);
- Indigenous and Tribal Peoples Convention, 1989 (No. 169); and
- Private Employment Agencies Convention, 1997 (No. 181).

This list is by no means exhaustive but provides an indication of the attention accorded to the situation of migrant workers in the supervision of a broad range of instruments. Issues relating to migrants may be raised under any of these Conventions through the formal procedures outlined below that are designed to secure their implementation.

5.2.5 What ILO instruments specifically relate to migrant workers?

There are two main ILO Conventions and two accompanying Recommendations that provide specific protection to migrant workers:

- Migration for Employment Convention (Revised) (No. 97) and Recommendation (Revised) (No. 86), 1949; and
- Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the Migrant Workers Recommendation, 1975 (No. 151).

Convention No. 97 represented a major breakthrough with the acceptance by many States, for the first time in history, of the principle of “equal treatment” between lawfully present migrant workers and national workers. In these instruments, the migrant worker is defined as a *person who migrates from one country to another with a view to being employed otherwise than on his own account*. A migrant worker, in other words, is a person who is a non-national – holds a different citizenship than that of the country in which he or she works. Citizens of the country in which they work are protected against discrimination under the terms of Convention No. 111 on discrimination, even if they or their ancestors are of a different national or ethnic origin (“national extraction”).

The migrant worker instruments possess two broad purposes: They aim (i) to regulate the conditions under which the migration process takes place and (ii) to provide specific protection to a highly vulnerable category of workers.

The purpose of these instruments is *not* to guide decisions on whether a particular labour migration policy is warranted by local economic or social considerations. Nothing in these Conventions limits a country's sovereign right to decide on how to address labour shortages.

There are some other Conventions that offer guidelines for broader employment policy. Chapter X of Recommendation No. 169 on employment policy calls on member States:

- To create more employment opportunities and better conditions of work in countries of emigration so as to reduce the need to migrate to find employment; and
- To ensure that international migration takes place under conditions designed to promote full, productive and freely chosen employment.

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

As previously noted, Convention No. 97 aims to protect workers from discrimination and exploitation while employed in countries other than their own. The Convention deals with *regular* migrant workers. It does *not* govern the right to admit or refuse entry to a foreign citizen; nor does it address the issue and renewal of residence and work permits. The Convention contains provision in three areas:

- (1) Regulations regarding the conditions under which migration occurs (e.g. exchange of information and cooperation between employment services);
- (2) General protection provisions:
 - The maintenance of appropriate medical services (Article 5);
 - Permission for migrants for employment to transfer their earnings and savings (Article 9); and
 - Prohibition of expulsion of migrant workers admitted on a permanent basis in the event of incapacity for work.
- (3) Equality of treatment between migrant workers and nationals regarding laws and administrative practices on:
 - Living and working conditions (including freedom of association and collective bargaining rights);
 - Social security;
 - Employment taxes; and
 - Access to justice.

Convention No. 97 also contains three annexes. The first two annexes deal with organized migration for employment, while the third applies to migration for employment generally, whether organized or spontaneous. Annex I of the Convention, consisting of eight Articles, deals with the recruitment, placement and conditions of employment of migrants recruited other than under government-sponsored arrangements. Annex II, consisting of 13 Articles, deals with the recruitment, placement and conditions of employment of migrants recruited under government-sponsored arrangements for group transfer. Annex III, consisting of two Articles, regulates the importation of the personal effects, tools and equipment of migrants for employment.

Article 14 of Convention No. 97 permits a ratifying State, by an express declaration, to exclude from its ratification any or all of the annexes. In the absence of such a declaration, the provisions of the annexes have the same effect as those of the Convention.

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

Recommendation No. 86 complements, and in many areas broadens, the scope of the protection provisions in Convention No. 97 by laying down, with greater specificity, a number of measures aimed at the welfare of migrant workers, including:

- Ensuring adequate accommodation, food and clothing on arrival in the country of immigration;
- Ensuring vocational training, where necessary, to enable migrants to acquire the qualifications required in the country of immigration;
- Providing access to schools for migrants and members of their families;
- Simplifying administrative formalities relating to departure, travel, entry, residence and settlement of migrants; and
- Equality of treatment, not only in terms of working and living conditions but also applicable for access to trades and occupations and the acquisition of property.

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

Unlike the 1949 Convention No. 97, the 1975 Migrant Workers Convention no longer addresses the question of facilitating the movement of surplus labour. It instead addresses the control of migration flows and, hence, eliminating illegal migration and suppressing the activities of organizers of clandestine movements of migrants. It consists of two main parts:

Part I (Articles 1-9) deals with the problems arising out of clandestine migration and illegal employment of migrants;

Part II (Articles 10-14) substantially widens the scope of equality between migrant workers in a regular situation and nationals, in particular by extending it from equality of *treatment* to equality of *opportunity*.

Part I establishes a general obligation to respect the basic human rights of regular and irregular migrant workers. The intention of this is to affirm, without challenging the right of States to regulate migratory flows, the right of migrant workers to protection, whether or not they have entered a country on a regular basis, with or without official documents. Its other provisions require ratifying States to:

- Monitor clandestine movements of migrant workers on their territory;
- Punish organizers of such movements, including abettors and employers; and
- Take protective measures for migrant workers who have lost employment or are in an irregular situation.

States ratifying Convention No. 143 may exclude either Part I or Part II from their ratification of the instrument.

5.2.9 The Migrant Workers Recommendation, 1975 (No. 151)

Recommendation No. 151 sets forth a number of protective provisions in several categories, including:

- Equality of opportunity and treatment;
- Adaptation into the society of the country of immigration;
- Occupational safety and health; and
- Reunification of families.

5.2.10 Ratification status of the migrant worker Conventions

Worldwide, Conventions No. 97 and No. 143 have been ratified by 43 States and 18 States, respectively. In the Asia-Pacific region, Convention No. 97 has been ratified by New Zealand and Sabah (Malaysia) only and is applicable in Hong Kong Special Administrative Region because it was a previous territory of the United Kingdom, which ratified it. Convention No. 143 has not been ratified by any of the 27 Asia-Pacific member States.

Checklist

Means of action to protect the rights and welfare of migrant workers

Role of governments

Ratify and fully implement all international legal instruments that promote the rights of migrant workers, including ILO Conventions No. 97 and No. 143;

Ratify the ILO's core Conventions and ensure that the scope of their implementation extends to migrant workers equally; and

Formulate, as part of a comprehensive migration policy, a programme of protection, incorporating the substantive provisions of the ILO migration instruments. Such a programme would include but not be limited to:

- Orientations to provide migrant workers with adequate information and other assistance services;
- Supervision of private recruitment agencies to prevent fraudulent practices;
- Reviewing and amending national labour laws to include migrant workers within the scope of their protections; and
- Providing social services to assist migrant workers on such matters as access to safe housing, education and language training and assistance in finding employment opportunities.

Role of employers' organizations

Raise awareness of migrant worker issues among employers, particularly those that hire large numbers of migrants, and secure their involvement in promoting migrants' rights and welfare;

Raise awareness of hiring practices and working conditions among employers to promote the principle of equal treatment between nationals and migrant workers; and

Cooperate with governments, trade unions and NGOs to advocate for informed, transparent and rights-based migration policies.

Role of trade unions

Actively recruit migrant workers or assist them in forming their own organizations to ensure that they possess effective voice and representation;

Utilize the full array of formal means available to unions, within the ILO supervisory system, to secure the rights of migrant workers under ratified Conventions; and

Cooperate with governments, employers' associations and NGOs to advocate for informed, transparent and rights-based migration policies.

5.2.11 What are the main provisions of the 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families?

Adopted in 1990, the UN Convention on migrant workers is a comprehensive instrument regulating most aspects of international migration. Its salient features cover:

- A definition of migrant worker that is broader than that contained in the ILO instruments, as it covers frontier workers, seafarers and the self-employed;
- The civil, political, economic, social and cultural rights applicable to all migrant workers and members of their families, irrespective of whether they are documented or undocumented, as elaborated in the instruments of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; and
- A broader articulation of the principle of equality between migrants and nationals before the courts and tribunals extending the principle of equal treatment to include access to urgent medical assistance and education for children of migrant workers.

5.3 How does the ILO ensure that its standards are observed?

The ILO differs from other UN norm-setting bodies in that it has its own mechanism for receiving complaints of workers and acting on them. Aside from setting international standards, one of the ILO's main means of action is to supervise the application of ratified conventions. The ILO's supervisory mechanism is built on long-established procedures for dealing with complaints filed on behalf of migrant workers by one or more of the tripartite constituents. A Committee of Experts, a body of independent legal experts, supervises ratified Conventions.

5.3.1 The Committee of Experts on the Application of Conventions and Recommendations

The Committee of Experts is composed of 20 legal experts chosen on the grounds of their independent standing, complete impartiality and technical competence. The principal function of the Committee of Experts is to examine the periodic reports member States submit on the progress of Conventions they have ratified. Comments by the Committee of Expert in response to these reports come in two

forms: observations and direct requests. Observations are public comments, available to all and compiled in the Committee's annual report; direct requests are submitted directly to governments. Both types of comment, in any event, share a common purpose: to provide guidance on the application of Conventions by assessing countries' level of compliance and identifying discrepancies between national practice and the Conventions' requirements.

5.3.2 Conference Committee on the Application of Standards

The Committee on the Application of Standards is a tripartite standing committee of the International Labour Conference, which takes place each June in Geneva. The Committee on the Application of Standards provides a forum for representatives of governments, employers and workers to meet and discuss, on a case-by-case basis, a selected number of observations contained in the annual report of the Committee of Experts. In the Conference Committee's deliberations, governments to whom the Committee of Experts' observations are addressed explain any difficulties experienced in applying a Convention. Ultimately, they are called upon to redouble all efforts to implement the recommendations of the Committee of Experts so as to bring national laws and practices into conformity with a Convention's provisions.

5.3.3 Article 24 representations

The Governing Body is mandated to examine representations lodged on the basis of Article 24 of the ILO Constitution, which reads:

"In the event of any representation being made to the International Labour Office by any industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its Jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit."

This Article enables trade unions and employers' associations to formally intervene in the ILO's supervisory mechanism in cases where they think that a Convention is being violated or not fully being applied. It may be utilized only with respect to countries that have ratified the Conventions in question. In November 2003, for example, the Governing Body of the ILO approved the report of the tripartite committee set up to examine the representation alleging non-observance by China of Convention No. 97, with respect to the Special Administrative Region of Hong Kong, made under Article 24 of the ILO Constitution by the Trade Union Congress of the Philippines (TUCP).⁹

⁹ The complaint concerned allegations that the Hong Kong Special Administrative Region approved certain measures that were harmful to Filipino workers and in violation of Article 6 of Convention No. 97 which provides for equality of treatment between migrant workers and nationals as regards remuneration, social security, employment taxes and access to legal proceedings. The specific measures included the reduction of the minimum allowance wage for foreign domestic workers by HK\$400, effective April 2003; the introduction of an employees' retraining levy of HK\$400 imposed on employers of these workers, effective 1 October 2003; and the possible exclusion of foreign domestic workers who have not resided in Hong Kong Special Administrative Region for at least seven years from subsidized public health care services.

The Governing Body requested the Committee of Experts on the Application of Conventions and Recommendations to examine the matter. In response, the Committee of Experts issued an observation, which is attached in Annex 4.

5.3.4 Committee on Freedom of Association

The Governing Body also adopts recommendations proposed by the Committee on Freedom of Association, a standing tripartite committee that examines complaints of violations of freedom of association and the right to collective bargaining. Given that these principles are enshrined in the ILO Constitution, workers' and employers' organizations and governments can all lodge complaints against States alleging violation – *whether or not* the States have ratified the relevant ILO Conventions, particularly No. 87 and No. 98. The procedure has given the ILO Governing Body the opportunity to articulate on various occasions the right of migrant workers to organize as a way of defending and furthering their occupational interests:

209: The prohibition of registration of mixed trade unions (consisting of workers of different races) is not compatible with the generally accepted principle that workers, without distinction whatsoever, should have the right to establish and, subject only to the rules of the organizations concerned, to join organizations of their own choosing without previous authorization.

211: With regard to the granting of trade union rights to aliens, the requirement of reciprocity is not acceptable under Article 2 of Convention No. 87.

382: Legislation should be made flexible so as to permit the organizations to elect their leaders freely and without hindrance, and to permit foreign workers access to trade union posts, at least after a reasonable period of residency in the host country.¹⁰

5.4 What specific means for protecting migrant workers does the ILO recommend?

A country must have *ratified* a convention for it to come under the scrutiny of the Committee of Experts and for the Article 24 complaint procedure to be applicable. However, the impact of standards is not limited to ratifying countries. Governments typically regard Conventions and Recommendations as regulatory models to be followed and applied, *regardless* of whether or not they have ratified the instruments in question. The ILO migrant worker instruments, therefore, may still provide guidance to countries by setting out the necessary elements of a comprehensive programme of protection. Their substantive provisions, organized by the stage of the migration process to which they correspond, are set out as follows:

5.4.1 Pre-departure and during the journey

Access to information

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

¹⁰ The paragraph numbers are from the International Labour Office: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, Fourth (revised) edition (ILO, Geneva, 1996).

- The information provided should be in their language or dialect or at least in a language they can understand.
- The information provided should be free.
- Measures must also be taken against misleading propaganda relating to emigration and immigration.

Recruitment

Recruitment should be carried out only by:

- Public authorities
- Prospective employers
- Authorized private agencies

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

- Excessive fees
- The use of misleading propaganda
- Attempts to evade immigration controls

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

Facilitated departure

- Migrants have the right to assistance in dealing with documentation and other administrative formalities relating to the immigration process.
- That assistance should be provided free of charge.
- Workers and members of their families authorized to accompany them have the right to a medical examination before departure and to adequate medical attention during the journey.

5.4.2 On arrival and after entry

Customs exemption

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

Settling in

Migrants are entitled to the services of the appropriate public authority in finding suitable employment, without payment of fees or administrative costs.

Migrants are entitled to other assistance necessary to settling into their new environment, including interpretation services and assistance with housing-related administrative formalities.

Discrimination in access to accommodation should be prohibited.

Equality in terms and conditions of employment, vocational training and related matters

Migrant workers are to be accorded equality of opportunity and treatment in respect of the following:

- Access to vocational guidance and placement services;
- Access to vocational training and employment of their own choice, on the basis of individual suitability for such training and employment;
- Merit-based advancement;
- Job security;
- The provision of alternate employment, relief work and retraining;
- Rates of pay and all other forms of remuneration;
- Conditions of work, including hours of work, rest periods, annual holidays with pay, occupational safety and health measures;
- Social security, particularly regarding employment injury, maternity, sickness, invalidity, old age, death, family responsibilities and unemployment; and
- Freedom of association and collective bargaining rights.

Access to courts

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

- Employment-related disputes
- The exercise of trade union rights
- Social security matters

Social policy

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

- Measures to facilitate the reunification of families
- Social services, including translation and interpretation services

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

5.4.3 Residence and repatriation

Employment and status in country

A migrant worker who resides legally in a country and who has lost his or her employment must not then be regarded as in an irregular situation and should be allowed an extension of the authorization of residence to enable him or her to seek alternative employment.

In case of disputes concerning a migrant workers' status, he or she has the right to present his or her case before the competent body, either personally or through a representative.

In cases where decisions are successfully challenged, migrants should be entitled to reinstatement, time to find alternate employment and compensation for loss of wages.

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

Departure from the receiving country

In cases where migrant workers cannot be regularized or are subject to an expulsion order, the costs of returning to their country should not be borne by them.

Return to home country

The personal possessions and tools of the trade of the migrant worker and his or her family should be exempt from customs duty upon returning to the home country.

Assuming they have retained the nationality of their State of origin, workers returning to their countries should be eligible for unemployment benefits without any condition as to previous residence or employment.

Measures designed to secure decent work for migrant workers form an essential part of a sound, comprehensive approach to regulating migration. The normative framework elaborated by the ILO and the UN provides a foundation on which to base national legislation, policy and practices.

5.5 Inter-country cooperation

Managing migration is inherently an international issue. Increasingly, States have sought to manage the conditions under which migration occurs by means of international agreements, most often bilateral ones. Bilateral agreements have proven to be an effective way of managing migratory flows. The ILO instruments expressly encourage cooperative efforts of this nature: both Conventions No. 97 and No. 143 provide for collaboration between States in implementing some of their provisions. Recommendation No. 86 includes in its annex a model agreement on temporary and permanent migration of workers, which includes clauses on the regulation of migratory flows, working and living conditions and social security for all. The International Labour Migration Survey found that Recommendation No. 86 has been widely used by States as a model or used even by countries that have not ratified the ILO instruments.

Review

Having completed Module 5, each participant should feel confident that he or she can discuss the following:

- There are enough international normative instruments to protect migrant workers against all risks.
- International norms are important, but they must be backed by appropriate procedures and mechanisms to ensure application.

Session Guide

Objectives

At the end of the session, participants are expected to:

- Be aware of the importance of labour migration to the three social actors – governments, employers and workers;
- Have a deeper understanding of the important and special roles of employers' and workers' organizations in the development of labour migration policy; and
- Reaffirm the positions of the social partners in resolving critical issues on labour migration.

Methodology

- Presentation of the roles of employers' and workers' organizations on the issue of labour migration;
- Separate group work for participants from employers' and workers' organizations, followed by a tripartite discussion; and
- Presentation of group work outputs.

Duration

Four hours (one session for presentation; two hours of group work; half hour review).

Session guide

- The module will start with presentations by resource speakers from employers' and workers' organizations. The presentations covering the roles and positions of these organizations on the issue of labour migration will be followed with a general discussion on the issues raised.
- The participants representing employers and workers will have separate group discussions on the issues and concerns of employers and workers.
- Group discussions will be followed by a full plenary tripartite discussion about the issues raised in the groups by employers and workers.

Suggested reading and reference materials

- International Confederation of Free Trade Unions: *Trade unions say no to racism and xenophobia! Plan of Action for trade unions*, Report presented to the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Durban, 31 August – 7 September 2001.
- International Labour Office: *Migrant workers*, Labour education 2002/4, No. 129 (Geneva, ILO, 2002).

“Cooperation among the social partners as well as with migrants themselves is especially important to the development of sound labour migration policies and programmes and their effective implementation”.

Summary of Conclusions
ILO Regional Tripartite Meeting on
Challenges to Labour Migration Policy and Management in Asia,
30 June – 2 July 2003
Bangkok, Thailand

6.1 What stakes do social partners have in labour migration?

Policies to admit foreign workers usually result from the pressure national industries exert after experiencing difficulties in finding enough local workers at current wages. Because it expands the pool of labour available, migration is naturally very welcome to employers, especially those in agriculture and in small industries that find it hard to retain national workers the moment better jobs become available. In rapidly industrializing economies that still rely on exporting labour-intensive manufactured products, powerful industrial groups often are behind most of the initiatives to establish guest worker programmes, arguing that such policies are necessary to ensure international competitiveness, maintain price stability and sustain rapid growth. And this should be a concern to employers in origin countries, who, in principle, would be disadvantaged by the migration process, if it tends to select the better educated and the more skilled. Local industries that invest in training their production technicians and supervisors will be deprived by the departure of their best and most experienced workers. Most will be helpless in trying to compete with employers in the richer countries where average wages may be a multiple of their own. The problem may end up being only minor or it could have serious implications, depending on how large the labour surplus is. But it is clear that at both ends of the migration chain, employers have an important stake in what kind and in how much labour migration takes place.

Workers and their unions may have an equally strong interest in migration – but for reasons that may not always be self evident. Historically, unions in host countries have opposed the entry of more foreign workers because this enlarges the pool of job-seeking workers and thus weakens their bargaining position. Their interest in migration is mainly in protecting foreign workers against exploitation, not in widening the doors for larger participation of foreigners in the local labour market. This attitude, however, is beginning to change in some countries. In the United States, for example, an increasing proportion of union members is accounted for by migrant workers. There is also a growing realization that while some foreign workers may replace native workers, labour migration as a whole adds to economic dynamism and is essential to the sustained growth of the economy. Indeed, studies suggest that labour immigration often helps boost national employment.

Clearly, employers and workers have much at stake in migration policy.

In the Asian region, what do workers' and employers' organizations see as their stakes in labour migration? Do these organizations have a history of active participation in national debates on the admission of more foreign workers? Do they generally take the “expected” position or have they taken a more unorthodox stance? Discuss.

The ILO report *Towards a fair deal for migrant workers in the global economy* argues for arriving at labour migration policies through open and transparent tripartite negotiations. It also recommends establishing regular tripartite structures and mechanisms for consultations on migration policy to bring more effectively to the table the concerns of each sector – governments, employers and workers.

Are there countries in Asia that have established such tripartite structures for consultation on migration policy? If not, how do these sectors seek to influence national policy? Discuss.

The other side of this arrangement is that employers' and workers' organizations can play a role in promoting acceptance by their members of national policies and regulations once these have been agreed to by all parties. Employers' organizations can advise and encourage individual employers to take action at the enterprise level. They also can initiate the development and promotion of codes of conduct. Trade union federations in both origin and host countries can mobilize their members to reach out to migrant workers. They can monitor abuses, advance greater awareness of migrant workers' issues, provide migrants with a voice and representation, support training and offer legal services. *How about the voice of civil society? Of the migrant workers?*

6.2 Employers' concerns for sound migration policy

Employers confront numerous policy and practical challenges related to labour migration. These are noted in the *Resolution concerning a fair deal for migrant workers in a global economy*, arising out of the general discussion at the International Labour Conference 2004. The resolution draws attention in particular to:

- Identifying, recruiting and ensuring entry of foreign workers through regular channels;
- Complying with complex and lengthy administrative procedures;
- Addressing document control;
- Facing risks of sanctions for employing migrant workers without authorization;
- Managing relations in multi-ethnic workplaces; and
- Assuring proper training and workplace protection in multilingual contexts.

The importance of labour migration to individual employers and to employers' organizations is evident. For employers in receiving countries, it can bring relief to labour shortages, help stabilize costs and maintain competitiveness. In economies undergoing rapid changes in technology and market demand, problems with imbalances in the labour market are inevitable – even with good education and training policies. The need for foreign skilled human resources may be particularly acute where economies are restructuring to higher value-added production and the country's training institutions are unable to produce the required number of skilled workers, technicians and professionals.

The need for foreign workers may be aggravated by social changes as living standards rise and national workers find better job options. As previously mentioned, some countries allow foreign workers to undertake jobs shunned by nationals: the so called "3-D" jobs – dirty, demeaning or dangerous.

Employers in sending countries also have an interest in labour migration management. They have a stake in ensuring that there is no excessive loss of their own skilled workers, technicians and professionals in whose training they may have invested heavily. They will find it difficult to compete with foreign employers and will be under pressure to raise wages to keep their workers. However, in a situation of surplus labour, they may see the benefits of increased employment and remittances and may support policies encouraging overseas employment. Remittances from overseas will increase consumption and have expansionary effects on the whole economy, raise potential fiscal revenues of the State and contribute to foreign exchange earnings. Remittances are usually spent on domestically produced goods; hence, they can contribute much to the growth of the local economy. Returned workers also bring expertise and experience that enrich the national pool of skilled human resources.

Employers in countries of employment, on the other hand, have a primary interest in accessing a pool of workers with the skills they need. Some employers, especially in the unorganized sectors of the economy, may profit handsomely from exploiting cheap foreign labour. But the large majority of employers accept their obligations to observe labour laws and pay decent wages. There is now a general acceptance of the idea of “corporate social responsibility” that employers’ organizations in Asia have endorsed. The debate is over the extent of this responsibility. Employers’ organizations have been equally active as workers’ organizations in drawing attention to human and labour rights by supporting the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up. They also supported the launching of the Global Compact by the United Nations Secretary-General in 1999, which encourages the business community to incorporate in their management practices universal principles on human rights, labour rights, protection of the environment and stamping out corruption. The International Organization of Employers has asked employers to promote voluntarily within their own business activities the ten principles of the Global Compact.

Box 9: Human and labour rights principles in the Global Compact

Human rights

- Support and respect the protection of internationally proclaimed human rights and
- Make sure employers are not complicit in human rights abuse.

Labour rights

- Uphold the freedom of association and the effective recognition of the right to collective bargaining;
- Abolish all forms of forced and compulsory labour;
- Abolish child labour; and
- Eliminate discrimination in employment and occupation.

The ILO Declaration, which was an initiative of ILO employer members, declares that all members have an obligation to respect, promote and realize the fundamental rights of migrant workers. The International Organization of Employers has urged its member federations to “promote greater awareness of the Declaration within their organizations and to cooperate in national measures to ensure its application”.

Some aspects of labour migration involve violations and abuse of human rights at work that are covered in the principles highlighted in the ILO Declaration and the Global Compact.

Employers' organizations will need, if they have not already done so, to develop a policy on labour migration. Such a policy must take into account both economic and business considerations as well as the human rights and the rights of work aspects involved. They may need, as appropriate, to address them on their own or in cooperation with the other two ILO partners on a bilateral or tripartite basis.

What are the essential elements of a sound labour migration policy from the employers' perspective? Discuss.

The following are some of the usual concerns of employers that a sound policy must address in origin and host countries:

- There should be consistency, transparency and stability in the policy to allow for enterprises to plan their business.
- Such a policy should take into account conditions in the labour market and the capacity of a country's educational and training system to produce the skills needed for development. Because the interests of domestic employers are likely to be prejudiced by an exodus of the most skilled workers, governments must ensure that there are adequate investments in training and education. Employers know first hand the supply and demand conditions for various skills and can contribute significantly to attuning labour migration to the needs of the economy and society.
- Social partners must be consulted in formulating or changing national labour migration policy.
- The management of labour migration needs to be efficient. Unnecessary delays in approval of visas and work permits can impose high costs on industries if they lead to a loss of competitive position in the product market. It also means high cost to the prospective workers who may be without work while waiting for their papers.
- Governments should go further and facilitate the recruitment of foreign labour, especially where the skills involved are in very short supply (e.g. IT professionals). The need may be urgent where the economy is being restructured to higher value-added production, such as knowledge-intensive industries. Through their organizations, employers may collectively engage in consultations with the government for the planned and orderly recruitment overseas of skilled labour. Such an approach could be more cost effective compared to recruiting by each individual company.
- In the administration of national policy on migration, governments must provide for the likelihood that systems may fail to ensure that all foreign workers employed have regular status. Sufficient and clear information will help employers to comply with the rules and regulations and thus avoid sanctions.
- Recruitment of skilled nationals or ex-nationals is of particular interest to governments, as they are the workers least likely to have problems settling in. The Republic of Korea, China and Taiwan (Province of China) have found diaspora communities abroad to be a good source of highly skilled labour.

6.3 What can employers do to curb abuses against migrants?

Employers' organizations may want to consider the following measures to eliminate abuses that might exist in various aspects of labour migration in the region:

- Promote awareness among employers of the need to apply the principles of the ILO concept of Decent Work, the ILO Declaration on Fundamental Principles and Rights at Work and the Global Compact in the treatment of migrant workers, from the time they are recruited through the time that they are employed.
- Reaffirm their opposition to the trafficking of women and children, a practice that not only violates human rights but offends the very human decency that is the foundation of any civilized society. They may want to suggest cooperating, as appropriate, with the government in regard to measures to prevent and eliminate trafficking, including making it a criminal offence where this has not been done already; and selected industries in the prevention and elimination of trafficking, including the adoption of a code of conduct.
- Support the elimination of irregular migration and engage in dialogue with the other two tripartite partners on measures that need to be taken for the removal of its root causes.
- Draw employers' attention to the human and labour rights violations associated with irregular migration and the undesirability of this type of migration. Remind them that such abuse is contrary to corporate social responsibility and the concept of decent work. More particularly, remind them that it contradicts employers' support of the ILO Declaration on Fundamental Principles and Rights at Work and the Global Compact.
- With respect to the role of the private sector in the recruitment of foreign workers, engage in dialogue with the government for an effective but not unduly restrictive regulatory framework and effective enforcement so as to eliminate malpractices in the recruitment industry. Where appropriate, they may wish to promote the adoption of a code of conduct to encourage fair and good practices by enterprises in the industry.

6.3.1 How can employers' organizations in countries of origin contribute to sound policy on labour migration?

Employers' organizations can work at two levels to promote sound migration policies:

- At the macro level, by becoming involved in consultations and negotiations over national policy on migration; and
- At the enterprise level, through assistance and training for employers.

In origin countries, employers organizations will, in the first instance, need to be involved with the task of finding concrete solutions to the problem of unemployment and lack of decent jobs. The task has implications for a broad range of policies, from education to population policies, from trade to investment policies, from fiscal to monetary policies, and from minimum wages to social security protection, among others. These complex issues cannot obviously be dealt with in this manual. Instead, we focus selectively on a few examples where employers' organizations have been seen to play an important role:

- Human resource development;

- Minimum wages;
- Social security; and
- Promoting good governance.

Employers' organizations are usually represented in advisory boards of ministries responsible for human resource development. In this advisory capacity, it will be relevant for employers' organizations to address the following questions:

- What are the foreseeable requirements of industry that are not being met or even addressed by planned investments in education and training? Is the market already sending signals such as fast-rising wages for certain occupations to education and training institutions? How responsive are education institutions to current employers' needs?
- To what extent is the training required already being provided by private industry through apprenticeships? How much do employers invest in such training? Have they been unable to recoup their investments on account of the loss of trained operators to foreign employers?
- How can domestic employers benefit from the acquisition by migrants of new skills abroad?

On their concerns regarding minimum wage policy:

- How has the emigration of workers affected the labour market, especially comparative wages? Has the opening of markets abroad for migrant workers benefited the unskilled, relative to the more skilled, workers?
- Would raising minimum wage standards help reduce emigration propensities?

On social security:

- What should be the policy on continuing the social security protection of nationals temporarily employed abroad? Should they be covered separately under a special scheme?
- Where there is a significant proportion of the labour force and potential social security recipients employed abroad, how should the social security system be designed to provide benefits that reach the migrant workers? What would be equitable rates of contribution?

6.3.2 How can employers' organizations in countries of employment contribute to sound foreign workers policies?

Employers' organizations are be concerned with:

- Are the shortages of labour due to long-run demographic factors or only to cyclical ups and downs of the economy? Are they due instead to structural factors, such as where national workers would rather be unemployed than perform certain jobs?
- If the shortages are likely to persist, would "guest worker" programmes suffice? What are the implications on productivity of immigration policies that are based on a rotation of short-term temporary workers?

- Where policy requires employers to prove that skills being sought through migration are not really available at home, what would be a practical way of testing for shortage without imposing long waiting periods?

Some countries that are short of labour have opted for establishing quota systems to manage the numbers. Employers' organizations would normally be concerned about whether the quotas are realistic and equitably allocated by industry or region.

- What role could be proposed for employers' organizations in establishing quotas? How should it be organized if quotas are to be allocated by industry? By region?
- How could employers effectively push for flexibility in the administration of a system of quotas, given the volatility of business conditions?

Finally, one of the big issues in host countries is how migrant workers are treated. In the Asian region there has been very little documentation, unlike in the United States and in some countries in Europe, of how employers' organizations play a role in promoting good practices among their members. For these organizations, the questions usually needing to be addressed are:

- What can employers' organizations do to promote the principle of equal pay for work of equal value among their member enterprises?
- How can they demonstrate that a multi-ethnic workforce gives an enterprise certain strengths and advantages over others?

Because employers work on the front line in labour migration, employers' organizations can play a major role. They know what the issues are and can contribute significantly to resolving problems. Specific measures include:

- Support national policy making by offering information on development in the industry (i.e. survey member companies, particularly with regard to skill gaps and requirements);
- Participate in bipartite meetings; and
- Improve capacity to contribute to social dialogue on migration policy.

At the enterprise level, employers' organizations can:

- Develop understanding of policy issues and agreement among members on vital issues;
- Support non-discrimination laws and promote good practices through publications and training;
- Promote long-term human resources development planning among member companies;
- Train and educate employer members in relevant laws; and
- Encourage and promote integration of migrant workers, such as: training of personnel managers to manage a multi-ethnic workforce, offering opportunities for training in work skills, preparing health and safety notices in languages understood by migrants and providing opportunities for lessons on language and culture.

Employers should know about the following, if they are employing foreign workers:

- Immigration status of job applicant;
- Foreign worker policies and regulations, including application procedures for visas and work permits;
- If recruiting abroad, regulations regarding recruitment of foreign workers, including use of private fee-charging agencies;
- Minimum standards for work contracts;
- Employer responsibilities for reporting on employment of non-nationals;
- Government requirements for compliance with labour market tests;
- Liability to employers' sanctions for employing foreigners without proper status; and
- Social values and cultural characteristics of origin societies and economic conditions.

6.4 What are the concerns of trade unions?

There are several issues that labour migration raises for workers' organizations: the treatment and protection of the rights of the migrant workers, the protection of the interests of national workers who make up the greater part of their membership, the impact of migration on economic growth and development and what each of these issues imply for the roles and functions of workers' organizations at different levels.

Although people leave their countries to better themselves, and many do succeed, significant numbers suffer considerable deprivation and exploitation. According to the report prepared for the International Labour Conference in 2004 on a fair deal for migrant workers, "A significant number of migrants face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers rights, discrimination, and xenophobia, as well as social exclusion". In Asia, such abuses are also well known and are documented in many newspaper reports.

How prevalent are these problems? Do they affect only migrant workers or national workers as well? Are migrant workers with legal documents also exploited? Which industries have the most serious cases of abuse and violations? Are problems to be found in all types of enterprises or are they only common to some? Are workers in these enterprises unionized? Do they have collective agreements? Discuss.

The 2004 International Labour Conference Resolution also notes key issues raised by workers' organizations, as presented in Box 10.

Box 10: Concerns of workers' organizations

For workers' organizations, labour migration presents particular concerns, notably: reaching migrant workers and organizing them into trade unions; ensuring solidarity between foreign and national workers; cooperating with employers to integrate migrants in multicultural workplaces; and obtaining access to policy forums to ensure that the view of men and women migrant workers are taken into account. Workers' organizations in countries of origin can assist migrant workers in obtaining accurate and comprehensive information about employment opportunities and workers' rights in destination countries.

Source: ILO: Resolution concerning a fair deal for migrant workers in a global economy, Adopted by the International Labour Conference, 92nd Session, June 2004.

6.4.1 Disparities between migrant workers and national workers

The following issues have been identified at the global level but these are also relevant to countries in Asia:

- *Wages.* Migrants as a whole are paid lower than national workers.
- *Social security.* There are inequalities in terms of access to and coverage by social security for migrant workers.
- *Health and safety.* Migrant workers mostly perform the “3-D” jobs – dirty, demeaning or dangerous.
- *Freedom of association.* Despite freedom of association being recognized as a fundamental right for all workers, migrant workers in some countries are denied the right to join unions or form unions.

Some of the occupations filled by foreign workers are in segments of the market where national workers are seldom found, for instance, domestic helpers in Singapore. Hence, it may not always be possible to make comparisons. However, discrimination in wages has already been documented in some countries. In the Republic of Korea, studies conducted by the Korea Labour Institute in the late 1990s showed that foreign workers were paid wages the equivalent of 40 per cent of what their national counterparts received. Most foreign workers were in an irregular status and did not belong to unions. Indeed, some of the most serious problems with exploitative treatment are associated with irregular status. In Japan, cases have been reported of foreign construction workers seriously hurt in work accidents who were abandoned by their employers because they feared severe penalties for hiring irregular workers.

In theory, workers should feel the most direct impact of labour migration – positively in origin countries but negatively in receiving countries. It is, however, extremely difficult to say, *a priori*, whether such impact will be positive or negative. The net impact on wages in origin countries will depend on the size and composition of labour migration, the rate of unemployment, the impact on productivity of local enterprises that lose their most skilled workers, their adjustments in technology, the volume of remittances and the multiplier effects of increased consumption by remittance-receiving households. In the countries of employment, wages in occupations where migrants find jobs will be negatively affected, but the actual impact may be negligible where immigration and other factors bring about faster growth of the whole economy.

In many countries of employment in Asia, migrant workers are still excluded from many branches of social security, notably from old-age benefits or pensions. In response to a request from some countries of the Association of South-East Asian Nations (ASEAN) in the late 1980s, the ILO designed a multilateral treaty on social security to remedy this lacuna in policy or gap in protection. In the end, however, the necessary agreement of all parties did not materialize. In West Asia, most countries cover migrant workers for occupational accidents and injuries but not for pensions, on the argument that the migrant workers vastly outnumber national workers and the system will not be sustainable.

The largest flows of migrant workers in Asia are still concentrated in the so-called “3-D” jobs where protection is especially challenging. Many hundreds of thousands of migrant workers are women in domestic service occupations where hours of work are not regulated and where abuses of all kinds have been widely reported.

Of the male-dominated occupations, dangerous jobs in construction, fishing and offshore drilling account for the biggest numbers of work-related injuries. Both male and female migrant workers are employed on plantations and in small factories where dangerous chemicals pose a serious hazard to their health.

While in most parts of Asia workers already enjoy the freedom to organize or to join unions, this right is in some cases denied to migrant workers. A recent bilateral agreement between two South-East Asian countries even contained an explicit provision limiting such right. There are individual employment contracts that stipulate similar restrictions. Given the short-term period of admission and policies that tie workers to employers through their work permit, it is already extremely difficult for migrant workers to bargain for better terms with their employers. A good practice is found in Hong Kong Special Administrative Region where migrant workers have been able to organize their own unions, and on many occasions in the past have actively defended their rights and interests collectively.

What can be done to address these problems? Discuss.

At the International Labour Conference 2004, many of these problems and issues were discussed. The Resolution passed by the conference participants called for:

- Developing a non-binding multilateral framework for a rights-based approach;
- Wider application of relevant ILO and UN standards and instruments;
- Capacity building, awareness raising, technical assistance and strengthening of social dialogue so that the social partners can play key roles in determining policies; and
- Improving the knowledge base and data collection to help develop appropriate policies.

A non-binding multilateral framework to govern international migration should address the following issues:

- The objective of the multilateral framework is to influence national policies and practice by providing guidelines based on internationally accepted principles and best practices. While acknowledging the sovereign right of States to formulate their migration and labour policies, international standards and multilateral rules can contribute to making policies more coherent and fair.
- Among the principles in the International Labour Conference Resolution that call for the development of a rights-based framework is the need to expand regular avenues for labour migration, based on labour market needs. Bilateral and multilateral agreements to facilitate mutually beneficial ways of managing migration are to be encouraged.
- The framework should also contain guidelines on how to supervise and regulate recruitment, to eliminate trafficking and other current abuses where women are especially vulnerable, to ensure protection of the human rights of all migrant workers regardless of status and to facilitate their social integration.
- Finally, it shall also aim to provide guidelines on how to maximize the development benefits from international migration.

Practically all labour standards are just as applicable to migrant workers as they are to national workers. The framework, however, draws attention especially to the

ILO Conventions on migrant workers, such as Conventions No. 97 and No. 143, the ILO Declaration on Fundamental Principles and Rights and Its Follow Up and other UN instruments.

The following outlines the various roles that trade unions can play, both in receiving and sending countries of migrant workers.

6.4.2 How can trade unions in origin countries protect their nationals working abroad?

- Develop union capacity to participate effectively in policy dialogue on labour migration;
- Establish a programme for monitoring conditions of migrant workers and for protecting their rights, especially through trade union action in receiving countries;
- Help organize migrant workers or arrange for their membership in trade unions in the receiving countries;
- Offer services for pre-departure training and country-specific information about conditions of employment, social security and relevant international labour standards;
- Advocate for the use of model employment contracts, based on ILO standards for decent work;
- Advocate for policies and programmes that would lead to the reduction or abolition of fees charged to migrants, including recruitment fees, as provided for in ILO Conventions;
- Establish links with diaspora communities abroad and participate in the development of appropriate policies and programmes for the reintegration of returning migrants;
- Provide counselling and referral services, particularly for migrants who have suffered from abuse; and
- Establish special programmes for migrant women, especially protection against discrimination and trafficking.

6.4.3 How can trade unions in countries of employment protect migrant workers?

- Advocate for ratification of international labour standards applicable to migrant workers, especially Conventions No. 97 and No. 143;
- Take appropriate action to protect rights of migrant workers and eliminate all forms of exploitation;
- Advocate for national policies and measures, especially legislation to ensure that migrant workers are given equal treatment with regard to wages and conditions of employment, social security, the right to organize and join trade unions and the other rights provided for in ILO Conventions;
- Defend migrants in court litigations involving violation of their human and labour rights;
- Assist in amnesty programmes and ensure that proper procedures respect human rights and are observed in the deportation of undocumented migrants;

- Make representation for the repeal of provisions in working contracts or working permits that discourage migrants from joining trade unions;
- Disseminate information to migrants through publicity campaigns, organize training activities concerning rights in a language they understand and assist them with legal and paralegal services;
- Discuss the situation of migrants with employers' organizations, include migrants in collective bargaining agreements and encourage employers' organizations to provide migrant workers opportunities for skills upgrading;
- Establish programmes to promote the integration of migrants; and
- Campaign for non-discriminatory treatment of migrant women and for adequate protection against sexual or other abuses.

Box 11: Korean trade unions advocacy for foreign workers' rights

The Korean trade unions actively promote the protection of migrant workers' rights by following a four-pronged strategy that consists of: (i) raising public awareness of the issues and problems foreign workers encounter in the Republic of Korea, (ii) pressing employers to pay decent wages and improve working conditions, (iii) organizing foreign workers and (iv) lobbying for an immigration law reform that would allow for the employment of unskilled foreign labour.

They directed their efforts first at raising public awareness of the issues and the violations of migrant workers' rights. Press conferences were organized where migrant workers were invited to take part, and the unions supported peaceful demonstrations in public places and in front of factories. The Federation of Korean Trade Unions (FKTU) sought to make itself fully aware of the concerns of all parties by arranging meetings with foreign workers and visiting officials from governments and trade unions of source countries, as well as with local employers.

Both the FKTU and the Korean Confederation of Trade Unions (KCTU) pressed for an early review of the policy on foreign trainees. They took the position that they should be treated as regular workers and should be entitled to social security. Thanks to the continued demands of trade unions, foreign trainees eventually were entitled to minimum wage and health care benefits. In 2004, the immigration law was amended to allow the temporary admission for employment of unskilled foreign labour.

Trade unions such as KCTU started organizing migrant workers in the name of "equality union" and invited them to participate in its rallies. They sought the cooperation of foreign partners to protect the rights and interests of migrant workers. For example, FKTU asked trade unions in China, Mongolia and Viet Nam to provide information on the trainees and migrant workers in order to organize them and provide necessary union services. An English guideline was prepared and shared with trade unions in those countries.

They also sought to help with integration into Korean society by organizing a big "cultural event for foreign workers" in collaboration with civil society groups. With humanitarian aid groups, the Korean trade unions provided legal and health services. There have been many joint activities between trade unions and NGOs concerned with migrant issues, such as the Joint Committee for Migrant Workers in the Republic of Korea and the joint committee (COCATS), which campaigned for several reforms including the abolition of the trainee system and giving status to irregular migrant workers. The latter played a crucial role in the enactment of a new law on employment of foreign labour.

6.4.4 How can trade unions in the region cooperate to protect migrant workers?

- Encourage union membership of migrant workers by establishing accessible mechanisms specifically dedicated to migrant concerns;
- Establish regular forms of consultation to update members on the development of migration issues in the region and to share programmes, initiatives and best practices;
- Ensure that their own charters do not discriminate against migrants;
- Encourage migrant women to join unions by providing benefits attractive to female workers;
- Cooperate in circulating information on social values and the culture of countries of origin and destination to enhance communication between workers and employers;
- Cooperate with the national authorities in supervising recruitment by identifying agencies involved in giving false information to migrants, engaged in the malpractice of contract substitution or charging excessive fees;
- Cooperate in identifying agencies, officials and employers involved in the trafficking of migrants, particularly migrant women and children, and ensure that they are prosecuted according to the law;

Box 12: Community unions in Japan

Community unions, which began in 1983 with Union Higoro (Osaka), are a new type of labour union based on individual affiliation rather than on place of work. They are a response to problems of workers living in local communities who are put in unstable, irregular forms of employment. By 1999, 95 unions had joined a National Community Union Network, representing more than 14,000 workers. What community unions have in common is that while they try to protect workers' rights at workplaces, they are also trying to create communities where workers can all live together. Their activities vary according to the local area and membership, but each has its base in labour consultation. For example, they pour lots of energy into initiatives such as cooperative movements. Community unions based in Hokkaido, Kansai, Kyushu, Hyogo and Tokyo have formed a national network to tackle common issues. For example, they carried out nationwide labour consultation campaigns on the problems of dispatch workers and foreign workers and pushed for the revision of the Immigration Control and Refugee Recognition Law in 1990 and 1999.

The Kanegawa Community Union (KCU) is involved in campaigns for the rights of foreign workers and women workers. Among the problems it addresses are poor working and living conditions of foreign workers in Japan, dismissals, unpaid wages, work-related accidents and sexual harassment. Other problems it tackles are traffic accidents, housing and livelihood issues and problems of human rights (such as racially motivated violence), health and welfare, and visa status. Until now, there has not been much international solidarity action between foreign workers in Japan and workers in their home countries. Action has been largely at the level of individual workers. For example, former Korean members of KCU who went back home helped establish the "Migrant Workers House" for foreign workers in the Republic of Korea. The KCU's main approach is still to gain the right to collective bargaining and bring in union members. One problem it grapples with is the near-impossibility of collecting dues regularly from foreign workers, many of whom are undocumented and have to change their residence often. KCU still has an unstable financial base but it does receive hefty donations from members from time to time. Most of the problems foreign workers bring to KCU are resolved financially and the settlements are usually rather substantial. Members donate about 15 per cent of their settlement money to the union.

- Establish a migrant workers' rights committee, appointed from a range of affiliates, to document cases of trafficking that can serve as a factual basis for ILO intervention;
- Encourage governments in the region to include the social clause in bilateral and international treaties; and
- Cooperate with international trade unions, including the International Trade Secretariat.

6.4.5 How can trade unions contribute to sound national policies on migration?

Trade unions can influence national policies in several areas, including:

- Ratifying the relevant ILO Conventions – No. 97 and No. 143, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- Establishing bilateral and multilateral labour and social security agreements to ensure that migration occurs in an orderly and protected fashion;
- Ensuring equal treatment to migrants with regard to the rights of association and collective bargaining, conditions of employment, social security, non-discrimination and other rights provided for in ILO Conventions;
- Ensuring equal treatment to both migrant women and men; in particular, migrant women should receive adequate maternity protection, equal pay and treatment according to international standards;
- Involving trade unions and employers' organizations in the formulation of policies, laws and regulations and in spreading good practices;
- Involving government agencies and employers' organizations in providing opportunities for training migrants to upgrade their skills and thus facilitate their reintegration upon return to their home country; and
- Involving governments of origin countries in decreasing the long-term dependence on labour migration.

Review

Having completed Module 6, each participant should feel confident that he or she can discuss the following:

- Trade unions have an important stake in ensuring that foreign workers receive equal treatment as national workers.
- What are the advantages to using tripartism as the principle for decision making in migration matters?

Session Guide

Objectives

By the end of the session, participants are expected to:

- See the various faces of the problem of irregular labour migration and the issues they raise for migration and labour policy making.
- Evaluate the means and instruments available to address them.
- Identify good practices that may be relevant for their respective countries.

Methodology

- Presentation
- Group discussion
- Exercise 5

Duration

Three hours (one session for presentation and general discussion, one session for Exercise 5; half an hour for review).

Session guide

- The module will start with a presentation of various ways in which migrant workers may find themselves in an irregular status and the need for protection of their rights.
- The participants are asked to discuss the issues that are at the heart of many policy discussions on the subject.
- The participants are presented with the elements of good practice and what the international community says about the rights of workers in an irregular status.

Suggested reading and reference materials

- Jerrold W. Huguet and Sureeporn Punpuing: *International migration in Thailand* (Bangkok, IOM, 2005).
- D. Cinar, A. Gachter, et al., eds.: *Irregular migration: Dynamics, impact, policy options*, Eurosocial Reports (Vienna, European Centre for Social Welfare Policy and Research, 2000).
- Philip Martin and Mark Miller: *Employers' sanctions: French, German and US experiences*, International Migration Papers No. 36, International Migration Programme (Geneva, ILO, 2000).

The growth of irregular migration has emerged as a major policy conundrum for many countries that are concerned that if flagrant violation of their immigration laws and regulations are allowed to continue, there will be serious consequences for public order. However, to check it would require draconian measures that can stifle normal trade and investments, tourism, cultural exchanges and diplomatic relations with other countries. The phenomenon has become the central concern in managing international migration.

What are the causes of irregular migration and what are its consequences for workers? How can countries deal with the problems of irregular migration in ways compatible with human rights and other international norms? What practical guidelines should countries follow in amnesty and regularization campaigns? What principles should underlie their policies on irregular migration? Discuss.

7.1 Who are workers in an irregular status?¹¹

Many terms are currently in use when referring to migrant workers employed in countries but are not in accordance with immigration or labour laws and policies. These terms include:

- *Documented and undocumented.* Undocumented migration does not cover all irregular cases. For instance, some documented persons, such as tourists, may undertake employment in the host country – violating conditions of entry.
- *Unauthorized.* The term is not precise, as it includes persons who may have authorization to enter the country but not to work. The term also does not make clear who authorizes entry or employment.
- *Clandestine migration.* This term is inadequate because many people in an irregular status actually entered through regular migration channels, not through clandestine means.
- *Illegal.* The term “illegal” is a widely used term but is objectionable when used to refer to persons because persons cannot be illegal.
- *Irregular migration.* This is a more acceptable term, commonly used by the UN system, including the ILO. Irregularities in migration can occur at every stage of the process – pre-departure, transit, destination and return. Irregular migration can range from simple unauthorized border crossings for work to trafficking and smuggling of human beings. ILO prefers to use “migrant workers in irregular status” instead of “irregular migrant workers”. A migrant worker in irregular status is a person who: (i) has no valid authorization to work by the State in whose territory he or she is present, though it is required by law in respect of entry, stay or employment, or (ii) who has failed to comply with the conditions to which his or her entry, stay or employment is subject.

7.2 Examples of workers in irregular status in host countries

- Persons who continue working after their employment visas expire;
- Tourists engaging in employment, thereby violating conditions of entry;
- Trainees who leave their assigned enterprises and work elsewhere, contrary to conditions of their admission and regulations;
- Students working without authorization;
- Regularly admitted workers who have lost their employment during the contract period and thereby also their residency status, according to national laws; and

¹¹ This section is completely based on Piyasiri Wickramasekara: *Asian labour migration: Issues and challenges in an era of globalization*, International Migration Papers No. 57, International Migration Programme (Geneva, ILO, 2002) at <http://www.ilo.org/public/english/protection/migrant/download/imp/imp57e.pdf>.

- Persons trafficked or smuggled into countries, bypassing official entry procedures and forced to work.

7.3 What are the dimensions of irregular flows?

Estimates of irregular migration are often inflated by politicians, media sources and security agencies. ILO estimates place 10-15 per cent of total migrant workers globally in irregular status. Statistics for the European Union show between 3 million and 3.5 million migrant workers in irregular status. Estimates for the United States are about 7 million to 8 million people. According to the ILO report, *Towards a fair deal for migrant workers in the global economy*, irregular migration is now much higher than in the 1980s and is estimated to be as high as 20 per cent of aggregate annual admissions to the OECD countries.

Irregular migration is even more pervasive in developing regions. For example, in 1997 the authorities in Thailand estimated that they had close to a million migrants in irregular status from neighbouring countries, especially Myanmar. At about the same time, the Malaysian Government estimated that there were more than 800,000 irregular migrants. Statistics are very unreliable by the very nature of the problem, but there is little doubt that irregular migration touches almost all the countries of the region. The problem is much more serious for South-East Asian countries than for East Asia, given the larger share of foreign labour in the workforce of the former group. Malaysia and Thailand purportedly have the largest estimated numbers of workers in irregular status (see Box 14 for Asian estimates). Widening income differences and the ease of crossing borders are among the key factors responsible for the spread of the phenomenon.

Estimates for the dimensions of irregular migration are usually based on information from:

- Number of foreigners refused entry at the borders;
- Apprehensions and deportations;
- Number of foreigners recorded as having overstayed their visas;
- Amnesties, regularization programmes and related registrations; and
- Special surveys and population censuses.

Box 13: Estimated numbers of migrant workers in irregular status

Australia	April 1999	53 413 (overstayers)
Japan	January 1999	271 048
Republic of Korea	1998	99 537
Malaysia	1998	244 730
Singapore	1998	23 000 (apprehensions)
Thailand	1998	897 027

Source: Piyasiri Wickramasekara: *Asian labour migration: Issues and challenges in an era of globalization*, International Migration Papers No. 57, International Migration Programme (Geneva, ILO, 2002) at <http://www.ilo.org/public/english/protection/migrant/download/imp/imp57e.pdf>.

7.4 Why is irregular migration a problem?

"...international migration, particularly irregular migration, has increasingly become a major economic, social, humanitarian, political and security concern for a number of countries in the Asia-Pacific region".

The Bangkok Declaration

Irregular migration gives rise to a number of important problems and challenges:

Irregular migration is a protection problem because migrant workers in irregular status are vulnerable to violations of their human and labour rights. Their status excludes them from legal forms of employment; hence, they are relegated to forms of employment or sectors of the economy where there is little or no social protection. Many are likely to be victims of the local mafia or criminal gangs. They are often paid substandard wages, and deportation may eliminate any chances of claiming unpaid wages. Fear of detection keeps migrant workers from joining trade unions and availing of established services for obtaining relief from exploitative employment conditions.

Irregular migration is a management problem for both sending and receiving countries. Opening the backdoor to irregular migration when the labour market tightens during boom periods may be seen as a clever strategy because it offers the flexibility to force their return when the economy contracts; but the social consequences of such policies are too severe for responsible governments to contemplate. The unrestrained growth of irregular migration will make illegal activities lucrative, lead to more displacement of unskilled local workers, undermine collective bargaining, create tensions in society and bias growth in favour of the informal sectors of the economy. For the governments in countries of origin, irregular migration clearly poses problems in protecting their nationals against exploitation, rewarding illicit activities and possibly straining relations with destination countries.

7.5 What are the causes of irregular migration?

7.5.1 Pull factors

In many countries there is a demand for migrant workers that exceeds the limit the State imposes on regular migration. In advanced countries, this is often due to structural factors that cause rigidities in the labour market, ensuring that the condition of excess demand is not a transient phenomenon. There are shortages not because there are no unemployed workers but because of mismatches (see Box 5 in Module 4). In the case of low-skilled workers, the limits to regular migration are usually set at unrealistic levels because of social attitudes and can become rigid when written into immigration laws. In countries with slow-growing populations, rapid economic growth easily leads to imbalances in the labour market, which cannot be remedied in the short run except through the backdoor entry of foreign labour. The majority of such workers would have entered the country legally as tourists, temporary visitors, trainees or as students.

7.5.2 Push factors

- *Income differentials – differences drive migration.* Poverty by itself cannot explain much of the migration phenomena, but large income differences more

aptly account for the large-scale cross-border labour movements, such as the flows to Thailand from neighbouring Myanmar and Cambodia, and from Indonesia and the Philippines to West Malaysia and Sabah. Those who move are not usually the poorest because the poorest cannot afford to move. Those who move are often the ones already employed with skills – not the ones without education or work experience.

- *Political suppression and armed conflict.* The increasing violence of political conflicts, thanks to modern armaments, repressive policies towards ethnic minorities and forced labour practices such as those found in Myanmar, prompt refugee movements. In recent years the doors to asylum seekers have narrowed, prompting those in desperate situations to seek entry to other countries in whatever way possible and ending up as migrant workers in irregular status.

7.5.3 Fraud and malpractices in private recruitment

Commercially motivated private recruitment agencies organize most labour migration from Asian countries, a fact that may explain its rapid growth. While their services have been sought to facilitate legal entry and employment in foreign countries, there are many cases of fraudulent recruitment that typically ends up in putting the migrants in an irregular situation. Because it is very easy to engage in recruitment, as hardly any capital is needed, and because the demand for jobs abroad is often large, the business tends to be plagued by fly-by-night operators who make money on fraud. Unscrupulous recruitment agents offer non-existing jobs, charge job applicants exorbitant fees, provide false information and tend to send workers abroad without firm job orders.

7.5.4 High migration costs

Many workers become irregular because of their need to recover the huge investments they made in obtaining jobs abroad. Though there is some expense in travel costs, these investments mostly refer to the high fees levied by recruitment agents, often much above legally specified amounts. The fees may range from two or three months' wages to one year's wages for low-skilled workers. Given the prevailing low wages and the short duration of employment contracts, workers may not be able to save any money and sometimes may run away from assigned employment before the expiration of their contract to prolong their stay, so that they can earn more. Entertainers in Japan are one example of such overstayers who put themselves at greater personal risk by moving into the irregular status.

The problem is more acute in the case of migrant smuggling and trafficking. The amount of fees charged may mean many years of virtual slavery or debt bondage, as for example in China where brokerage fees for premium Western destinations may range from US\$30,000 to US\$40,000.

State bureaucratic procedures also add to high costs of emigration with cumbersome approval procedures and the financial burdens involved require hiring brokers just to get over the paperwork involved.

7.5.5 Activities of criminal gangs and traffickers

Trafficking gives rise to the most odious forms of irregular migration. Criminal syndicates have found a lucrative business in smuggling workers through borders for the purpose of subjecting them to forced labour. Women are especially vulnerable

in this regard, because of the high demand for young female workers in the sex and entertainment industries.

7.6 How should States deal with irregular migration?¹²

There is international consensus that irregular migration should be minimized or eradicated because it results in the violation of basic human rights of migrant workers and creates problems for both origin countries and host societies. Only migration under regular conditions can provide an environment conducive to the improvement of migrant workers' welfare and respect of their rights and dignity as human beings.

The following are the main means for addressing irregular migration:

- Agreements with source countries on joint responsibilities for controlling migration and re-admission;
- Careful screening of visa applicants;
- Penalties imposed on carriers transporting irregular migrants;
- Border controls;
- Penalties imposed on employers for illegally employing foreign workers without work permits;
- Penalties imposed on the foreign workers – forced repatriation;
- Public information campaigns;
- More market-oriented policies; and
- Regularization and amnesties.

Bilateral agreements. There are always advantages in having the governments at the two ends of the migration involved in ensuring that migration proceeds according to the laws of both countries. In usual circumstances, the information needed by one end to prevent fraud or other recruitment malpractices is available or more easily obtained at the other end. Both sides may agree to exchange information on the operations of known syndicates engaged in smuggling and trafficking. Simple information such as awareness of advertisements for jobs that are of a suspicious nature can be very valuable in warning authorities in receiving countries of the likely formal cover of the organizers and participants. Agreements that create operational mechanisms for implementation and foster a level of trust and informal cooperation are needed if the complex processes of migration are to be effectively supervised.

Re-admission agreements. The European Union pioneered this approach, which involves reciprocal undertakings by the European Union and third-country partners to cooperate over the return of illegal residents to their country of origin. The European Union has signed such agreements with China, Sri Lanka and Hong Kong Special Administrative Region, among others.

¹² This section draws on W.R. Böhning: *Employing foreign workers: A manual on policies and procedures of special interest to middle- and low-income countries* (Geneva, ILO, 1996) and Piyasiri Wickramasekara: *Asian labour migration: Issues and challenges in an era of globalization*, International Migration Papers No. 57, International Migration Programme (Geneva, ILO, 2002).

Visa requirements. External controls, such as careful screening of applicants for visas, constitute a first line of defence against irregular migration. Some countries, such as the United States and Japan, rely heavily on this measure, as many who ended up in an irregular status in their country entered through regular doors. However, it may be completely circumvented by illegal organizers who use falsified documents and visas. In countries with visa-free travel arrangements, the measure is evidently not applicable.

Sanctions on carriers. The airlines are increasingly being forced to take on the responsibility for checking the possession of valid travel documents and visas. They are penalized for bringing in people without visas by the requirement that they take them back to the point of origin. Representatives or agents of immigration authorities may actually be posted abroad to take on this function, but this is a costly activity that only a few countries can afford to undertake.

Police borders. The first line of defence is usually to tighten border controls. In the European Union, many joint programmes have been launched over the past two decades to fortify the weaker points of its common borders. In the United States, which has millions of workers in an irregular status from Mexico, huge investments have been poured into creating high-tech walls at the United States-Mexico border. Overall, flows have declined as a result but the sad consequence is that hopeful migrants are taking desperate, high-risk means to enter these high-wage countries. Leaders of target countries have called on governments of source countries to help stem the flow, some even going so far as to threaten sanctions. At the European Union Seville Summit, for example, some members suggested using foreign aid to control emigration by third countries.¹³ Unfortunately, rigid controls of destination countries are making trafficking and smuggling more lucrative occupations.

Box 14: On controlling borders

*“Few, if any, States have actually succeeded in cutting migrant numbers by imposing such controls. The laws of supply and demand are too strong for that. Instead, immigrants are driven to enter the country clandestinely, to overstay their visas or to resort to the one legal route still open to them, namely the asylum system. This experience shows that stronger borders are not necessarily smarter ones. And it shows that they can create new problems of law enforcement and lead almost inevitably to human rights violations”.*¹⁴

Kofi Annan, United Nations Secretary-General

Sanctions and penalties on employers. Pecuniary or penal sanctions on employers can make it costly for employers to take the risk of hiring foreign workers in an irregular status. For such measures to work, however, the fines to be paid or the punishment to be expected should outweigh the expected labour cost savings in employing workers in an irregular status. Moreover, the chances of getting caught must be high if someone violates the regulation. Employers’ sanctions have been widely ineffective because of poor enforcement. Labour inspection is used for detecting the irregular employment of foreigners, especially on building sites, in hotels and restaurants, in sweatshops and similar workplaces, but such inspections

¹³ Third countries are those outside the European Union, often the developing countries of origin.

¹⁴ Kofi Annan: Emma Lazarus Lecture on International Flows of Humanity, Columbia University, New York, 21 November 2003.

can prove dangerous. In their efforts to escape discovery, irregular migrant workers may endanger their lives or be at risk of serious injury. Careful checks of employment records and comparisons with immigration records is a more efficient way of achieving the same results.

ILO Convention No. 143 was the first international instrument to call for the definition and the application of administrative, civil and penal sanctions, which include imprisonment of the organizers of illicit or clandestine movements and those who knowingly provide assistance, whether for profit or otherwise. The United Nations Convention Against Transnational Organized Crime 2000 has two protocols that contain extensive legal provisions to deal with the just-described problems: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime.

Expulsion or deportation. Many countries have regulations calling for the deportation of individual aliens found working in violation of immigration laws. This is often a costly procedure, especially where origin countries are far away. When problems accumulate and large numbers are involved, States sometimes decide on mass expulsions. International Conventions caution against mass or collective deportations because they invariably result in human rights violations. The ILO Convention No. 143 specifies a number of provisions before expelling foreign workers (see Box 15). Migrants should be entitled to due process of law and to benefits arising from past employment.

During the Asian financial crisis, several countries including Malaysia, Thailand and the Republic of Korea resorted to large-scale repatriation of migrant workers. Malaysia has used mass deportation programmes several times.

Public information campaigns. Publicity and media campaigns are needed to inform potential emigrants about the hazards and costs of relying on smugglers and having to hide from the police, labour inspectors and others as well as exploitation by employers. In Fujian province, the Chinese Government, with support from Australia, has made use of such campaigns to warn potential victims of the so-called “snake gangs” and of the dangers involved in being smuggled abroad by criminal syndicates. They must, however, be accompanied by information on available regular migration opportunities and improvements in the processing of applications. People will resort to illegal channels where the cost of going through formal channels is equally prohibitive. In countries of destination, the information campaigns must be directed at employers – especially to inform them of sanctions for employing foreign workers without work permits.

More market-oriented policies. Much more can be done in the area of making immigration policies more attuned to economic needs. This is becoming more and more evident in the admission of highly-skilled workers, where the policy is driven in many countries by employers’ demands. This is not the case, however, for less-skilled workers, even if large shortages may exist. A review of policies on the less skilled in the Republic of Korea has recently led to a reform of the migration law. Today, a regular temporary migrant worker programme is in place in that country for accepting unskilled workers for certain sectors of industry.

7.7 Amnesties and regularization¹⁵

Faced with large numbers of irregular migrants, governments may choose to declare amnesties through which migrants can leave the country without any penalties or regularize their status. The two measures are usually taken together, as amnesties alone may fail to persuade those without papers to come forward and register. ILO Convention No. 143 mentions that member States have the option to give persons who are illegally residing or working within the country the right to stay and to take up legal employment. Many States seek to avoid declaring amnesties for fear of encouraging more irregular movements, but some already confronted with large irregular foreign populations may see no other humane option. There have been recent amnesties, for example, in Southern Europe – Italy, Greece, Spain and Portugal, which are key ports of entry for migrants from across the Mediterranean.

Regularization programmes are complex undertakings. Authorities must convince the migrants that it is to their advantage to become regularized, but they cannot divulge their plans too far in advance because this might immediately encourage more immigration. They must prepare the ground carefully and ensure that they fully involve representatives of all groups that will be affected. They also have to engage the migrants, using publicity and information programmes through channels that migrants trust. Some governments have found that a good way to achieve this, and generally overcome suspicion, insecurity and resistance, is to engage the help of a range of civic and religious organizations.

Box 15: Rights of workers in irregular status

Both ILO and UN instruments recognize that all migrant workers, including those in irregular status, should enjoy certain rights. Unless otherwise stated, all ILO instruments apply to all workers, including migrant workers in irregular status.

- The ILO Migrant Workers Convention, 1975 (No. 143) specifies the following rights: (i) basic human rights of all migrant workers should be respected – fundamental rights are spelled out in the ILO Declaration and UN human rights instruments; (ii) rights against arbitrary expulsion and right to due process; (iii) entitlement to past dues for wage payments and social security; and (iv) expulsion expenses not to be borne by the migrant;
- The 1990 UN Convention elaborates on human rights of workers in irregular status. Irregularity should not lead to loss of employment benefits. The UN Convention clearly states that governments shall take all appropriate measures to ensure that migrant workers are not deprived of any rights derived from the principle of equality of treatment by reason of any irregularity in their stay or employment;
- Loss of employment shall not lead to irregular status;
- The ultimate objective of both instruments is to minimize irregular migration through a number of measures, including bilateral cooperation; and
- The Resolution on migrant workers adopted at the ILO International Labour Conference 2004 called for: (i) providing due consideration to the particular problems irregular migrant workers encounter and the vulnerability of such workers to abuse; (ii) ensuring that their human rights and fundamental labour rights are effectively protected and that they are not exploited or treated arbitrarily; and (iii) following best-practice guidelines on preventing and combating irregular labour migration, including the development of amnesties and regularizations.

¹⁵ The following section is based mainly on ILO: “Managing migration”, in *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004).

Broad principles of regularization

To make both foreigners and employers respond to the maximum extent, regularization programmes need to conform to the following principles:

- Motivate registration by adopting clear, transparent and attractive conditions or eligibility rules. Regularization will not succeed if it is seen as a means to simply get rid of foreigners or to raise revenues from fees paid by employers;
- Ensure that all involved with the regularization, including local police agencies, are made aware of the objectives and the procedures and are properly trained on how to handle all kinds of contingencies;
- Seek the cooperation of national authorities in countries of origin, especially the participation of their diplomatic missions;
- Launch a broad-based and energetic advertising and publicity campaign;
- Involve NGOs trusted by the migrants in some of the tasks in actual implementation; and
- If possible, decentralize powers over legalization decisions to state bodies or institutions at the level of regions, districts or even towns.

Regularization works best when the process is straightforward. If the requirements are too demanding, time consuming or costly, they will discourage many of those who are eligible. Some regularizations have failed, for example, because of the requirement that the foreign worker shows proof of having a job in the formal sector. Regularization should instead take the form of a simple act at the lowest possible level of administration, demanding very little documentation and requiring neither the support of a lawyer nor recourse to the courts. In some countries, it is not the workers who have to register but their employers. Because some employers may gain from using workers in irregular status, they may not be motivated to register their workers.

Many regularizations are treated as “one-off exercises” – brief “windows of opportunity” offering a large number of migrants the opportunity to regularize one or more aspects of their status. When it is repeated, the determination of the government comes into doubt. The alternative is to have a permanent national authority with powers to regularize the status of irregular migrants who submit a petition and fulfil established criteria.

In this context, a principle that seems to be reflected in the regularization policies of many countries is that of *earned adjustment*. Migrant workers with irregular status may be said to earn a right of legal status if they satisfy certain criteria – are gainfully employed, have not violated any laws other than those relating to illegal or clandestine entry, made an effort to integrate, for example, by learning the local language, and have relatives in the country.

7.8 What good practices should guide approaches to addressing irregular labour migration?

The following highlight good practices based on international norms and experience:

- Base policy on internationally accepted norms and instruments: create a migration management that respects the rights of migrants;

- Treat irregular migration as a labour market issue, not only as a legal or security issue;
- Address root causes by promoting investments and trade through such measures as opening markets for exports from origin countries of the migrants;
- Address the bigger problem of informal and undeclared work in receiving countries;
- Use the tripartite framework to find solutions, such as tripartite consultations on amnesty and regularization programmes;
- Provide for *earned adjustment* to regularization when migrant workers satisfy specified criteria, such as gainfully employed, no criminal record and proven attempts to integrate (see conclusions of the Regional Tripartite Meeting on Challenges to Labour Migration Policy and Management in Asia, which also advocate this measure);
- Provide information and education on risks of irregular migration; and
- Promote bilateral and regional cooperation as recommended in ILO Convention No. 143, the 1990 UN Convention, the Bangkok Declaration,¹⁶ recent anti-trafficking initiatives such as the Bali Conference 2002, conclusions of the 13th ILO Asian Regional meeting and subregional integration frameworks including the Association of South-East Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC). These could all be used for developing a common framework.

Exercise 5

Discuss

- There will be less irregular migration if only more avenues exist for regular migration.
- Irregular migration is part of a broader labour market issue.
- To minimize irregular migration, governments should have policies to minimize illegal employment.

Review

Having completed Module 7, each participant should feel confident that he or she can discuss the following:

- There are many ways in which a migrant worker can become “irregular”.
- Migration policy is not sufficient for addressing problems of irregular migration.
- What are the essential elements of an effective regularization programme?

¹⁶ See Annex 6 to this module.

Session Guide

Objectives

At the end of this session participants will be able to understand and explain:

- The risks migrant workers, in particular women, face regarding to discrimination, exploitation and abuse; and
- Why and how legislation, policies and practical measures can address these issues with a view to: upholding human rights, including labour and migrant rights, promoting gender equality and ending all forms of discrimination.

Methodology

- Video introduction and discussion
- Presentation on addressing gender inequalities in migration management followed by general discussion
- Exercise 6

Duration

Four hours (one hour video screening and discussion; one session for presentation and general discussion; one hour for Exercise 6; half an hour for review).

Session guide

- This module looks at migration with a rights-based and gender perspective. The key to the rights-based approach is working towards the protection and realization of human rights for all persons. Looking at migration with a gender lens means identifying differences in the migration experience of men and women, understanding how the unequal relations between them affect women migrants and identifying effective ways to address these issues in migration management. The module shows how to protect women migrants from exploitation and highlights means of empowering them so that they are able to benefit from migration to the same extent as male migrants. In line with international experience, guidance is given on how to address gender inequalities in the mainstream or core of migration management – a process often referred to as gender mainstreaming.
- Introduce the session with a video presentation dramatizing risks, vulnerabilities and challenges faced by migrant workers, in particular women. This will help the participants visualize and understand the gender-based inequalities confronting women migrants.
- Start a discussion by asking the participants to reflect on the video. Encourage them to raise questions and share their country experiences on the opportunities, risks and challenges confronting women migrant workers as compared to those men face.

- Give a brief presentation on addressing gender inequalities in migration management, with the main content as follows:
 - Why focus on gender issues in migration?
 - Multiple types of discrimination;
 - Risks during recruitment;
 - Risks while living and working abroad;
 - How to address gender inequalities in migration management; and
 - How to provide decent work to all migrant workers.
- Open a discussion with participants on the protection of women migrant workers in their country. Ask them to share good practices and/or point out gaps in the policies, legislation and programmes of their organizations. List these on a flip-chart, board or PowerPoint screen.
- Conclude the session by summarizing and synthesizing the main points raised.

Suggested reading and reference materials

- International Labour Office: *An information guide on preventing discrimination, exploitation and abuse of women migrant workers*, Gender Promotion Programme (GENPROM) (Geneva, ILO, 2003), Booklets 1-6.
- International Labour Office: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004), Chapters 1-4.
- International Labour Office: *Promoting gender equality at work: ILO gender mainstreaming strategy in Asia and the Pacific, 2004-2007* (Bangkok, ILO Regional Office for Asia and the Pacific, 2004).
- International Organization for Migration: Video on *The power to choose: Guide for women migrant workers* (Manila, IOM, 2003).

8.1 Why focus on gender issues in migration?

Migration, especially across national borders, involves risks and opportunities for all; however, compared with men, women appear to encounter greater risks and more limited opportunities. Women workers are among the world's most vulnerable workers according to ILO. To address this issue in an effective and efficient manner, it is necessary to identify the problems they experience and to understand the underlying causes. This often means that we need to look at migration with a gender perspective.

What is "gender"? The sex children are born with influences their chances in life, alongside other important variables such as socioeconomic class, race or ethnicity. All societies assign different roles and opportunities to boys and girls from the moment of their birth; and they are taught to perform these roles based on the ideas in each society on how men and women should or should not behave, people's assumptions about what they might be good at, what skills they have and what opportunities they have in work and in life as a woman or a man. These social meanings given to biological sex differences are covered by the term gender, defined as the social differences between men and women that are learned, change over time and differ between and within societies.

Gender inequalities exist in most societies, both in sending and receiving countries. These, in turn, give rise to different opportunities and treatment of men and women in migration. If they are to be corrected, gender issues need to be addressed at all levels and at all stages of migration management – a process often referred to as *gender mainstreaming*.

8.1.1 Increasing participation of women in foreign employment

An accurate and reliable construction of the trends in female migration will have to wait for the availability of better data than we have today. The UN Population Division has published reports on women migrants, based on the best available sources, notably census data, but there are still very few countries that provide information and statistics on migration broken down by sex. We do know from sources in Asia that there has been a dramatic rise in the participation of women in labour migration, especially in Indonesia, the Philippines and Sri Lanka. For example, in 2000, women represented 68 per cent of the 2.5 million Indonesian migrant workers abroad, 46 per cent of the 2.9 million Filipino documented migrant workers and 75 per cent of around 1.2 million Sri Lankan migrant workers abroad.¹⁷

While men migrate for a range of jobs, women's labour migration is concentrated in a very limited number of occupations that are associated with traditional gender roles of women, such as domestic work, entertainment, garment making, nursing and teaching. Some 103,264 migrants entered Japan as entertainers in 2000 alone. In the Hong Kong Special Administrative Region, migrant domestic workers numbered more than 202,900 in 2000. Between 1999 and June 2001, 691,285 Indonesian women left their country (representing 72 per cent of the total Indonesian migrants) to work mainly as domestic workers abroad. In Malaysia, there were 155,000 documented (and many more undocumented) migrant domestic workers in 2002.¹⁸

In some European countries such as France, Greece, Italy and Spain, domestic work, or housekeeping, is the most common occupation available to female migrants. During the 1990s, numerous migrants with residence permits entered Italy, Greece and Spain as domestic workers through a quota system. In Italy, half of the estimated 1 million domestic workers are non-European Union citizens. In France, more than half of migrant women are believed to be engaged in domestic work.¹⁹

Most women migrants come from poorer countries and leave their families behind, often in the care of relatives or a hired local maid, creating global care chains. The availability of foreign household helpers allows women with children in destination countries to work for wages so that many are able to pursue paid employment outside the home. The bulk of women migrants engage in temporary migration. However, there are many who end up going abroad several times during their lifetime, taking up a series of employment contracts, or who live and work in a country for several years and in some cases, permanently.²⁰

¹⁷ ILO: *An information guide on preventing discrimination, exploitation and abuse of women migrant workers*, Gender Promotion Programme (GENPROM) (Geneva, ILO, 2003).

¹⁸ ILO: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004).

¹⁹ ILO: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004).

²⁰ ILO: *An information guide on preventing discrimination, exploitation and abuse of women migrant workers*, Gender Promotion Programme (GENPROM) (Geneva, ILO, 2003).

In many parts of the world, the growth of a migration industry encompassing private recruitment agents, promoters, human resource suppliers and a host of other legal and illegal intermediaries, has greatly facilitated female labour migration, a trend that has become known as the “feminization of migration”.

8.1.2 Why are women migrant workers at risk?

Women migrant workers are vulnerable to abuse and exploitation because:

- There are social, economic and cultural inequalities between women and men in both the countries of origin and destination, but migration policies and regulations seldom take into account the differences between women and men. This may lead to reproducing and intensifying such inequalities.²¹
- Sectors dominated by women, such as domestic work or sweatshops, are in the informal economy, where labour protection laws and regulations in both origin and receiving countries do not effectively reach – including for nationals.
- Where domestic workers are covered by legislation, they may not benefit from it because protective labour laws are not always applied and the workers often do not know that they exist.
- Moreover, some laws and regulations covering women’s employment tend to emphasize the obligations rather than rights of migrant workers.
- Generally, existing unequal power relations between men and women in societies are exacerbated in migration relations. Male officials, brokers or employers are usually in a position of authority, while the women migrant workers are in a subservient position. In most countries, the staff of organizations dealing with migrant workers, including private recruitment agencies, immigration and labour authorities, are predominantly men. Appropriate “gender training” can help them become sensitive to the needs of migrant women workers. For example, better information can change the mistaken perception that all migrant women are employed in socially outcast occupations, such as prostitution.

Can some of these vulnerabilities of women migrants be reduced or eliminated through appropriate safeguards included in bilateral labour agreements? Discuss.

8.1.3 Women face multiple types of discrimination

Many women move to achieve greater freedom and personal fulfilment for themselves and their children, husbands and parents. However, migration for employment can expose women to serious violations of their human rights, including their labour rights. Whether at the recruitment stage, during the journey across national borders, in transit or while living and working in another country, women migrant workers often encounter multiple forms of discrimination.

As women. Gender inequality and discrimination persist in varying degrees in all countries of origin, transit or destination. In most societies women face distinctions, exclusions or restrictions on the basis of their being born female, especially, if they are poor or belong to minority groups, and sometimes both. This could have the effect of impairing or nullifying the recognition, enjoyment or exercise of their human and labour rights and fundamental freedoms in the political, economic,

²¹ See ILO: *An information guide on preventing discrimination, exploitation and abuse of women migrant workers*, Gender Promotion Programme (GENPROM) (Geneva, ILO, 2003).

social and cultural spheres. In many societies, stereotyped gender roles persist – for instance, many people believe that men are the main breadwinners and women are dependants, despite evidence to the contrary.

As foreign workers. Women migrants, like men, are vulnerable when they are outside the jurisdiction and protection of the laws of their home country and are not entitled to the full range of protection and benefits of workers in the destination country. For example, in some countries, female migrant workers are required to undergo compulsory periodic pregnancy tests although such tests are prohibited under the Maternity Protection Convention, 2000 (No. 183). If they test positive, they may be immediately deported. Jobs available to them are often in the “3-D” category (dirty, dangerous or demeaning), characterized by low status and low pay in the receiving country. Women migrant workers often concentrate in occupations that are not effectively covered by the umbrella of the destination country’s labour and social laws, such as domestic service, sweatshop manufacturing and the entertainment and sex industry. In some countries, migrant workers are not allowed to form or join trade unions.

As dependants. As “dependants”, migrant women have restricted labour market rights, may be deported if they lose the support of their husbands or families or may be summarily forced to leave if their husbands or parents are deported.

As undocumented or migrants in irregular status. This applies to both men and women migrants, but women in particular often are exposed to harassment, intimidation or threats to themselves and their families, economic and sexual exploitation, increased health risks and other forms of abuse, including trafficking into forced labour, debt bondage, involuntary servitude and situations of captivity. Women in these circumstances are generally too scared to complain or even to approach the authorities for any kind of official assistance. When they are rescued by the authorities from their employers, intermediaries or others abusing them, they often are treated as criminals and further victimized.

8.2 Risks start with recruitment

The recruitment process can involve a number of dangers for migrants, especially for women with little education from low-income groups who lack access to reliable and timely information. The risks include:

Excessive placement fees. Under the ILO Convention on Migration for Employment (Revised), 1949 (No. 97), public recruitment services should be provided free of charge. However, public employment agencies have played a very small role in the placement of workers for low-skill jobs, the only occupations frequently open to women migrants. Most women domestic helpers, for example, are recruited through private employment channels, which usually demand excessively high fees relative to the salaries offered for their domestic services.

Debt bondage. Because of these high fees, many female migrant workers find themselves in debt even before they start earning. Unless special assistance is provided for financing migration, they are subjected to usurious interest and extra charges from money lenders, their recruiters or employers.

Falsification of documents. In some instances, women may not even be aware that their documents – for which they have been charged and often overcharged – are forged. When they arrive in the destination country, they are apprehended by authorities who detect the fake documents.

Deception. Some women workers are enticed by false promises of well-paid jobs. They may be made to sign contracts in languages they do not understand and may unknowingly agree to limitations on their basic rights. Upon arrival in the country of employment, they are often issued with new contracts specifying lower conditions of work, pay or other clauses prejudicial to their interest.

Mail-order brides. There are countless cases of women who correspond by mail or through the Internet with men who selected them from marriage agency catalogues. In many cases, poverty and a sense of obligation to the family spur young women to take the risk of accepting marriage offers from foreigners they have never seen. Some women get lucky with men who treat them decently, but many end up as domestic workers or sex slaves for their “husbands”.

Exploitation and abuse while waiting for the job. In some countries, recruiters create a pool of job applicants who are ready to leave when jobs are offered. In one Asian country, it is reported that women applicants are made to stay in “collection centres” where they may wait for several months before being sent abroad. Abuses sometimes take place in these centres: The women are not allowed to contact their families, are given inadequate food and are sometimes subjected to exploitation.

Forced or coerced recruitment, including kidnapping or sale to illegal recruiters or traffickers. Recruiters may deliberately seek out vulnerable women and girls, such as those from ethnic minorities or very poor, uneducated communities. Some are forced or coerced to accept offers of jobs in cities or even abroad and some are sold by their family members. This may involve kidnapping and illegal transportation to an unfamiliar environment in another country.

8.3 What risks do women face while working and living abroad?

The types of discrimination, exploitation and abuse that women migrant workers may endure in the destination country include:

8.3.1 Violation of employment contracts

Women migrant workers must be fully briefed on the terms and conditions of the job they will actually do and have a formal employment contract. By having a contract, the worker has a legal basis for asserting her rights if she is in an occupation not effectively covered by labour laws. In some cases, a contract may not be enough because compliance and enforcement are a problem. If their work is not covered by the labour law of the destination country, complaints or redress mechanisms are not likely to exist.

Contract violations come in many forms. Women are sometimes recruited or hired for non-existent jobs. Once they arrive in the destination country, their passports are confiscated and they are made to perform illegal jobs, such as forced prostitution. Other violations involve clauses that trample on the women workers’ human rights or allow arbitrary termination of contracts.

In some countries in Asia, employment agencies are known to demand that women migrant workers sign a “statement of undertaking”, which may have the effect of restricting their freedom of association and movement. Some contain clauses dealing

with “immoral activities”, which reflect the negative perceptions about women migrant workers. Dress codes may be imposed, either much more restrictive in the case of domestic service or much more revealing as in the entertainment business than women would choose for themselves.

8.3.2 Discrimination and poor working and living conditions

Evidence abounds of many women migrant workers enduring discrimination and poor working and living conditions. Common problems include:

Unequal pay for work of equal value. Women migrant workers often suffer from double discrimination – first as women and second as migrants. In some countries, pay discrimination may also exist between migrant women workers from different countries of origin. For instance, in Singapore and Malaysia, Filipino domestic workers are paid more than Indonesians and Thais on the grounds that they generally possess a higher level of education and are able to communicate in English.

Withholding of wages. The practice of withholding wages for several months is common in domestic service and the entertainment business where many women migrants are employed. The employer sees this as a means of control so that a worker will not “run away”.

Very long work hours. Women migrant workers in domestic service generally have long working hours. It is very common to find them working more than 15 hours a day without compensation for overtime and to be on call to the members of the household day or night. Shorter hours of work may be specified in labour legislation, but an exception is often made for domestic services.

Work overload. Authorities in some countries of employment have found it necessary to place restrictions on the tasks that can be assigned to domestic service workers because of the tendency of some employers to ask them not only to carry out household duties at home but also to clean their business premises, waitress in restaurants, work as sales girls or work in gas stations. In addition, many are expected to provide domestic services for relatives and friends of the employer, without extra payment.

No rest or holidays. In some countries it is not uncommon for women migrant workers not to be given their weekly days off, though they may be compensated in cash or in-kind.

Inadequate food and substandard accommodation. Contracts of employment may provide for free food and lodging, but in many instances domestic service workers are given only leftover food. For live-in domestic workers, the sleeping area can be as sparse as a mattress on the kitchen floor. Workers in other types of jobs, such as in restaurants and hotels or in manufacturing industries, often are accommodated in crowded, unhygienic dormitories that offer no privacy.

8.3.3 Restrictions on movement

The withholding of migrant workers’ passports and official documents is common in some countries, a practice meant to tie them to their employers. It has been documented worldwide, including in Europe, the Middle East, East and South-East Asia, despite international Conventions against the practice. The right of a person to move freely is a human right protected by the International Covenant on Civil

and Political Rights (ICCPR), 1996. The United Nations Human Rights Committee has stressed the importance of protecting this right from “not only public but also private interference”, noting that it is very relevant for women. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families specifically prohibits limitation of freedom of movement through passport confiscation (Article 21).

With the growth of trafficking, there are more and more documented cases of women migrants kept virtually as prisoners by their employers. The means used to restrict their movement have included locks, bars and chains or, less conspicuously but no less effectively, confiscation of their passports and travel documents, threats of arrest and deportation or threats of retaliation against them or their family members.

8.3.4 Harassment and violence

Irrespective of the nature of their employment, women migrant workers tend to be vulnerable to harassment, abuse and violence. Those in domestic service or in the entertainment industry are especially at risk. In some countries, the risks exist in the workplace and on their way to and from work, on the street, in public places or in the place where they live. Harassment may be committed by agents of local authorities when the women try to access public services or when they are in detention centres after being found in an irregular situation.

Because women are generally afraid to report sexual harassment, it is most likely that ill treatment and violence against migrant women is generally understated. In Sri Lanka, 20 per cent of the complaints received were about harassment at work.²² Of the 793 migrants reporting harassment, 227 had been subjected to assault and rape. The incidence of violence against women domestic workers has been so alarming that some governments, such as Singapore, have taken strong measures to punish employers found guilty of beatings and other forms of physical violence and torture inflicted on their migrant workers. Some of these are so serious that they make headlines in the local news and the destination country authorities are pressured to take legal action. In some instances, however, migrant women fleeing abusive employers have ended up being accused of dubious crimes by their employers, arrested and even imprisoned.

8.3.5 Health and safety risks and lack of social protection

There are hazardous occupations that equally affect native as well as migrant workers, regardless of sex. Migrant women tend to be in certain hazardous occupations that require the attention of authorities. Workers in the entertainment services, for example, including prostitution, are especially at risk of being afflicted with sexually transmitted diseases and HIV/AIDS.

Compounding the risks is the lack of social protection: Migrants do not have adequate health insurance and no access to affordable and easily available health care in the country of employment. Undocumented migrants, in particular, are disqualified from the national health insurance.

²² Asian Migrant Centre and Migrant Forum in Asia: *Asian migrant yearbook 2001: Migration facts, analysis and issues in 2000* (Hong Kong, Asian Migrant Centre Ltd., 2001), Cited in ILO: *An information guide on preventing discrimination, exploitation and abuse of women migrant workers*, Gender Promotion Programme (GENPROM) (Geneva, ILO, 2003), Booklet 4.

8.3.6 Forced labour and debt bondage

The ILO Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights on Stopping Forced Labour highlights the situation of migrants in forced labour situations. Trafficking in children and women is a particularly abusive form of migration because it involves a number of serious human rights violations, including forced labour, sexual and labour exploitation, violence and abuse of the victims. People younger than 18 who migrate and end up in forced labour and exploitation are in fact “trafficked”, irrespective of whether or not they initially consented to their movement.

Even domestic service may, in certain situations, involve forced labour. In Europe, for example, the Council of Europe Parliamentary Assembly has called on the Committee of Ministers to draw up a domestic workers’ charter of rights to address the problem of domestic slavery. The Assembly drew particular attention to the fact that a considerable number of victims work for diplomats or international civil servants who, under the Vienna Convention of 1961, enjoy immunity. This modern-day form of slavery is widespread. In the United Kingdom, a Filipino NGO called KALAYAAN, which means “freedom”, has taken care of more than 4,000 domestic workers from 29 different countries: Of the total, some 84 per cent had suffered psychological stress, 54 per cent had been locked up, 38 per cent beaten and 10 per cent sexually abused. In the United States, the Institute for Policy Studies has been campaigning to address the effects of human trafficking, modern-day slavery and worker exploitation. It also assists trafficked, enslaved and exploited migrant workers to live free from forced labour, slavery and servitude.

8.3.7 Summary of the vulnerabilities of women migrant workers at different stages of the migration process

Vulnerabilities at different stages of the migration process	
Migration stage	Female migrant workers’ experiences
Recruitment and pre-departure	<ul style="list-style-type: none"> ● Falling victim to illegal recruiters and traffickers ● Cheating, harassment and extortion by agencies and brokers ● Exploitation in “training centres”
Journey	<ul style="list-style-type: none"> ● Risks attendant to clandestine entry or smuggling, including unsafe means of travel, harassment by criminal elements, being caught with false documents, etc.
Working and living abroad	<ul style="list-style-type: none"> ● Contracts being substituted with ones providing for substandard wages and working conditions, accommodation, etc. ● Violation of contract by employers and disputes over compensation and other entitlements ● In some countries, rights denied to women ● Withholding of passports and travel documents ● Lack of adequate insurance to cover medical treatment ● Delays or non-payment of wages and unauthorized deductions ● Physical, psychological or sexual abuse or violence ● Lack or absence of access to services and redress mechanisms ● Risks of detention if in irregular status or undocumented
Termination of contract	<ul style="list-style-type: none"> ● Risk of pre-mature termination of employment ● Lack of effective access to complaint and redress machinery

Return and reintegration	<ul style="list-style-type: none"> • No alternative source of income and difficulties in finding employment • In some countries, extortion by airport and customs personnel upon arrival • Family problems and adjustment • Social reintegration difficulties, particularly for survivors of violence abroad • Danger of being re-trafficked
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Source: ILO: *An information guide on preventing discrimination, exploitation and abuse of women migrant workers*, Gender Promotion Programme (GENPROM) (Geneva, ILO, 2003).

In East and South-East Asia and the Middle East, the numbers of women migrant workers who have “run away” from their employers and sought refuge or lodged complaints at their embassies or at social support organizations has become alarmingly high – so high that in countries such as Malaysia and Singapore, the governments have imposed security bonds on employers.

8.4 How should gender inequalities in migration management be addressed?

Prevention is better than cure. This principle is also valid in migration management. Piecemeal, isolated action to redress the exploitation and abuses that women migrant workers encounter is not very effective nor efficient for the concerned States or individuals. There is a need to organize migration better through the development of appropriate laws and enforcement mechanisms. Laws are needed to provide both men and women with equal chances, opportunities and treatment in migration and protect them from abuse and exploitation. In situations where women migrants face inequalities compared to male migrants, there is a specific need to redress such imbalances.

8.4.1 Ratify international instruments

As discussed in Module 5, there are international standards on fundamental human rights for migrants to guide national legislation. With respect to rights specific to women migrant workers, there are two important instruments: (i) the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 which reaffirmed that the human rights of women and the girl child are an inalienable, integral and indivisible part of universal human rights, and (ii) the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) adopted at the Fourth World Conference on Women in Beijing in 1995 and endorsed at the Copenhagen Summit for Social Development in 1995.

Migrant rights to non-discrimination and gender equality. Non-discrimination on the basis of sex and promotion of gender equality are at the core of human rights. The following principles must guide migration policies and programmes:

- Women should have the same social, economic, civil and political rights as men that cannot be taken away or denied, whatever the circumstances. All rights are equally important and interdependent;

- Promoting gender equality means giving equal chances, opportunities and treatment as well as compensating for long-term inequalities and discrimination, because equal treatment alone in situations where inequalities exist can sometimes reinforce and perpetuate inequalities;
- Priority should be accorded to protecting the poor, children and youth, women, ethnic minorities and others, who may not be able to exercise their rights;
- Legal, policy, social and institutional environments respectful of the rights and dignity of all human beings must be created through standards setting and legislation. These must also provide for appropriate enforcement and monitoring institutions and machinery to give legal effect to these rights. At the same time, individuals and groups must be empowered to claim their rights; and
- States are obliged to guarantee that private persons and institutions respect, protect, promote and ensure practical realization of human rights according to the principle of non-discrimination.

Box 16: Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights, 1948 contains the following key principles, including labour rights as part of human rights:

- Everyone is entitled to the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2);
- Everyone has the right to freedom of movement and residence within the borders of each State (Article 13.1);
- Everyone has the right to leave any country, including his or her own, and to return to his or her country (Article 13.2);
- Everyone has the right to a nationality (Article 15.1);
- No one shall be arbitrarily deprived of nationality nor denied the right to change his or her nationality (Article 15.2);
- Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (Article 23);
- Everyone who works has the right to just and favourable remuneration, ensuring for himself [herself] and his [her] family an existence worthy of human dignity and supplemented, if necessary, by other means of social protection (Article 23);
- Everyone has the right to form and to join trade unions for the protection of his or her interests (Article 23).

The United Nations Millennium Declaration, adopted by the General Assembly in September 2000, urges all UN members to “...combat all forms of violence against women and to implement the Convention on the Elimination of All Forms of Discrimination Against Women.... [and] to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in many societies and to promote greater harmony and tolerance in all societies”.

States are not only obliged, according to international human rights standards, to refrain from violating the human rights of individuals but also to take positive steps to ensure that individual women and men are able to enjoy these rights. This

includes the duty to take appropriate measures to protect individuals against human rights infringements by private persons. The mere enacting of formal legal prohibitions is not sufficient. States are, moreover, obliged to act with due diligence to prevent, investigate and punish human rights violations and to provide compensation.

Box 17: Examples of best practice regarding night and overtime work of domestic service workers

In **Denmark**, domestic workers are not to be employed for night work without a valid reason and, when employed on such work, shall be entitled to a corresponding rest period the following day. In **Finland**, night work (between 11 p.m. and 6 a.m.) may only be performed in the following cases: emergency work, standing by in readiness for work (subject to the worker's consent) and occasional work that is necessary for special and important reasons and subject to the worker's consent.

Under **South African** law, the "stand-by" period (meaning the period when a domestic worker is required to be at the workplace and is permitted to rest or sleep but must be available to work if "necessary") is allowed, but this should not be more than five times per month or 50 times per year. In **Austria**, the parties may agree to hours of work outside normal hours, daily rest and breaks, and weekly rest but only "in cases where the employer's household includes infants (i.e. children younger than 3) or where the employer or any member of the household is so disabled that he [she] needs constant attendance for which no other arrangements have been made". Such a situation shall not exceed normal hours by more than 18 hours in two consecutive weeks. To be valid, the agreement must have been set down in writing in the contract of employment.

In **France**, domestic workers' overtime cannot exceed, on average, eight hours per week in any consecutive 12-week period. In addition, overtime cannot exceed ten hours in any one week. Compensation for overtime work represents in **South Africa** a supplement of 50 per cent of the regular rate of payment and an additional increase of 100 per cent of the regular rate of payment. In **Finland**, the rate progressively increases as overtime hours worked increase.

Source: José María Ramírez-Machado: *Domestic work, conditions of work and employment: A legal perspective*, Conditions of Work and Employment Series No. 7 (Geneva, ILO, 2003) p. 27.

8.4.2 Apply a rights-based and gender perspective in policies and programmes

- Take into account the needs, constraints and opportunities of women and men in the development of legislation and management of migration.
- Carry out a gender analysis:
 - Collect and disaggregate migration data by sex to identify and assess the situation of women migrants;
 - Identify differences in occupations available to male and female migrants in the destination countries, the level of protection in sending and receiving countries and access to information and services before and during migration; and
 - Review the capacities of existing institutions and mechanisms to promote gender equality and end all forms of discrimination in migration.

- Address gender inequalities in migration through gender planning:
 - Extend labour and migrant legislation to sectors and occupations in which women migrants predominate;
 - Provide equal opportunities and treatment to men and women migrants by abolishing protective measures for women that restrict their entry into productive and safe migrant work;
 - Revise legislation in receiving countries that restricts rather than protects women migrants;
 - Involve gender experts and women in decision-making processes related to the development of legislation and management of migration;
 - Employ more women in the administration of migration;
 - Make immigration officers and employers more aware of the fundamental human and workers' rights of women; and
 - Avoid victimization and criminalization of migrants who end up in illegal or forced labour situations.

Exercise 6

Actions at various stages of the migration process

Because discrimination, exploitation and abuse of women migrant workers are not isolated acts but a “multilayered string of events” involving many actors at the various stages of the migration process, countries of origin, transit and destination need to take action – nationally, bilaterally and within regional and international frameworks.

Participants are divided into three groups and asked to consider the following questions. What are the most important actions that should be taken by various actors, and why?

Group 1: Government as actor

Group 2: Employers' organizations as actor

Group 3: Trade unions as actor

Review

Having completed Module 8, each participant should feel confident that he or she can discuss the following:

- There are important differences between the conditions of employment of men and women migrant workers that are due to discrimination and not to the nature of the work.
- Working abroad creates more risks for women than working at home.

Session Guide

Objectives

By the end of this session, participants will be:

- Familiar with the main patterns of trafficking and why the phenomenon is growing;
- Familiar with what international and multilateral treaties provide for combating trafficking; and
- Able to appreciate what measures can be taken by various groups at different levels to address the problem.

Methodology

- Presentation
- Group discussion

Duration

Three hours (one session of presentation and general discussion; one hour of group discussion; half an hour for review).

Session guide

- Session starts with a presentation of the patterns of trafficking, the concept used to describe it and the methods typically used by traffickers;
- Group discussion of how these patterns can be observed in different parts of the region;
- Presentation of international Conventions and Protocols on trafficking; and
- General discussion of approaches needed to deal with the problem at different levels.

Suggested reading

- Ma. Alcestis Abrera-Mangahas: "The trafficking of children for labour and sexual exploitation: An overview presentation of the situation and ILO responses, The movement of young people into exploitative employment: The trafficking of children in Asia", Report for the ILO-Japan Asian Meeting on the Trafficking of Children for Labour and Sexual Exploitation, 11-12 October 2001, CD-ROM.
- Kane Boonpala: *Unbearable to the human heart: Child trafficking and action to eliminate it* (Geneva, ILO, 2002).

9.1 What is human trafficking?

Although the term trafficking has been in use for many years in several international Conventions, the first international legally binding definition of trafficking was only formulated in November 2000. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing The United Nations Convention Against Transnational Organized Crime defines “trafficking” as:

“...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.

To establish a case of trafficking, three elements must be present:

First: An *action*, which may include any of the following activities – recruitment, transfer or receipt of persons;

Second: The *means used* covers the use of force, coercion or abduction as well as fraud, deception, abuse of power and abuse of a position of vulnerability. The giving or receiving of payments or benefits to achieve the consent of a person having control over another person is included in the definition;

Third: The *purpose is exploitation*. The protocol specifically defines exploitation to include several possible situations and is not limited to sexual exploitation.

For children, defined as persons younger than 18 years, the Trafficking Protocol specifies that the *action* and the *purpose* are sufficient to establish a case of trafficking. If a child is recruited or transported or received for the purpose of exploitation, “trafficking in persons” is deemed to have taken place.

Coercion may not be evident at the beginning of the trafficking process. A person may enter into an agreement with a recruiting agent on a seemingly *voluntary* basis. In most instances this may be because they have not been given full information. The coercion may surface later or only upon reaching the destination, and this may consist of physical restrictions on freedom of movement, abuse, violence and fraud.

Though the concept of forced labour has been well established since the ILO Forced Labour Convention, 1930 (No. 29), it was mainly associated with prison labour. Today, trafficking as a form of forced labour is characterized by:

- Lack of freedom to leave and change employment due to physical captivity or psychological coercion;
- Use of physical violence or threats;
- Absence of power to negotiate working conditions, including payment of wages, hours of work, leave days and others;
- Non-payment of wages or unreasonable wage deductions; and
- Control by recruiter or employer of personal documents, such as passports or other identity documents and travel tickets.

9.1.1 Trafficking versus human smuggling

Smuggling refers to the facilitated, illegal movement of persons across national borders for profit. Compared to trafficking, smuggling may involve no coercion or exploitation whatsoever. The smuggled person, desiring to reach a destination country where legal channels of migration have been blocked, may enter into an entirely consensual contract to achieve clandestine or irregular migration. Human smuggling constitutes an illegal border crossing and is therefore a violation against the laws of a State. In contrast, human trafficking is a violation of the rights of the individual, as the victims of the crime are the trafficked persons. Unlike smuggled migrants, most of the victims of trafficking come from the poorest, most marginalized communities and families unlike the smuggled migrant who is often able to pay cash up front for the services of the smugglers.

9.1.2 Trafficking of children

The immense harm that trafficked children may suffer and their greater vulnerability to exploitation compared to adults require that special laws, policies, programmes and interventions be adopted for their protection. Coercion, deception, abuses and the trauma of being trafficked are bound to have a profound negative impact on their development. Laws and policies to protect them from being trafficked must contain the principle that trafficked children should not be criminalized. Children have special rights under international law, in particular the UN Convention on the Rights of the Child, 1989 and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182).

9.2 What are the common characteristics and patterns of trafficking in children and young women?

The hidden and invisible nature of trafficking makes it difficult to estimate its dimensions. However, ILO studies show consistent patterns and trends:

9.2.1 Source areas and destinations

In Asia, a growing number of young people are being trafficked both *within* and *across* borders. Young girls from Bangladesh, Pakistan, Sri Lanka and Nepal are taken to India. Young boys from Sri Lanka, India and Nepal are shuttled to the Middle East. In the Greater Mekong Subregion, internal trafficking of young boys and girls has been much in evidence in Cambodia, Thailand and Viet Nam. Young people, both boys and girls, coming from Myanmar, Lao People's Democratic Republic and Cambodia seek employment in Thailand but are trafficked along the way. Young girls from Lao People's Democratic Republic and Viet Nam are sent to China, while young women from Thailand and the Philippines are taken to Japan.

9.2.2 Types of work situations

Because it has received much attention in recent research, there is a widespread perception that the trafficking of girls for sexual exploitation is growing in South and South-East Asia much faster than other forms of trafficking. There is, however, evidence that trafficking of young people for exploitation in other forms of work, including domestic service, work in plantations and family farms, construction sites and small informal production workshops is equally widespread and deserves attention.

9.2.3 The trafficking syndicates

Trafficking is carried out by well-organized syndicates, typically involving complex networks or channels. The recruitment of children takes many varied forms; their transfer and their ultimate exploitation involves multiple agents or individuals, which can be recruiters, brokers, family members or even law enforcement officials. These actors do not necessarily know each other. There is evidence that organized trafficking networks are increasing and that drug smuggling networks are expanding their activities to include the trade in humans because of higher profitability and less danger.

9.2.4 Stages of trafficking

There are recognizable patterns in the trafficking that may be viewed as three consecutive stages in a cycle:

Stage 1: The process of mobilization when migrants are recruited using the following strategies:

By force, coercion or fraud

Coercion may not be evident at the beginning of the trafficking process. Many people enter into an agreement with the recruiting agent on an apparently voluntary basis, albeit often without having been given full information. Some may even seek out the recruiters and willingly pay for travel documents because they believe that relocation for employment is beneficial and they are enticed by those returning with tales of a better life and higher incomes. However, for the larger majority, human traffickers rely on the use of force, coercion or trickery, and, not infrequently, with complicity by family relations. There are some who are kidnapped outright in one country and taken forcibly to another, but nowadays these cases are few. Ethnic minority groups are often the most likely to be targeted by traffickers because they usually lack identification or citizenship papers. This situation may be aggravated by their isolation, either due to a language barrier or the lack of education. There could be complicity with family members. This happens where traffickers make an outright “purchase” of the victim or advance loans to the family to be paid back later by the victim who is taken abroad. Those exposed to domestic violence also are more likely to be trafficked.

Victims are lured with false promises of good-paying jobs in foreign countries, sometimes advertised in the local media. Sometimes, the victims are lured with false promises of marriage opportunities. Crime syndicates use marriage agencies, mail-order bride agencies and matchmaking parties or the Internet to find their victims. Traffickers may even enter into false marriages with their victims. After providing transportation and false documents, traffickers subsequently charge exorbitant fees for those services, creating debt bondage.

Among those most vulnerable to being trafficked are women working in the sex industry in their home countries. Most of these women came from the poorest parts of their countries. They work for pimps, are moved from one place to another, sold to other pimps or kidnapped by them.

Use of false documentation

There are elaborate systems for providing migrants with forged documents at different points of the journey. These include:

- Falsified passports and entry visas;
- Fake marriage certificates;
- False work contracts;
- False documents relating to studies at universities and colleges or “language schools”;
- Forged requests for family reunion; and
- Forged documents with regard to seeking medical treatment in a country.

Stage 2: Illegal crossing of borders

The time between departure from origin and arrival in the final destination may take several months or even years, and the destination country is often decided by the traffickers who look for the weak links in migration control systems. Forged identity and travel papers make the trafficking victims more difficult to trace and leave them in a situation of illegal migration, in fear of detection and vulnerable to threats and continued coercion.

An essential component of the trafficking cycle is the movement or transport involved in placing the victims in an unfamiliar milieu where they are often culturally, linguistically or physically isolated, away from family and friends and other sources of protection and support and denied legal identity or access to justice. Such dislocation increases vulnerability to abuse, violence and exploitation by traffickers and even by some corrupt police officers.

Stage 3: The harbouring of migrants under coercive, exploitative or forced labour conditions

Once the victims reach destination countries, their passports are confiscated and their money taken away. Their promised jobs do not materialize and wages are not paid. Instead, they frequently find themselves in slave-like conditions, particularly those in prostitution. The same fate also falls from time to time on those in domestic service and sweatshops. Trafficking victims often are subjected to mental and physical abuse to keep them in servitude, including beatings, rape, starvation, forced drug use, physical restraint, confinement and seclusion. The victims feel trapped because of their situation as undocumented immigrants. Where costs are onerous, little difference may exist between the conditions of those who pay to be “smuggled” into another country and those who are “trafficked”.

9.3 What are the common causes of trafficking?

More is needed to address the failures of globalization to create jobs where people live. In fact, globalization has been faulted for loss of livelihoods and the widening of wage and income differentials between regions. These factors combine with the growth of the informal economy where working conditions are only accepted by workers who have no access to protection. The demand for trafficked persons does not appear in sectors where workers are well unionized or where labour standards are routinely monitored.

It is the demand from employers seeking to maximize profits with cheap, pliant labour and from sex industry customers that actually *cause* trafficking to take place. Without a demand, or even the *perception* of a demand among unscrupulous facilitators, and exploitation in the job, there would not be any trafficking. However, there are many factors in home countries, along migration routes and in the destination countries that enable the trafficking process to take place.

9.3.1 Supply-side factors that create people's vulnerability to being trafficked

Poverty and indebtedness. Children who have been trafficked usually come from poor rural families. However, poverty is seldom sufficient to explain the phenomenon. Several factors combine to prompt young people to put themselves in positions where they may be exploited. Family indebtedness is a common cause.

Gender bias and traditions. Gender biases and cultural traditions play a big role in children's susceptibility to trafficking. There is gender-based discrimination in the labour market, which makes finding jobs difficult for women, but they may be under strong pressure, even at young ages, to contribute to the family finances. More frequently, there is a relationship between trafficking and problems in the family, be it divorce, death of a parent, an alcoholic parent or physical or sexual abuse. Family dysfunction or personal problems may have far more impact – than previously realized – as the factor that triggers a woman or child to put herself (or himself) in a channel where she is highly vulnerable to being trafficked.

Attraction of the city lights. As the mass media reaches remote areas and more young people catch a glimpse of the culture and lifestyle of other places, "boredom in the village" may set in. Cities look more attractive with perceived opportunities and people, both children and young adults, leave their home and end up in channels or situations that also increase their vulnerability to being trafficked.

9.3.2 Demand-side factors that cause trafficking

Demand for cheap and obedient labour. Generally, labour trafficking persists because there are employers who benefit from employing cheap labour. While all migrant workers in an irregular status generally receive lower wages than national workers, it is especially worse for women and children who are coerced into working under conditions in the workplace that are well below the standards required by law.

Preference for sex with children and young women. As for commercial sexual exploitation, there is a premium paid for young girls for health reasons related to the HIV/AIDS scare, paedophilia and because of male myths about virility. Paedophiles also seek boys; in some countries there is a greater paedophilia-preying problem among boys than girls.

Weak laws and law enforcement. Trafficking channels flourish because there may be no laws against them, or what is more often the case, the laws exist but enforcement is weak and officials can be corrupted. Some authorities directly benefit by being owners of establishments or they simply take bribes to ignore the situation. Weak enforcement may, however, also be due to the lack of personnel and funding of law enforcement.

9.3.3 Other facilitating factors

Elements that facilitate trafficking include:

- Growth of the commercial business profiting from the movement and use of people;
- High costs of legal migration channels;
- Entry of organized criminal networks; and
- Low levels of education among both parents and the children.

9.4 What is the response of the international community to human trafficking?

The crime of human trafficking has become a high profile issue in many countries, with policies tending to gravitate toward a criminal approach, on one hand, or toward a human rights or protection approach, on the other. The two approaches are inherently linked and both are essential to prevent and combat the trafficking of humans.

Experience shows that criminal law and human rights standards have strong complementary roles. The targeting of organized crime and related criminal activities is an essential step to combat this human rights violation, but it is equally important to promote wide awareness, strengthen law enforcement and judicial systems and put in place an effective system of victim protection and reintegration.

ILO response to these complex problems covers a variety of normative as well as technical cooperation activities aimed at eliminating root causes, promoting cooperation among States and strengthening capacities of its tripartite constituents to deal with the problems. In addition to its global programmes on child labour and on forced labour, the ILO also provides:

- Advice concerning regulation of the activities of private placement agencies and other institutions recruiting for jobs abroad by assisting in the development of an enforceable system of licensing and regularly monitoring their activities;
- Support for the creation of an efficient labour market information system about work opportunities, both at home and abroad;
- Advice on gender-sensitive employment and training programmes especially targeted at reducing or preventing the trafficking in women and providing reintegration options to those already trafficked; and
- Advice on monitoring labour markets and working conditions for migrants in countries of destination.

9.4.1 International standards

Several ILO Conventions place obligations on member States to combat trafficking in order to suppress forced labour, abolish the worst forms of child labour, ensure equal treatment of migrant workers and promote gender equity. These were reinforced by the adoption of the Declaration of Fundamental Principles, as the four fundamental Conventions contained in it are directly concerned with the issue:

In the case of children, the UN Convention on the Rights of the Child (Article 32) stipulates the “right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”. Article 34 states the need, “To protect the child from all forms of sexual exploitation and sexual abuse (including) the inducement or coercion of a child to engage in prostitution or other unlawful sexual practices”.

ILO Convention No. 182 on the worst forms of child labour is an important instrument in the fight against the trafficking of children. It covers all forms of slavery, or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour. Underlining the gravity of the problem and the urgency of eliminating it altogether, the Convention commits States to “the prohibition and immediate action for the elimination of the worst forms of child labour”.

The ILO migrant worker Conventions urge member States to take measures to combat clandestine forms of labour migration while guaranteeing equal treatment for those in regular status. Several ILO Conventions concerned with working conditions seek to eliminate the forced labour into which persons are trafficked. To give practical effect to these international standards, the ILO has a supervisory mechanism that can be activated by any of the tripartite constituents through long-established procedures (see Module 5).

9.4.2 Enhancing capacities for managing migration

The ILO contributes to the elimination of human trafficking through a number of activities, such as:

- Assisting governments to enhance capacities for managing migration;
- Promoting tripartite action or the involvement of social partners in protecting the basic rights of all workers and working to eliminate the worst forms of child labour;
- Improving the inspection and monitoring of working conditions in sectors prone to “irregular employment”; and
- Finding better jobs for women.

The ILO’s programme to combat trafficking is not limited to sexual exploitation but also focuses on labour exploitation in agriculture, construction, tourism, unskilled manufacturing and low-wage services, such as domestic labour and home health care.

9.4.3 Addressing a comprehensive strategy

While police and judicial action to stop trafficking will go a long way to reduce the problem, it is clear that failures of the global economic order that give rise to migration pressures need to be addressed at the same time. In countries of origin, the ILO’s programme is directed first and foremost at boosting productive employment. Complementary strategies include promoting bilateral agreements between countries of origin and destination, enhancing government capacities for supervising recruitment and promoting skills development. In destination countries, the programme is directed at encouraging better planning of migration policy

(especially in middle-income countries), assessing long-term deficits in the labour market, establishing safe channels for labour migration and promoting decent work and equal treatment of foreign workers. At the core of its programme is the idea that good governance of international migration is essential to protecting the rights of migrant workers. The ILO report for the International Labour Conference in 2004, *Towards a fair deal for migrant workers in the global economy*, called for “strengthening measures to combat trafficking in children and adults focused on protection, prevention and prosecution, including provision of access to regular labour migration channels and for decent work and social protection alternatives in origin countries”.

9.4.4 Involving social partners

In several Asian countries, trade unions have played an important role in protecting victims of trafficking as well as irregular migrants. They have assisted victims in obtaining redress even after deportation or repatriation. Employers’ organizations, as part of their commitment to the Decent Work Agenda, are becoming actively involved in preventing irregular recruitment and curtailing human trafficking and forced labour at the national level. They have, for example, helped monitor the activities of employment agencies in origin and destination countries to ensure they do not collude with criminal trafficking activities.

9.5 What specific counter-trafficking measures should be taken?

Because trafficking is a multiphased problem, all countries of origin, transit and destination in the trafficking cycle should be involved in comprehensive responses that cover the following key areas:

Laws. Most Asian countries have laws forbidding the trafficking of persons, and some are revising their legislation to bring it more in line with international Conventions and to the changing dimensions of the problem. For instance, some countries are defining trafficking beyond those intended for sexual exploitation. Unfortunately, most laws treat the young people involved as criminals rather than as victims. People working with trafficked children need to be concerned with protecting the basic rights of the children. In Asia, the scope of national action plans needs to be enlarged to cover all forms of exploitative employment – and not only the sexual exploitation of children.

Institutional mechanisms. In Asia, several countries have set up national committees and task forces to bring about a greater coordination and consolidation of national efforts against the trafficking of children and women.

Bilateral and regional cooperation. Trafficking affects at least two countries, two systems of law enforcement and two systems of protection. It is clear that governments need to work together if they are to suppress trafficking and its networks. In pursuing and prosecuting traffickers, there is a greater need for cooperation among law enforcement agencies. Bilateral agreements are needed in establishing proper repatriation systems. Thailand and Cambodia have, for example, entered into a memorandum of understanding on trafficking that is primarily focused on the recovery and repatriation of trafficked persons. Thailand and Lao People’s Democratic Republic have signed a similar memorandum.

In mid 2003, six Asian governments in the Greater Mekong Subregion initiated an inter-governmental process to develop a coordinated response to human trafficking. This response, known as the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT), signed by all six member States is expected to lead to a subregional MOU.

Awareness raising. Trafficking is a labour issue and needs to be covered by labour law, even if laws are unlikely to be sufficient on their own. Advocacy and awareness raising efforts are critical for creating a critical mass of public opinion and support for work against the trafficking of children and women. The tripartite partners – labour ministries, employers’ organizations and trade unions – need to work closely with each other to reduce, if not eliminate, the market for trafficked workers.

Civil society groups can encourage communities to take a more active role in the protection of vulnerable children. One example of where they can be very helpful is in organizing “vigilance committees” that operate hotlines for reporting trafficking. However, communities first need to be convinced that child labour, at least exploitative child labour, defies child rights and is intolerable.

Complementary approaches. Campaigns linking awareness raising with income-generating schemes and access to credit, education and other services have proven effective. Examples include programmes that:

- Introduce “community watch” systems and improve young people’s access to education;
- Provide economic opportunities closer to home for their parents;
- Inform families and communities about child rights and the reality of the work being offered to youth thus reducing their need to leave home, at least for economic reasons; and
- Change community attitudes or cultural practices that reinforce or perpetuate trafficking in children and women.

“Community watch” systems and child labour monitoring systems in border communities also are promising approaches. There are innovative programmes for training boat, bus and taxi drivers, hotel staff and “truck stop” workers to be alert to potentially trafficked children. They hand out information on services that victims can access, such as “quick action teams” that respond to information on the organized or syndicated movement of children and young people for jobs.

9.6 Protecting children and young women at risk

Many people who have been trafficked continue to be treated in some countries as criminals and are put in detention centres or immediately deported and abandoned at the borders where they are, again, easy targets for other traffickers or additional abuse. Rehabilitation or temporary rescue shelters, where they exist, are generally overcrowded, inadequately funded, poorly supplied and lacking social workers, especially ones who can speak the victim’s language. There are many reports of rescued girls who escape from these “shelters” due to risks of being sexually abused. Some who are emotionally traumatized need a professional counsellor who speaks their language.

Repatriation can be an area of contention between countries, highlighting the need for dialogue and discussion on the ways children can be helped and protected.

Victims should be provided with safe, voluntary and timely repatriation to their origin communities and assistance with reintegration into society. However, some cases might require alternatives to repatriation to protect the child's best interests.

Finally, the reintegration of formerly trafficked children and women ought to be monitored and, in some instances, the communities to which they return need to be assisted so that they can provide a welcoming and supportive environment.

Box 18: Best practice examples on how to protect the victims of trafficking

The United States T visa

The United States Trafficking Victims Protection Act of 2000, states that victims of trafficking may receive a so-called "T" visa, if they (i) comply with any reasonable request for assistance in the investigation or prosecution of the traffickers (not required if the person is younger than 15 years old) and (ii) would suffer extreme hardships involving unusual and severe harm upon removal from the United States. The visa is for a period of three years, at the end of which T visa holders may, if they want, apply for permanent residence, provided that they:

- Have been physically present in the United States for a continuous period of at least three years since the date of receiving the T visa;
- Have been a person of "good moral character" during that period; and
- Complied with any reasonable request for assistance in the investigation or prosecution or would suffer extreme hardship involving unusual and severe harm upon removal from the United States.

The number of T visas and permanent visas are each limited to 5,000 per year, excluding family members. The T visa requires compliance with a "reasonable request for assistance" and proof of extreme hardship. This reflects the nature of the T visa – its purpose is not just to aid the prosecution but also to protect the trafficking victim.

Italy's Article 18

Enacted in 1998, Article 18 of the Law 286/98 provides for a special residence permit to women victims of trafficking, irrespective of their willingness to denounce the exploiters. The residence permit has a validity of six months, with possibility for renewal of up to a year. The special residence permit for social protection can be given in the following cases:

- Whenever a woman is in danger "because of attempts to free herself from the subjugation of a criminal association"; and
- Whenever a woman is in danger after having given testimony against exploiters during penal proceedings.

The special residence permit is not co-terminus with the time necessary to prosecute and conclude the criminal proceedings and can be converted into a regular residence permit for the purpose of employment.

9.7 Prosecuting perpetrators

In most countries, prosecution is probably the weakest part of the whole anti-trafficking programme. The main obstacles are:

- Lack of political will;
- Absence of anti-trafficking legislation;
- Failure to apply relevant existing law because enforcement is weakened by corruption;
- Inadequacy of knowledge or understanding of anti-trafficking legislation;
- Lack of training for the police and judiciary;
- Problems with using written testimonies by the victims of trafficking as evidence in court;
- Absence security for witnesses; and
- Lack of international cooperation and exchange of information.

To overcome these obstacles and improve prosecution of traffickers, authorities could consider the following:

- Policy measures should be directly targeted at stopping the practices or the perpetrators of trafficking.
- Very often, young people caught up in trafficking are immediately deported and thus have little, if any, opportunity to press charges. They should be given protection and a chance to stay in the country to pursue a legal retribution.
- Criminal law has greater effect where it includes comprehensive safeguards for witnesses and victims. These measures range from confidentiality, legal assistance, provision of appropriate and secure environments for groups at risk to specific measures against the stigmatization of victims. Regularization of status should include compassion. Above all, procedures affecting them must consider the best interests of the child.

9.8 Participation and partnerships

What is striking in policy and programme discussions on trafficking and migration is the relative absence of the voices of those who are most affected by the problem. It is essential that in defining the problems of trafficking and irregular migration at both the national and local levels that there is a concerted effort to bring key stakeholders and programme beneficiaries into the search for solutions.

The involvement of the community, especially young people, is essential in ensuring the effectiveness of interventions. They can play an indispensable role in building knowledge and awareness.

Given the multifaceted nature of trafficking and its solutions, responsibilities extend to the work of multiple departments, usually ministries of social affairs, labour, justice, home affairs, foreign affairs and those with special responsibility for women's and children's affairs.

International organizations

There has been a renewed effort by several international organizations to move against trafficking of persons, particularly women and children. The ILO is part of the growing global and regional efforts of UNICEF, UNDP, International Organization for Migration (IOM), the United Nations Development Fund for Women (UNIFEM) and the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP). Each agency brings its own strengths to the global movement against trafficking.

Review

Having completed Module 9, each participant should feel confident that he or she can discuss the following:

- Two approaches are essential in stopping the trafficking of children: One is to fight organized crimes involved in the activity and the other is to protect the victims.
- There is a need to change attitudes if we are to succeed in reducing the market for trafficked women and children for sexual exploitation.

Session Guide

Objectives

At the end of the module the participants are expected to:

- Identify information needs for labour migration policy and management;
- Acquire basic knowledge on data sources;
- Learn about concepts and definitions for migration statistics;
- Obtain a list of major international sources; and
- Identify basic steps in setting up an information system.

Methodology

- Presentation and discussion
- Exercises

Duration

Two and a half hours (one session of presentation and general discussion, one hour of exercise; half an hour for review).

Session guide

- The session will begin with a brief overview of a labour market information system for international labour migration.
- There will then be an activity in which participants will be asked to develop an inventory of country migration information.
- The participants will then share information about existing information and key gaps.
- Based on the information inventory, the participants will be asked to identify key limitations in existing data, together with some ideas for improving the information system.

Suggested reading and references

- R.E. Bilsborrow, G. Hugo, A.S. Oberai and H. Zlotnik: *International migration statistics: Guidelines for improving data collection systems* (Geneva, ILO, 1997).
- E. Hoffman and Lawrence, S.: *Statistics on international labour migration: A review of sources and methodological issues* (Geneva, ILO, 1996).

10.1 Why do we need migration information?

Migration information is a subset of broader labour market information, involving both qualitative information, such as laws, regulations, Conventions and reports, and quantitative information in the form of statistics, figures and charts. The analysis of information about migration should be part of a mechanism that informs policy, including developments, trends and costs. It can be used to formulate, implement, monitor and evaluate policies.

Migration information can be used to monitor the numbers and characteristics of foreign workers, including the length of stay. Policy makers need information to assess the impact of foreign workers on the receiving country as well as the working and living conditions for migrant workers and their families. Information is required to assess the effectiveness of public employment and immigration services. There is also a need for studies to evaluate the effectiveness of policies in terms of human resources and national development.

While employment abroad creates jobs and generates remittances, it can lead to exploitation, discrimination and abuse of migrant workers. It also raises issues about education and training, including the so-called “brain drain”. Improved information can support better policies for sending workers abroad.

The following is a list of some of the reasons that we need information about labour migration:²³

- Contributing to informed debates on international labour migration policies at all levels – national, regional and international;
- Protecting migrant workers and victims of trafficking more effectively and ensuring compliance with international standards;
- Supporting better migration management and administration;
- Assisting migrants to help themselves;
- Fighting racism, xenophobia and stereotyping of migrant workers;
- Promoting the integration of migration issues into national development planning and poverty-reduction strategies; and
- Targeting policies that relate to aid, trade and development in order to reduce migration pressures.

10.2 What types of information are needed for developing migration policies?

The information needs vary according to the requirements of sending and receiving countries. Among the many and complex needs are the following:²⁴

²³ From Piyasiri Wickramasekara: “Migration data and statistics: Guidelines”, Presentation at National Tripartite Workshop on Labour Migration Policy, Legislation and Administration in the Prevention of Trafficking in Women in Albania, Tirana, Albania, 3-4 March 2004.

²⁴ See Piyasiri Wickramasekara: “Migration data and statistics: Guidelines”, Presentation at National Tripartite Workshop on Labour Migration Policy, Legislation and Administration in the Prevention of Trafficking in Women in Albania, Tirana, Albania, 3-4 March 2004.

Origin countries

- Overseas markets and demand for workers by sectors and occupation;
- Numbers and profiles of workers leaving the country;
- Channels of recruitment and profiles of recruitment agencies;
- Conditions of work for nationals abroad;
- Stock of national migrant workers abroad and their profiles;
- Remittances from workers abroad;
- Impact of emigration on the local labour market and human resources; and
- Return migration and circulation.

Host countries

- Labour market shortages in different sectors and for different skills;
- Numbers and profiles of foreign workers admitted under different programmes;
- Growth of irregular migration, including trafficking;
- Absorption into employment of foreign workers in different sectors and regions;
- Impact of foreign workers on the local labour market, including employment, labour force participation of different groups, wages and working conditions;
- Impact of foreign workers on public revenues and public expenditures;
- Impact of labour immigration on the distribution of income; and
- Targets for social protection and integration policies and programmes.

10.3 What types of information do migrant workers need?²⁵

Before accepting an offer, migrant workers need information about:

- Names and addresses of state employment services and licensed agencies;
- Names of blacklisted foreign employers and their agents and recruiters;
- Wage standards in destination countries;
- Skills-testing procedures and fees;
- Health examination services and fees;
- Clear guidelines on procedures for obtaining emigration clearances;
- Description of prohibited recruitment practices;
- List of countries where overseas work is discouraged or banned;
- Average cost of transport to various destination countries; and
- Recruitment fees normally charged by agents.

After accepting an offer, migrant workers need information about:

- General working and living conditions in specific countries of destination;
- Worker complaints and contract violations;
- Conditions of admission and stay under immigration laws and bilateral agreements;

²⁵ See Manolo Abella: *Sending workers abroad: A manual for low- and middle-income countries* (Geneva, ILO, 1997).

- Names and addresses of national administrative bodies that oversee conditions of migrant workers in countries of employment;
- Procedures and facilities for sending remittances of earnings;
- Services for migrants and their families in countries of employment, including schooling and medical care; and
- Addresses of diplomatic missions and labour attachés that can provide assistance to migrant workers.

10.4 What types of information are needed in regulating recruitment?

National authorities in charge of regulating recruitment also need information that will enable them to assess how effectively they are curbing abuses and malpractices, and to see how well migrant workers are doing in their employment abroad. More specifically, they need information on:

- Licensed agencies, their performance and record of placements, foreign employers they represent and management profile;
- Profile of workers who have registered their employment contracts, their qualifications, home address and address of employers abroad;
- Conditions of employment in different countries of employment, as reflected in registered contracts and reports of labour attachés;
- Complaints of abuses and ill-treatment of nationals working abroad and action taken to defend their rights; and
- Policies on admission of foreign workers in different countries.

10.5 What are the major sources of migration information?

Information about international migration is generally obtained from administrative records, sample surveys and population censuses.

Qualitative information

- Laws and regulations
- Diplomatic missions and labour attachés
- Government reports
- Academic studies
- International labour standards – Conventions and Recommendations
- Documents and reports of international organizations
- Newspaper articles
- Interviews with key informants
- Focus groups

Quantitative information

Migration statistics come from administrative records, household-based censuses and surveys and establishment-based censuses and surveys. A census is based on a count of all units in a particular category or population, whereas a survey is based on a sample of the population.

Administrative records

Statistics can be obtained from various administrative processes of keeping records and preparing reports for employment of foreign workers. These are necessary to carry out vacancy tests, register candidates abroad, bring foreign workers into the country, give employers permission to employ foreign workers and license private recruitment agents. Such records and reports can provide information for assessing policies for employing foreign workers. Data collected from administrative records are produced as a by-product of the regular functions of an agency or institution. In the process of its work, an organization may record and register information related to its laws and procedures. Administrative records are a source of individual information about foreign workers, such as sex, age, education and dates for entry into the country, registration with the labour market and registration with residence authorities.

Unemployment statistics, housing information and school records also can provide potentially useful information to assess migration policies.²⁶ Administrative records can be used to obtain information about nationals working abroad. These include records for exit permits, border registrations, insurance schemes and recruitment agencies. However, there are drawbacks in using migration information from administrative records. These include the fact that: (i) different countries may use different definitions and data-gathering tools; (ii) the main purpose of data collection is for administrative purposes that may be quite different from the intended use as migration statistics; (iii) administrative records may miss certain migration information, given the greater mobility of workers across borders with the liberalization of travel and cheaper transport, especially within economic integration areas; (iv) lack of coordination among the different national agencies collecting data; (v) administrative data are not always updated and disseminated on a timely basis; and (vi) official statistics from administrative sources may fail to capture irregular migration, working conditions and other information needed for migration policy.

Sample surveys

Two kinds of surveys used to obtain labour statistics are household-based surveys and establishment-based surveys. The difference is based on the unit that answers questions – households or businesses. Household-based surveys include labour force surveys, income and expenditure surveys, living standards measurement surveys, socioeconomic surveys, multipurpose surveys and special migration surveys. The types of data collected are demographic information, employment, unemployment, underemployment, inactivity and other. The advantages of these types of surveys are being able to measure socioeconomic conditions that are not captured elsewhere and the use of statistical methods for estimating degrees of accuracy. Disadvantages may be the expense and the limitations on information

²⁶ See W.R. Böhning: *Employing foreign workers: A manual on policies and procedures of special interest to middle- and low-income countries* (Geneva, ILO, 1996).

that can be obtained through interviews. Examples of establishment surveys are those designed to collect data on employment issues and industrial production. They collect statistics for employees, wages, vacancies, labour turnover and other concepts. Disadvantages are that they often include only the formal sector and large enterprises or exclude certain sectors, such as agriculture and services. Establishment-based surveys may not cover casual labour and temporary workers.

Population censuses

Population censuses can be a useful source of migration information if specific questions are included to ask about foreign workers and household members with overseas employment. A major limitation is that they are generally conducted infrequently, every five or ten years, and the data processing generally takes between one to three years. This makes it difficult to obtain information about changes in the flows of migrants and policies for migration. In addition, the census may not cover irregular migrants.

10.6 Some concepts and definitions of migrant workers

Some basic concepts

- *Migrant worker.* Defined in the ILO instruments as a person who migrates from one country to another with a view to being employed otherwise than on his or her own account. Some countries, however, define the migrant workers as persons admitted to a country other than their own for the explicit purpose of exercising an economic activity. The latter definition would thus include the self-employed. While some may migrate permanently, most are usually admitted for only a limited period though the permission to stay and exercise an economic activity may be extended.
- *Smuggling of migrants.* This is the facilitation of the illegal entry of a person into a State of which the person is not a national or a permanent resident, to obtain, directly or indirectly, a financial or material benefit.²⁷
- *Trafficking of persons.* The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons defines it as “..the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat or use of force or other forms of coercion, of abduction, of fraud, deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.
- *Country of usual residence.* The country in which a person has a place to live and normally spends the daily period of rest. Temporary travel abroad for purposes of recreation, holiday, visits to friends and relatives, business, medical treatment or religious pilgrimage does not change a person’s country of usual residence.
- *Short-term migrant.*²⁸ A person who moves to a country other than that of his or her usual residence for a period of at least three months but less than a year (12 months), except in cases of temporary travel to that country. For purposes

²⁷ These were formally defined in Module 9.

²⁸ These definitions are based on the recommendations of the UN Committee on Migration Statistics.

of international migration statistics, the country of usual residence of short-term migrants is considered to be the country of destination during the period they spend in it.

- *Long-term migrant.* A person who moves to a country other than that of his or her usual residence for the period of at least a year (12 months), so that the country of destination effectively becomes his or her new county of usual residence. From the perspective of the country of departure, the person will be a long-term emigrant and from the standpoint of the county of arrival, the person will be a long-term immigrant.

Some basic characteristics:

General information

- Age
- Sex
- Address or locality
- Citizenship
- Educational attainment
- Marital status

Employment information

- Occupation
- Industry
- Status in employment
- Type of work contract
- Length of previous work in receiving country

Other information

- Capacity to use language in receiving country
- Date of arrival in receiving country
- Length of current stay in receiving country
- Type of family situation
- Type of living situation

10.7 What are sources of information for stocks and flows of migrant workers?²⁹

Stocks versus flows

Flows refer to the number of persons moving or being authorized to move to or from a country to access employment during a period of time, such as between 1 January and 31 December. Outflows are those citizens who, during a particular

²⁹ See E. Hoffman and Lawrence, S.: *Statistics on international labour migration: A review of sources and methodological issues* (Geneva, ILO, 1996).

reference period, left the country with the objective of taking up employment in another country. Inflows are those foreign citizens who, during a particular reference period, arrived in the country with the objective of taking up employment there. Stocks refer to the number of persons counted as residing in a country at a particular point in time.

Information for outflows

- Exit or emigration visas
- Permissions to work abroad
- Members of special insurance schemes
- Reports from recruitment agencies
- Other administrative registrations, such as border exit registrations, reports to tax and social security authorities
- Household-based surveys
- Establishment-based surveys

Information for inflows

- Entry or immigration visas
- Permission to work in the country
- Administrative entry registrations at the border
- Apprehension of irregular border crossers
- Application for asylum and new grants of refugee status
- Reports to population registers
- Reports to tax and social security authorities
- Reports from recruitment agencies
- Border registrations
- Household-based surveys
- Establishment-based surveys

Information for stocks

- Accumulated entry or immigration visas
- Accumulated permissions to work in the country
- Apprehension of irregular foreign workers
- Accumulated applications for asylum and grants for refugee status
- Registration, tax and social security registers
- Reports from recruitment agencies
- Cumulative time-series data on registered inflows and outflows
- Migration modules on population censuses in sending and receiving countries
- Migration questions on regular national surveys, such as labour force surveys
- Specialized migration surveys
- Surveys of target groups, such as domestic workers, transnational communities (diaspora) and others

10.8 What are some of the problems associated with migration information?

Data quality

- *Accuracy, reliability and validity.* Can the statistics be used by policy makers?
- *Coverage.* Do the data include geographical areas, industrial sectors, migrant groups and other classifications needed for policy purposes?
- *Timeliness and frequency.* How often are the data produced and how quickly are they released?
- *Relevance and usefulness.* Are the concepts and definitions appropriate for end users?
- *Comparability.* Do concepts and methods used make the statistics comparable over time and across regions and countries?
- *Access and transparency.* Is the information that is compiled made available to key users of migration statistics on a schedule and in a format that makes them useful for policies and management of international labour migration?

Problem areas³⁰

- *Irregular migration.* Most data cover only officially recorded flows. Large numbers of migrant workers, however, remain outside official channels of information collection due to their irregular status, undeclared work and other factors. Some countries use proxy indicators such as the number of foreigners who have been discovered to be working without documents. Japan and the Republic of Korea keep a record of foreigners who have “overstayed” their visas. Censuses should, in principle, capture all persons residing in the country by national origin regardless of migration status. Comparison of census data with records of admissions should provide a basis for estimating irregular migration using the residual approach. The problem is that censuses are taken only every five or ten years.
- *Trafficking.* There is a need for a common definition of trafficking to collect comparable information about trafficking at the national, regional and global levels. Standard definitions could be based upon the UN Protocol. Mechanisms are needed to compile data from various sources, such as police records, NGOs and academic research. There is a need to train officials to collect data on trafficking, including the staff at border facilities. Improvements in national legislation, inter-country cooperation and enforcement agencies should lead to improved information.
- *Working conditions.* Separate information is not generally available on the working conditions of migrant workers – wages, hours worked, accidents and injuries, benefits and so forth.
- *Domestic workers.* Domestic workers are sometimes “invisible” in migration statistics due to their work situation and irregular status.

³⁰ See ILO: *Towards a fair deal for migrant workers in the global economy*, International Labour Conference Report VI, 92nd Session (Geneva, ILO, 2004) and Piyasiri Wickramasekara: “Migration data and statistics: Guidelines”, Presentation at National Tripartite Workshop on Labour Migration Policy, Legislation and Administration in the Prevention of Trafficking in Women in Albania, Tirana, Albania, 3-4 March 2004.

- *Skilled migration.* There are generally serious data gaps in both sending countries and receiving countries on information about the migration of skilled workers, especially for short-term movements. Many technical and managerial personnel of multinational firms, for example, move around regularly but do not stay long enough in each country to make the acquisition of a work visa an absolute necessity. There is a need for profiles in terms of skills and experience as well as for information about the transitions from education abroad to overseas employment and between temporary work and permanent migration.
- *Return migration.* What are the profiles of migrant workers who return from employment overseas? Almost no country has data on migrant workers who return, although disembarkation cards could provide useful information.
- *International remittances.* There is a need for better information about flows, patterns and uses of remittances from workers employed abroad. Migrants transfer their savings in many forms – money, goods such as appliances, or services such as travel tickets. They use various channels, such as money transfer agencies like Western Union, commercial banks, friends returning home, traders who offer to exchange local currency for foreign exchange, or they bring home their savings in their own pockets. It is thus extremely difficult to assess the true dimensions of remittances. Even the regular banking channels find it difficult to distinguish migrants' remittances from other money transfers. Some banks use simple rules to identify migrants' transfers, such as by counting those transfers that do not exceed certain (small) amounts. Central banks are now resorting to simple methods, based on statistics on total stock of workers abroad multiplied by an average remittance per worker derived from sample surveys.
- *Transnational communities.* How large are overseas communities? The usual source is the country of destination, but not all countries are willing to release such information by nationality. It is difficult to estimate the numbers in an irregular situation.

10.9 Sources of information on international migration and databases

ILO International labour migration database:

<http://www.ilo.org/public/english/protection/migrant/ilmdb/index.htm>.

UN Population Division: International Migration Report 2002:

<http://www.un.org/esa/population/unpop.htm>.

Migration Information Source:

<http://www.migrationinformation.org>.

US State Department, Office to Monitor and Combat Trafficking in Persons – Annual Trafficking in Persons Report:

<http://www.state.gov/g/tip/rls/tiprpt/2003>.

Philippine Overseas Employment Administration:

<http://www.poea.gov.ph>.

Asian Migrant Centre:

<http://www.asian-migrants.org>.

Scalabrini Migration Centre:

<http://www.scalabrini.asn.au>.

Asian Research Centre for Migration (ARCM), Chulalongkorn University

United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM) and other organizations dealing with persons who cross international borders.

10.10 Towards better migration information

Labour market information systems require a great deal of resources to establish and maintain. It is, therefore, necessary to identify key priorities for data collection:

- *Is there a mechanism to coordinate the users and producers of migration information?* Establish a focal point for data collection.
- *Are employers' and workers' organizations involved?* Make certain that the social partners participate as users and producers of migration information and statistics.
- *What are the priorities?* Promote consultations between producers and users of migration information to determine key priorities.
- *What information already exists?* Examine ways of making better use of the information that is already collected.
- *How do users obtain information about migration?* Take steps to improve the transparency and dissemination of information about migration.
- *Who analyses information about sending workers abroad and employing foreign workers?* Include a plan for analysing migration information.
- *How is this analysis used by policy makers?* Introduce a plan to disseminate statistics and to "market" information.
- *What are the capacity constraints?* Develop a plan to build capacity for the compilation, analysis and dissemination of information about labour migration.

Review

Having completed Module 10, each participant should feel confident that he or she can discuss the following:

- The employment of foreign workers will affect the labour market in various ways. What indicators of impact should national authorities monitor?
- Statistics are very poor on the number of nationals working abroad at any point in time. What can be done to improve the statistics?

Exercise 7

Migration information and statistics

Priorities for information	Existing information	Current sources	Information gaps	Proposed sources

Exercise 8

Formulating action plans for labour migration policy and management

During the training session participants were briefed on and discussed various aspects of labour migration policy and management. These included best practices and international experience. In this final exercise, each participant is asked to identify and write down priorities for concrete action in his or her own country.

Based on work already undertaken in the form of matrices, checklists and presentations, participants are asked to work with tripartite partners to formulate proposals for immediate action, taking into consideration:

- National legislation
- Existing policies
- Organizational structures
- Coordinating mechanisms
- Tripartite bodies
- ILO Conventions and Recommendations and other international instruments
- Gender mainstreaming
- Migrant services
- Awareness raising
- Bilateral agreements
- Migration information
- Other issues relating to migration policy and management

The plan should focus on a time frame of one year, based on consensus among government, employers and workers. It can be placed in the attached matrix.

Action plan

Action area	Objective	Specific strategies	Institution in charge

Administration

This employment contract is executed and entered into by and between:

- A. Employer:
Address and telephone:
- B. Represented by:
Name of agent/company:
- C. Employee:
Civil status: Passport number:
Address: Place and date of issue:

Voluntarily binding themselves to the following terms and conditions:

1. Site of employment:
2. Contract duration commencing from employee's departure from the point of origin to the site of employment:
3. Employee's position:
4. Basic monthly salary:
5. Regular working hours: maximum of eight hours per day, six days per week
6. Overtime pay:
 - (a) work over regular working hours
 - (b) work on designated rest days and holidays
7. Leave with full pay:
 - (a) vacation leave
 - (b) sick leave
8. Free transportation to site of employment and, in the following cases (specify _____) free return transportation to the point of origin.
9. Free food or compensatory allowance of US\$_____and free suitable housing.
10. Free emergency medical and dental services and facilities, including medicine.
11. Personal life and accident insurance in accordance with the host government and/or _____government laws, without cost to the worker. In addition, for areas declared by the _____government as war, risk insurance of not less than _____shall be provided by the employer at no cost to the worker.

12. In the event of death of the employee during the terms of this agreement, his or her remains and the personal belongings shall be repatriated to _____ at the expense of the employer. In case the repatriation of the remains is not possible, the same may be disposed of upon prior approval of the employee's next of kin and/or by the _____ Embassy/Consulate nearest to the job site.
13. The employer shall assist the employee in remitting a percentage of his/her salary through the proper banking channel or other means authorized by law.
14. Termination:
 - (a) Termination by employer: The employer may terminate this contract on the following just causes: serious misconduct, wilful disobedience of employer's lawful orders, habitual neglect of duties, absenteeism, insubordination, revealing secrets of the establishment, when employee violates customs, traditions and laws of _____ and/or terms of this Agreement. The employee shall shoulder the repatriation expenses.
 - (b) Termination by the employee: The employee may terminate this Contract without serving any notice to the employer for any of the following just causes: serious insult by the employer or his/her representative, inhuman and unbearable treatment accorded to the employee by the employer or his/her representative, commission of a crime/offence by the employer or his/her representative and violation of the terms and conditions of the employment contract by the employer or his/her representative. Employer shall pay the repatriation expenses back to _____.
 - (c) The employee may terminate this Contract without just cause by serving, one (1) month in advance, a written notice to the employer. The employer upon whom no such notice was served may hold the employee liable for damages. In any case, the employee shall shoulder all the expenses relative to his/her repatriation back to his/her point of origin.
 - (d) Termination due to illness: Either party may terminate the Contract on the ground of illness, disease or injury suffered by the employee. The employer shall shoulder the cost of repatriation.
15. Settlement of disputes: All claims and complaints relative to the employment contract of the employee shall be settled in accordance with the company policies, rules and regulations. In case the employee contests the decision of the employer, the matter shall be settled amicably with the participation of the labour attaché or any other authorized representative of _____ Embassy or Consulate General nearest the site of employment. In case the amicable settlement fails, the matter shall be submitted to the competent or appropriate body in (host country) or _____, if permissible by the host country laws, at the option of the complaining party.
16. The employee shall observe employer's company rules and abide by the pertinent laws of the host country and respect its customs and traditions.
17. Applicable law: Other terms and conditions of employment that are consistent with the above provisions shall be governed by the pertinent laws of _____.

The following three country cases illustrate different measures and regulations for admission policies:

Case 1: Singapore³¹

Migration regulations with work permits

Singapore's foreign labour management relies on a system of preferences (for countries of origin) and a system of variable levies or taxes paid by employers for each foreign worker they are permitted to employ.

A permit is granted to a specific firm at the request of the employer. The permit must specify the prospective employee, his or her country of origin, the job to be performed and the duration of the job. The number of permits granted to employers is subject to a dependency ceiling, or dependency ratio, which is defined as the maximum share of foreign workers in a firm's total employment. Dependency ceilings are set for each sector and are uniform across firms.

The four types of permits are work permit for unskilled workers, work permits for skilled workers, employment passes and entry/re-entry permits. Higher levies apply to the less-skilled categories, thus discouraging over-reliance on cheap unskilled foreign labour.

(1) Work permits for unskilled workers

Unskilled workers who fall below a maximum salary cap of S\$2,000 per month (equivalent to US\$1,190 per month) are eligible for a work permit. Duration can last up to two years and permits are renewable up to a cumulative total of four years. The monthly levy for employing an unskilled worker starts at S\$330 (US\$196), which applies to the service and harbour craft sectors, domestic workers (maids, gardeners) and manufacturing firms whose dependency ratio is under 40 per cent

For employees of manufacturing firms who fall between the dependency ratios of 40 and 50 per cent, the monthly levy is S\$400. Manufacturing firms are subject to a two-tiered dependency ceiling. The maximum fee, equal to S\$470 per month, is applicable to construction workers. Employers are required to post a S\$5,000 (almost US\$3,000) security bond for each worker, to guarantee the worker's return following the expiration of the permit.

The dependency ratios are lowest for services at one foreign worker for every three Singaporean workers, while for manufacturing it is one foreign worker for every Singaporean worker. Harbour craft firms, on the other hand, can be predominantly foreign, with dependency ceilings set at 9:1.

Employment of unskilled foreign labour is discouraged via permit fees that are relatively higher compared to those for skilled workers and by tightly restricting personal freedoms and the right to bring family members with them. Unskilled workers are targeted for only temporary jobs by effectively placing them in a revolving pool of workers with high rates of turnover.

³¹ See Elizabeth Ruppert: *Managing foreign labour in Singapore and Malaysia: Are there lessons for GCC countries?* (Washington, D.C., World Bank, 1999), pp. 3-5.

(2) Work permits for skilled workers

Skilled workers who fall below the same monthly salary cap (S\$2,000) are eligible for work permits of up to three years' duration, renewable for up to a total of ten years. The same permits are available to workers in the construction, marine and harbour craft sectors, subject to the same sector dependency ratios for unskilled workers mentioned previously.

Employers of skilled workers must also purchase a security bond, but the workers are eligible for permanent residence and are not subject to limits on personal freedoms, unlike their unskilled counterparts. The permit fees are in fact lower for skilled workers compared to the unskilled, at only S\$200 per month in marine and harbour craft firms and S\$100 in the construction sector, resulting in relatively less disincentive to hire skilled foreigners compared to unskilled foreigners. For the three-year permits, employers are exempt from paying the permit fee.

(3) Employment pass

Skilled workers with professional or tertiary qualifications can obtain an "employment pass" if their compensation exceeds S\$2,000 per month. Employment passes are valid for up to five years and are renewable. The S\$5,000 security bond is still required, but employment pass holders are eligible for permanent residence after six months. There are no dependency ceilings imposed on this category of workers and no limits to personal freedom. No fee is charged to obtain a pass.

(4) Entry and re-entry permits

Permanent residents, or skilled workers holding work permits or employment passes who are also eligible for permanent residence, can be issued an entry or re-entry permit that is valid up to five years and renewable. Others who are eligible under this category include the skilled and professional staff of foreign firms choosing to relocate to Singapore. This permit can be obtained for employees of firms that meet some minimum capital investment criteria. No security bond is required, and no fees and services are charged to lower the cost settlement.

Case 2: Japan

Fundamental principles of migration policy

Japan still maintains a highly restrictive migration policy, based on three fundamental tenets: (i) the admission of foreign workers, on whatever basis, should be allowed only as a last resort; (ii) no unskilled worker should be admitted; and (iii) all foreigners should be admitted only on a temporary basis. While the Revised Immigration Control and Refugee Recognition Act of 1998 expanded the coverage of visa categories from 17 to 27 highly skilled occupations, a policy restriction still exists. The law recognized the diversity of purposes of foreign workers to facilitate proper management of landing and residence. Japan also has a "trainee" system and a programme for admission of Japanese descendants coming from Latin American countries. The Japanese migration law allows Japanese descendants to enter the country under the status of long-term residents rather than foreign workers. Accordingly, they are not subject to the rules and regulations governing foreign workers and are allowed to work without restrictions. Japan also has adopted a policy of encouraging relocation of industries to overseas production sites to overcome the problem of local shortages.

In principle, all foreigners who wish to enter (with the exception of shipping and airline crews) are required to apply for a visa at Japanese embassies or consulates. However, having only a visa does not guarantee foreigners the right to stay in Japan. They still have to apply for a landing permission that is stamped in their passport. The landing permission serves as the legal basis for their stay in Japan. In May 2004, Japan concluded general visa exemption arrangements with 59 countries, although paid activities are excluded from this arrangement.

Work and long-term stays

Foreigners who wish to work in Japan have to secure a working visa. Among the various types of residence status possible, those falling under working visa category are: professor, artist, religious activities, journalist, investor/business manager, legal/accounting services, medical services, researcher, instructor, engineer, specialist in humanities/international services, intra-company transferee, entertainer and skilled labour. Those who acquire a working visa are given permission to stay one to three years in Japan. There are visa categories and certain status of residence types that prohibit foreigners from engaging in paid activities, though with some exceptions.

Source: Patcharawalai Wongboonsin: Chapter 3 of “Comparative migration policies in the ESCAP region”, in *Migration patterns and policies in the Asian and Pacific region*, Asian Population Studies Series No. 160, Bangkok, UNESCAP, 2003 at www.unescap.org/esid/psis/population/popseries/apss160/index.asp.

Case 3: United States

Five broad goals of the US immigration system

The present US immigration system is highly regulated, balancing economic and humanitarian needs. The system possesses numerical ceilings in virtually every category, yet ethnicity is no longer the defining characteristic of immigration law. The US immigration policy is governed by five broad goals:

- The social goal of family unification;
- The economic goal of increasing US productivity and standard of living;
- The cultural goal of promoting diversity;
- The moral goal of promoting human rights; and
- The national and economic security goal of preventing illegal immigration.

Three components of legal immigration flows

The mechanism for selecting legal immigrants is very complex, but all legal immigration flows have at least three categories relating to family, employment and humanitarian issues. The family immigration programme admits the spouses, parents and minor children of US citizens, without numerical limits, and has limited categories for the adult sons and daughters of citizens, the siblings of citizens and the spouses and children of non-citizens. The employment-based categories are complicated collections of preferences ranging from “priority workers” to unskilled and religious workers and investors. While the humanitarian categories include refugees and those receiving “cancellation of removal”, such as long-time illegal aliens whose deportation would cause hardship for American family members.

Two types of admission programmes

The United States immigration policy offers two types of admission programmes for foreign-born professionals who would like to take advantage of the employment opportunities in the United States: (i) The Immigrant (Permanent) Admissions Programme and (ii) the Non-Immigrant (Temporary) Admissions Programme.

Immigrant (Permanent) Admission Programme

The first admission category governs the entry of foreign nationals who wish to establish permanent resident status in the United States. Permanent visas are available in limited numbers and are subject to admission requirements established by Congress. This opportunity is open to the following foreign applicants:

- Priority workers, including persons with extraordinary abilities, outstanding professors and researchers and certain multinational executives and managers;
- Professionals with advanced degrees and persons with exceptional abilities; and
- Baccalaureate degree professionals, skilled and unskilled workers.

Advanced degree professionals, baccalaureate degree professionals and most skilled and unskilled workers are subject to foreign labour certification requirements. The requirements are intended to ensure that qualified Americans are not readily available and that immigrant admissions will not adversely affect employment opportunities, wages and working conditions for similarly employed US workers. They allow a statutory limit of 140,000 admissions per year for foreign national applicants under the immigrant employment-based preference programme.

The following are the types of work that qualify for the permanent admission programme: (i) a full-time and permanent job for which the employer is ready to hire an available qualified US worker; (ii) a job where an employer-employee relationship exists, evidenced by employer's ability to hire, supervise and provide payment to the employee; (iii) a job that is generally consistent with those defined in the Dictionary of Occupational Titles and normally required for the job in the United States; (iv) a job where the hiring requirements conform to the Department of Labour's data for usual experience and education standards common to the occupation and the industry; (v) a job that is not tailored to the qualifications of the foreign worker; and (vi) a job that does not include requirements for a language other than English, without written justification.

Non-Immigrant (Temporary) Admissions Programme

The Non-Immigrant, or Temporary, Admissions Programme for foreign employment-related applicants aims to facilitate cultural, educational and social exchanges and promote trade, commerce and economic development. The programme also provides a significant supply of workers to the US labour force. For the past five years, more than 2 million new workers were brought in the United States through this programme. There are nine categories of non-immigrant visas (NIVs) in this employment-based programme:

- Treaty trader investors (E);
- Temporary workers and trainees (H-1, H-2, H-3);
- Exchange visitors (J-1);

- Intra-company transferees (L-1);
- Extraordinary workers (O-1, O-2);
- Athletes, artists, entertainers, etc. (P-1, P-2, P-3);
- Exchange programmes (Q-1, Q-2);
- Religious workers (R); and
- North American Free Trade Agreement (NAFTA) professionals.

However, there are also other non-immigrant visas not included in the nine categories but providing permission to work, such as students visas (F-1) that allow one year of “practical training” after graduation or to engage in any kind of work related to the student’s degree.

Among the nine categories, the most wide ranging that applies to almost all occupational categories is the H-1B. This is for specialty occupations that require theoretical and practical application of highly specialized knowledge and skills. Applicants must have at least a baccalaureate degree in this specialty. To be eligible, foreign nationals must also possess a state license to practise their profession or occupation, an appropriate university degree or equivalent experience in the same or similar profession or occupation and must have a job offer from a US employer. Based on data of the US Immigration and Naturalization Service, most of the admitted H-1B workers in recent years are workers in information technology, college educators, accountants and auditors and providers of health services, including physicians, nurses and therapists.

Certification of employment by the US Department of Labour (DOL)

Several factors have to be considered in determining the appropriate visa for a particular foreign national employee, including the nationality of the sponsoring employer and the prospective employee, the foreign national’s educational and employment history, job duties and requirements, current and past visa status, geographic location, purpose and duration of employment and whether the employer intends to sponsor the employee for permanent residence.

Employers who want to hire foreign nationals under H-1B visas must attest that they will pay foreign employees the “actual or the prevailing wage” in the intended area of employment, that working conditions for US workers will not be adversely affected, that there are no strikes or lockouts at locations where the workers will be employed and that a notice of intent to hire foreign workers is posted at their intended place(s) of employment. The employer must further attest that they have tried and been unable to recruit US workers and that they have not displaced, and will not displace, US workers in order to hire the foreign national employees. Certifications must be obtained from the Department of Labour prior to the submission of visa petition to the US Citizenship and Immigration Services (USCIS).

Employees granted H-1B visas are allowed to stay in the United States for three years but can be extended for a maximum period of six years. Temporary or seasonal foreign workers in agricultural employment (H-2A) are granted visas valid only for 364 days due to the temporary nature of their job.

Sources: American Council on International Personnel: *The hiring and visa process for foreign national employees* (2003) at <http://acip.com/acipweb.nsf>; Vin O’Neill: *Educational and employment-based visa programmes* (2002) at <http://www.ieeeusa.org/forum/features/visaprograms.html>; and Jessica Vaughan: *“Shortcuts to immigration: Temporary Visa Programme is broken* (2003) at <http://www.cis.org/articles/2003/back103.html>.

The following are examples of post-admission policies in Singapore and the United States:

Case 1: Singapore

Terms and conditions

In Singapore, the terms and conditions for foreigners to work or stay differ substantially, depending on skills. Migrants holding work permits for unskilled labour are ineligible for permanent residence and must leave the country within seven days of permit expiry, upon threat of deportation. In addition, there is no right to bring in family members, and the work permit becomes invalid in case of marriage to a Singapore national. Women are subject to mandatory pregnancy tests and are deported in the case of a positive result. On the other hand, skilled workers, professionals and entrepreneurs are encouraged to take up permanent residence and are not subject to such limitations on personal freedoms. Assimilation of workers into Singaporean society is provided by the Social Integration Management Service established by the Government to encourage permanent integration of workers with desirable skills into the labour force. Additional incentives for permanent residency include access to subsidized health care, education and housing. Permanent residents also can apply for citizenship after a period of two to ten years.

Guidelines for employers

In general, the Government issues guidelines to remind employers and migrant workers of their rights and responsibilities. While employing a foreign worker in Singapore, the employer is generally responsible for:

- Paying the foreign workers levy;
- Arranging for the worker to be certified by a Singapore-registered doctor as medically fit and free from contagious diseases and drug addiction, when requested by the Controller of Work Permits;
- Ensuring that the worker does not engage in any form of employment other than that stated in the work permit card;
- Ensuring that the worker does not engage in any form of freelancing arrangements or self-employment;
- Providing basic terms and condition of employment as stipulated in the Employment Act;
- Resolving all employment-related disputes with the worker amicably;
- Providing employment injury compensation for the worker; and
- Sending the worker to the Safety Orientation Course if the migrant worker is a construction worker.

For non-Malaysian workers, the employer is also responsible for:

- The upkeep, maintenance and cost of the worker's eventual repatriation;
- Providing adequate housing;

- Putting up a S\$5,000 security bond; and
- Buying personal accident insurance with a minimum coverage of S\$10,000 if the worker is a foreign domestic worker.

The employer should ensure that the worker's welfare and interests are well looked after. These include non-statutory requirements such as proper orientation, medical care, hospitalization expenses and providing for the worker's social and recreational needs. There is a guide for the employment of foreign domestic workers that describes in detail the responsibilities of employers in terms of employment contract, wages, medical care, accommodation, rest, employment disputes, abuse of foreign domestic workers and repatriation.

Source: Republic of Singapore, Ministry of Manpower (2003), *A general guide on work permits*, at <http://www.moms.gov.sg>.

Case 2: United States

Terms and conditions

The employer has to prove that he or she offered the same employment terms and conditions for both US workers and the petitioned foreign national. This policy is strictly implemented to protect both workers and to ensure that the hiring of foreign national workers will not adversely affect the working conditions of US workers similarly employed in the area of intended employment. The employer must further attest that he or she will maintain and regularly provide to the Department of Labour a copy of the employment records of the foreign national worker. The employer is obliged to comply with all employment-related laws and regulations. Failure to comply with the established laws and regulations may result in penalties and possible legal action. The contract must state that the employer can guarantee employment to the foreign national worker for at least three-fourths of the workdays of the total period during which the work contract is in effect.

Integration of immigrant workers

In 1965, the US Congress, through the Immigration and Nationality Act Amendments, replaced the national origins system with a preference system. It was designed to unite immigrant families and attract skilled immigrants to the United States. The family immigration programme of the United States admits the spouses, parents and minor children of US citizens without numerical limits and has limited categories for the adult sons and daughters of citizens, the siblings of citizens and the spouses and children of non-citizens. Spouses of foreign workers are generally not permitted to work in the United States; spouses and children are only allowed to attend school, not to work. The foreign workers as well as their families are not entitled to social benefits, but they can enjoy the same civil rights and labour market protection as US residents.

Source: American Council on International Personnel: *The hiring and visa process for foreign national employees* (2003) at <http://www.acip.com/acipweb.nsf>.

1. The Committee notes that at its 288th Session (November 2003), the Governing Body of the ILO approved the report of the tripartite committee set up to examine the representation alleging non-observance by China of Convention No. 97 with respect to the Special Administrative Region (SAR) of Hong Kong, made under Article 24 of the ILO Constitution by the Trade Union Congress of the Philippines (TUCP). The complaint concerned allegations that the Hong Kong administration approved certain measures that were harmful for Filipino workers and in violation of Article 6 of the Convention, which provides for equality of treatment between migrant workers and nationals as regards remuneration, social security, employment taxes and access to legal proceedings. The specific measures included: (a) the reduction of the Minimum Allowance Wage (MAW) of foreign domestic workers by HK\$400, effective April 2003; (b) the introduction of an employees' retraining levy of HK\$400 imposed on employers of these workers, effective 1 October 2003; and (c) the possible exclusion of foreign domestic workers, who have not resided in Hong Kong SAR for at least seven years, from subsidized public health care services (see GB/288/17/2). The Committee also notes the joint communication by the Indonesian Migrant Workers Union (IMWU) and the Asian Domestic Workers Union (ADWU) dated 15 January 2003, concerning the application of the Convention in Hong Kong SAR, which was sent to the Government of China on 27 February 2003 for its comments thereon and which it will address in points 5 and 6 below.
2. The Committee notes that the Governing Body concluded that with regard to the proposed measure to exclude in the future, foreign domestic helpers who had not resided for at least seven years in Hong Kong SAR, from public health care services, the residence requirement of seven years would be too long and the automatic exclusion of these workers from all public health care benefits would contravene Article 6(1)(b) of the Convention. It urged the Government not to take this particular measure and to take all necessary steps to ensure that the social security provisions of the standard employment contract are strictly enforced.
3. The Governing Body further determined that insufficient information was provided by both the complainant organization and the Government to permit it to reach any definite conclusions as to whether the measures to reduce the MAW of foreign helpers and to impose an employees' retraining levy on the employers of these workers contravened Article 6(1)(a) of the Convention. Nevertheless, the Governing Body believed that the imposition of the same levy on the employers of all imported workers, including domestic workers whose wages are already the lowest amongst migrant workers, while at the same time reducing the MAW wage of these workers with the same amount, would not be equitable. It urged the Government to review the above-described levy and minimum wage policies on imported workers, especially foreign domestic workers, taking into account the requirement of Article 6 of the Convention that non-nationals shall not be treated less favourably than nationals and the principles of equity and proportionality. It also invited the Government to include detailed information on the wages paid to local domestic workers and any other comparable categories of local employees that would allow comparisons to be made and to provide updated information on the number of underpayment complaints made

by domestic workers, as well as the impact of the measures taken by the Government to encourage these workers to forward such complaints, since the entry into force of the above-mentioned measures. The Governing Body asked that the Committee of Experts on the Application of Conventions and Recommendations to continue to examine this matter (GB/288/17/2, paragraph 45).

4. The Committee follows the Governing Body in its conclusions as regards the above-mentioned measures taken by the Hong Kong administration concerning foreign domestic workers. It requests the Government to provide full information in its next report on: (a) the access to public health care services of foreign domestic helpers who have not resided for at least seven years in Hong Kong SAR; (b) the enforcement of the social security provisions of the standard employment contract; (c) any ongoing or planned review of the above-described levy and minimum wage policies on imported workers, especially foreign domestic workers, taking into account the Committee's conclusions and recommendations as to the requirements of Article 6 of the Convention that non-nationals shall not be treated less favourably than nationals and the principles of equity and proportionality; and (d) the wages paid to local domestic workers and any other comparable categories of local employees, as well as information on the number of underpayment complaints made by foreign domestic helpers and on the impact of the measures taken by the Government to encourage these workers to forward such complaints.
5. With regard to the comments made by the IMWU and the ADWU, the Committee notes the allegations that foreign domestic workers are particularly vulnerable to abuse and violations of their employment contracts and are facing problems such as payment of excessive fees, long working hours, denial of rest days, and physical, mental and sexual abuse and the underpayment of wages, the latter being particularly problematic for Indian, Indonesian and Sri Lankan domestic workers. The IMWU and the ADWU also allege that certain proposed or existing government policies discriminate against foreign domestic workers, such as the policy restricting employment of migrant workers in domestic work, the rule according to which foreign domestic helpers have to leave Hong Kong within two weeks after the termination of their contract, the proposals to set a quota for foreign domestic workers, the ban on live-out arrangements and the recent tax imposed on the employment of foreign domestic helpers. The Committee notes that the allegations made by the IMWU and AMWU on the underpayment of wages and the imposition on employers of foreign domestic workers of an employees' re-training tax, concern allegations that are related to those made by the TUCP and which were addressed in points 1, 3 and 4 of the present observation.
6. With regard to the point raised by the AMWU and the IMWU on the rule according to which foreign domestic helpers have to leave Hong Kong within two weeks after the termination of their contract ("two-week rule"), the Committee refers to its previous comment in which it noted the information in the Government's report that the purpose of the "two-week rule" was to deter foreign domestic helpers from overstaying and taking up unauthorized work. It noted that the rule was exercised with flexibility and that in some cases (financial difficulties of, or abuse by, the employer), foreign domestic helpers may be allowed to change employers without returning to their home country. It also noted that foreign domestic helpers were allowed to apply for

an extension of stay in Hong Kong SAR from the Immigration Department to facilitate their pursuing claims at the Labour Department or attending civil proceedings in court. The Committee asks the Government to supply further information regarding the practical application of this possibility, including the number of applications for extension and the reasons for refusal by the Immigration Department. It also asks the Government to provide detailed information on the other allegations made by the IMWU and the ADWU concerning violations of the employment contract of foreign domestic workers and physical, sexual and mental abuse of these workers, as well as the above-mentioned existing or proposed policies that are alleged to be discriminatory against foreign domestic workers.

The Committee is raising other points in a request addressed directly to the Government.

[The Government is asked to report in detail in 2004.]

ILO instruments

International labour migration has been a central concern for the ILO since its inception and the singular vulnerability of migrant workers remains significant in the ILO mandate. When the ILO was founded in 1919, the Treaty of Versailles addressed the situation of workers employed abroad:

“The standards set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein”. (Article 427)

The ILO’s obligation to protect migrant workers traditionally has been carried out through the elaboration and supervision of international standards. Broadly speaking, all the ILO’s fundamental Conventions apply to nationals and non-nationals. The ILO Declaration on Fundamental Principles and Rights at Work and its Follow Up, which was unanimously adopted by the member States in 1998, refers specifically to the protection of migrant workers in its preamble. The Declaration states that all members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the ILO to respect, to promote and to realize the principles concerning the fundamental rights embodied in the core Conventions relating to freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect to employment and occupation.

The core labour standards covered in the Declaration on Fundamental Principles and Rights at Work and its Follow Up, 1998 are:

- Forced Labour Convention, 1930 (No. 29);
- Abolition of Forced Labour Convention, 1957 (No. 105);
- Minimum Age Convention, 1973 (No. 138);
- Worst Forms of Child Labour Convention, 1999 (No. 182);
- Equal Remuneration Convention, 1951 (No. 100);
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- Freedom of Association Convention, 1948 (No. 87); and
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98).

These core Conventions apply to all workers, nationals or non-nationals. The provisions that are of particular relevance to preventing discrimination, exploitation and abuse of women migrant workers are as follows:

Forced Labour Convention, 1930 (No. 29)

- Aims at the immediate suppression of all forms of forced or compulsory labour;
- Defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself [herself] voluntarily”; and

- Calls for adequate and strictly enforceable penal sanctions for the illegal exaction of forced or compulsory labour.

Worst Forms of Child Labour Convention, 1999 (No. 182)

- Confirms that child trafficking is a practice similar to slavery and as such a worst form of child labour;
- Calls for immediate and effective measures to secure the prohibition and elimination of trafficking of girls and boys younger than 18;
- Targets trafficking of children that leads to exploitation of boys and girls, including illicit activities such as drug trafficking and prostitution;
- Provides guidelines to effectively eliminate child trafficking and to protect children who have fallen victim to traffickers or are at risk of doing so;
- Requests member States to establish mechanisms to monitor child trafficking and to draw up a programme of action to eliminate child trafficking as a matter of priority;
- Calls for effective and time-bound measures for prevention, to provide support for the removal of child victims of trafficking and their rehabilitation, to ensure access to basic education or vocational training for all children removed from trafficking situations and to identify children at special risk and to take account of the special situation of girls; and
- Calls for international cooperation and assistance among the ratifying States to combat child trafficking.

Equal Remuneration Convention, 1951 (No. 100)

- Aims to ensure that men and women workers receive equal remuneration for work of equal value, establishing rates of remuneration without discrimination based on sex; and
- Aims to ensure equal remuneration in the public sector and promote equal remuneration in the private sector.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

- Defines discrimination as “any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation”;
- Requires the provision of a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination thereof;
- The scope of the Convention covers access to vocational training, access to employment and to particular occupations, and terms and conditions of employment; and
- Protection against gender-based violence or exploitation in the sphere of work can be part of a national policy to promote equality of opportunity and treatment.

There can be tension between the sovereign right of States wanting to protect the interests of their domestic labour market and the fundamental human rights of individuals who, for various reasons, are forced to migrate in search of employment. The Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) seek to achieve a balance between these apparently conflicting interests. They aim to regulate certain aspects of labour migration and also to protect migrant workers. Their relevance to women migrant workers, including those who are trafficked, relates to the fact that they aim to protect workers from discrimination and exploitation while employed in countries other than their own.

United Nations instruments

The Universal Declaration of Human Rights (UDHR), adopted in 1948, specifies that all human beings, men and women alike, are born free and equal in dignity and rights. No man or woman shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms (Article 4). No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5). Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment (Article 23).

The formulation of rights and freedoms stipulated in the UDHR apply equally to migrants as to any other individual, as do the provisions of other UN instruments, in particular the UN Covenant on Civil and Political Rights (1966) and the UN Covenant on the Economic, Social and Cultural Rights (1966), that have been subsequently developed. States are not only obliged to refrain from violating the human rights embodied in these Conventions but shall also take positive steps so that individuals can enjoy these rights.

A number of specialized human rights instruments provide further standards for the treatment of migrant women and men: The International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) is the United Nations instrument of direct relevance to migrant workers. It recognizes and builds upon the provisions contained in the existing ILO Conventions and in many ways goes beyond them. The UN Convention, which came into force in 2003, considerably extends the legal framework for migration, treatment of migrants and prevention of exploitation and irregular migration. It extends to migrant workers who enter or reside in the host country illegally, rights which were previously limited to individuals involved in regular migration for employment. The objective of the Convention is to discourage and finally to eliminate irregular migration, but it also aims to protect the fundamental rights of migrants during the migration process, taking account of their vulnerable position. Ratifying States are no longer permitted to exclude any category of migrant worker from its application.

The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979, recognizes that factors such as stereotypes about the roles of men and women, the (low) status of women in the family and society, as well as discriminatory laws and practices against women may affect her employment status, level of education, access to and control over income and resources and decision-making power. They may also influence her decision to migrate and determine the ways she experiences the migration process. CEDAW condemns discrimination against women in all its forms and obliges member States to pursue

a national policy to eliminate discrimination and ensure equal rights with men, *inter alia*, in the fields of education and vocational guidance, employment, remuneration, social security, marriage and maternity, health care and equality before the law. Article 6 of CEDAW explicitly states that “States...shall take appropriate measures, including legislation, to suppress all forms of trafficking in women and exploitation and prostitution of women”.

According to General Recommendation No. 19 (section 6) of the Committee on the Elimination of Discrimination Against Women (the monitoring mechanism established under the Convention), discrimination against women includes “...gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”.

To the extent that racial discrimination is one of the root causes for exploitation and abuse of migrant workers, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965 is of particular relevance to the situation of women migrant workers and trafficked women and girls. Due to the situations of vulnerability in which they frequently find themselves – owing to the departure from their country of origin, their legal status, the differences in languages and their isolated and controlled work situations, they are particularly exposed to violence, racism and racial discrimination.

The UN Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children and the Protocol Against Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against Transnational Organized Crime, 2000 both contain important provisions aiming at the protection of the basic rights of women migrant workers who have ended up in situations of abuse and exploitation.

The Trafficking Protocol is the first internationally binding anti-trafficking instrument that includes a definition of cross-border trafficking. It covers a wide range of obligations by ratifying States, mainly regarding international cooperation in the field of investigation and prosecution but also in the field of protection and prevention. The purpose of the Protocol is to prevent and combat trafficking in persons, paying particular attention to women and children, to protect and assist victims of such trafficking, with full respect for their human rights and to promote cooperation among States to meet these objectives.

The Smuggling Protocol includes a number of provisions aimed at protecting the basic rights of smuggled migrants and preventing the worst forms of exploitation, which often accompany the smuggling process. The purpose of the Protocol is to prevent and combat the smuggling process and the smuggling of migrants, as well as to promote cooperation among States Parties to that end and as well as to protect the rights of smuggled migrants.

The Bangkok Declaration on Irregular Migration

International Symposium on Migration “Towards Regional Cooperation on Irregular/Undocumented Migration” 21-23 April 1999

We, the Ministers and representatives of the Governments of Australia, Bangladesh, Brunei Darussalam, Cambodia, China, Indonesia, Japan, Republic of Korea, Lao PDR, Malaysia, Myanmar, New Zealand, Papua New Guinea, the Philippines, Singapore, Sri Lanka, Thailand, and Viet Nam, as well as the Hong Kong Special Administrative Region (hereinafter referred to as “the participating countries and region”), meeting at the invitation of the Royal Thai Government in Bangkok on 23 April 1999, on the occasion of the International Symposium on Migration, on 21-23 April 1999, under the chairmanship of H.E. Bhichai Rattakul, Deputy Prime Minister of Thailand, to address the question of international migration, with particular attention to regional cooperation on irregular/undocumented migration:

1. Realizing that international migration is a complex phenomenon that is rooted in human history and is closely associated with social and economic aspirations of each country and region;
2. Recognizing that the process of globalization and liberalization, including the increasing interdependence of economies, has contributed to large flows of people in the Asia-Pacific region, thus providing both opportunity and challenge for governments in the region;
3. Noting that both the supply (push) factor and demand (pull) factor from concerned countries have led to the outflow of migrants from the countries of the region;
4. Being aware that international migration, particularly irregular migration, has increasingly become a major economic, social, humanitarian, political and security concern for a number of countries in the Asia-Pacific region;
5. Noting with concern that the ongoing financial and economic crisis in many Asian countries has led to rising unemployment and other social problems, and has had differing impacts on irregular migrants and on the countries of origin, transit and destination;
6. Noting further that the periodic natural disasters in some Asian countries badly affect their economies and lead to rising unemployment and irregular migration;
7. Gravely concerned by the increasing activities of transnational organized criminal groups and others that profit from smuggling of and trafficking in human beings, especially women and children, without regard to dangerous and inhumane conditions and in flagrant violation of domestic laws and international standards;
8. Underlining that comprehensive, coherent and effective policies on irregular/undocumented migration have to be formulated within the context of a broader regional framework based on a spirit of partnership and common understanding;

9. Noting that over 65 per cent of the world's poorest people live in the Asia-Pacific region, hence poverty and differences in level of development among countries in the region remain important causes of irregular migration;
10. Recognizing a need for international cooperation to promote sustained economic growth and sustainable development in the countries of origin as a long-term strategy to address irregular migration;
11. Noting that there is a number of international Conventions and instruments dealing with humanitarian issues relating to migration;
12. Respecting the sovereign rights and legitimate interests of each country to safeguard its borders and to develop and implement its own migration/immigration laws, and also recognizing the obligations of the country of origin to accept its nationals back, and the obligation of the countries of transit and destination to provide protection and assistance where appropriate, in accordance with their national laws;
13. Recognizing the important role and contribution of regional consultative mechanisms, such as the Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants, and the Manila Process, on issues relating to irregular migration;
14. Noting with appreciation the participation of countries from various regions, United Nations bodies and specialized agencies, inter-governmental organizations, as well as non-governmental organizations, in sharing their views and experiences in dealing with migration issues;
15. Noting also with appreciation the discussion papers prepared by the Institute for Population and Social Research, Mahidol University and the International Organization for Migration (IOM), which provide useful points of discussion and recommendations for the management of irregular migration;
16. Acknowledging with gratitude the timely initiative of H.E. Dr. Surin Pitsuwan, Minister of Foreign Affairs of Thailand, the dynamic chairmanship of H.E. Bhichai Rattakul, Deputy Prime Minister of Thailand, as well as the excellent arrangements provided by the Royal Thai Government, with the valuable support of the IOM,

Declare as follows:

1. Migration, particularly irregular migration, should be addressed in a comprehensive and balanced manner, considering its causes, manifestations and effects, both positive and negative, in the countries of origin, transit and destination;
2. The orderly management of migration and addressing of irregular migration and trafficking will require the concerted efforts of countries concerned, whether bilaterally, regionally or otherwise, based on sound principles of equality, mutual understanding and respect;
3. Regular migration and irregular migration should not be considered in isolation from each other. In order to achieve the benefits of regular migration and reduce the costs of irregular migration, the capacity of countries to manage movement of people should be enhanced through information sharing and

technical and financial assistance. In this context, UNITAR, UNFPA and IOM, joint sponsors of the International Migration Policy and Law Course (IMPLC), are invited to hold, in the near future, a course for middle to senior government officials from the region;

4. A comprehensive analysis of the social, economic, political and security causes and consequences of irregular migration in the countries of origin, transit and destination should be further developed in order better to understand and manage migration;
5. As the causes of irregular migration are closely related to the issue of development, efforts should be made by the countries concerned to address all relevant factors, with a view to achieving sustained economic growth and sustainable development;
6. Countries of origin, as well as countries of transit and destination, are encouraged to reinforce their efforts to prevent and combat irregular migration by improving their domestic laws and measures and by promoting educational and information activities for those purposes;
7. Donor countries, international organizations and NGOs are encouraged to continue assistance to developing countries, particularly the least-developed countries, in the region aimed at poverty reduction and social development as one means of reducing irregular migration;
8. The participating countries and region should be encouraged to pass legislation to criminalize smuggling of and trafficking in human beings, especially women and children, in all its forms and purposes, including as sources of cheap labour, and to cooperate as necessary in the prosecution and penalization of all offenders, especially international organized criminal groups;
9. The participating countries and region should exchange information on migration legislation and procedures for analysis and review, with a view to increasing coordination to effectively combat migrant traffickers;
10. The countries of origin, transit and destination are encouraged to strengthen their channels of dialogue at appropriate levels, with a view to exchanging information and promoting cooperation for resolving the problem of illegal migration and trafficking in human beings;
11. Greater efforts should be made to raise awareness at all levels, including through public information campaigns and advocacy, of the adverse effects of migrant trafficking and related abuse, and of available assistance to victims;
12. Concerned countries, in accordance with their national laws and procedures, should enhance cooperation in ascertaining the identity of undocumented/illegal migrants who seemingly are their citizens, with a view to accelerating their readmission;
13. Timely return of those without right to enter and remain is an important strategy to reduce the attractiveness of trafficking. This can be achieved only through goodwill and full cooperation of countries concerned. Return should be performed in a humane and safe way;

14. Irregular migrants should be granted humanitarian treatment, including appropriate health and other services, while the cases of irregular migration are being handled, according to law. Any unfair treatment towards them should be avoided;
15. The participating countries and region should each designate and strengthen a national focal point to serve as a mechanism for bilateral, regional and/or multilateral consultations and cooperation on questions of international migration;
16. A feasibility study should be conducted on the need to establish a regional migration arrangement, linked to existing international bodies, to provide technical assistance, capacity building and policy support as well as to serve as an information bank on migration issues for the countries in the Asia-Pacific region. The countries in the region are meanwhile encouraged to utilize and strengthen the already existing bilateral and multilateral arrangements;
17. The participating countries and region will follow up on the above-mentioned issues of irregular migration at the political and senior official levels in ways that may be deemed appropriate;
18. This document shall be given the widest publicity and dissemination possible to encourage governments, non-governmental organizations, the private sector and civil society to join in a collective regional effort to alleviate the adverse effects of irregular migration and to prevent and combat trafficking of human beings, especially women and children.

Bangkok, THAILAND
23 April 1999

<http://www.thaiembdc.org/info/bdim.html>

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