



# *Labour Migration in Asia*

**Trends, challenges  
and policy responses  
in countries of origin**



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IOM International Organization for Migration

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# PREFACE

Migration is increasingly coming into focus as one of the big issues of our times. Moreover, there is a growing recognition that migration is an essential, inevitable and potentially beneficial component of the economic and social life of every State and every region. Within this, labour migration and the Asian region are seen as particularly important and interesting. World demographic, economic, political and social trends indicate that organizing, regularizing and managing the international labour market will be a very significant challenge for governments and societies in the coming decades. Asia is arguably the most dynamic region in the labour migration field with large numbers of people working overseas at all skills levels, significant extra- and intra-regional labour migration and some countries being simultaneously importers and exporters of labour.

Developments are fast moving. New patterns and trends are emerging which affect and are affected by not just the labour market, but also national economic and social circumstances. The effects of labour migration on national human resource pools, the effects and use of remittances, the potential for significant contributions by workers overseas to development of home countries through, for example, investment, skills training and networking – all these have a significant impact on the welfare of nations, even, in some cases, on national stability.

A proper understanding of the factors and issues is essential to effective policy making, advocacy, and activities, both for the current situation and in order to be able to anticipate and influence the future.

This book, which is a collection of materials prepared for the Ministerial Consultations on Labour Migration organized by IOM in Colombo, Sri Lanka in April 2003, aims to contribute to that better understanding. It has chapters on three key elements in part one, and a compendium of labour migration policies and practices in major Asian labour sending states in the second part. Chapter One looks at trends and characteristics of labour migration in Asia with reference to ten major Asian labour sending states. It also provides an overview of policy responses and inter-state cooperation in these states. Chapter Two covers an area of particular concern – that of the protection of migrant workers in Asia. It looks at the special characteristics of Asian migration affecting migrants' rights protection, at various aspects of the problems facing migrant workers, at what international instruments exist in this sphere, and offers some policy options. Chapter Three covers the aspects that governments need to address both at national level and in cooperation with other states to protect migrant workers and facilitate orderly labour migration.

I hope this publication will both provide information and stimulate thinking on labour migration in Asia and as such provide a valuable tool for policy makers and researchers alike.

Brunson McKinley  
Director General

## Authors' Note

Throughout this volume, “Hong Kong” refers to the Hong Kong Special Administrative Region of China and “Taiwan” refers to the Taiwan Province of China.

# PART I



# CHAPTER 1

## INTERNATIONAL LABOUR MIGRATION IN ASIA

### Trends, Characteristics, Policy and Interstate Cooperation\*

#### 1.1 INTRODUCTION

International migration in the Asian region has changed substantially in terms of its magnitude, directions and character over the last two decades. Migration into and within the region takes a variety of forms – tourists, students, refugees, family reunion, labour, business – but migration for economic reasons, particularly temporary labour migration, has experienced the most rapid growth. “Asia is the developing region experiencing the most varied and dynamic types of international migration flows” (Zlotnik, 1998: 7). Labour migration is expected to become increasingly important to the countries of the region for the foreseeable future.

This paper will focus on various forms of labour migration: less skilled contract labour migration, spontaneous or irregular labour migration and highly skilled labour flows. Contract labour migration may be organized by the governments of sending or receiving countries, by employers, special agencies or a combination of these. However, some participation by the government of the receiving country is necessary – otherwise the movement should be seen as a spontaneous or irregular one.

Often contract labour migration is regulated by bilateral agreements between sending and receiving countries, or by multilateral agreements to which several states are party. The recruitment agreements or employment contracts may specify wage levels, duration of employment, working conditions and labour market rights of the workers. The agreements may also lay down obligations for the employers or public authorities to provide housing, family allowances, health care and social insurance. The recruitment agreements, together with laws and regulations of the receiving country, also define the legal status of the contract migrant with regard to residence and family reunion, as well as social, civil and political rights. Generally, the situation of the temporary workers is a restricted one that denies them many of the rights of citizens or permanent residents.

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\*Professor Robyn Iredale (Woolongong University/Asia Pacific Migration Research Network Secretariat, Australia), and three other members of the Asia Pacific Migration Research Network, Kalika N. Doloswala (Australia), Tasneem Siddiqui (Bangladesh), and Riwanto Tirtosudarmo (Indonesia), prepared this paper as independent consultants to IOM. The APMRN is a collaborative organization of researchers and scholars working on migration. Each regional network of the APMRN is autonomous and there are regional coordinators in various countries. For more details on the Network, please check their website at <http://www.capstrans.edu.au/apmrn/>

This paper has benefited from critical review and constructive comments from many colleagues in IOM. The authors should like to thank for their input, Nilim Baruah, Head of Labour Migration Service, Gervais Appave, Director of Migration Policy and Research Programme, and Frank Laczko, Chief of Research and Publications Division. June Lee of Research and Publications Division has also provided valuable assistance throughout the preparation of this paper. However, the authors alone remain responsible for any shortcomings in the paper.

The current contract labour migration systems in Asia began to evolve in the 1960s around the oil-producing countries of West Asia, but since the mid-1980s rapid economic growth and declining fertility have led to considerable demand for migrant labour in Asia – Japan, Republic of Korea, Hong Kong, Malaysia, Thailand, Taiwan, Singapore and oil-rich Brunei. In the 1990s, labour migration within Asia continued to grow with only a relatively minor hiccup resulting from the Asian financial crises. A key development in recent years has been the increasing feminization of migration: about 1.5 million Asian women were working abroad in the mid-1990s, and in many migratory movements they outnumber men.

Besides the contract or legal component, there is an equally important irregular or undocumented component.<sup>1</sup> A recent study coordinated by the Scalabrini Migration Center (SMC) in Manila states:

(H)igh levels of irregular or unauthorized migration have accompanied the rise of intra-regional migration in South-East Asia. During the period of economic expansion, irregular migrants moved to the more prosperous economies to take up jobs vacated by the local population and were generally tolerated. The recession in the mid-1980s brought out concerns about the negative impacts of irregular migration. The concerns were rekindled during the economic crisis of 1997, which prompted Malaysia, Thailand and Singapore to tighten their policies against irregular migration. This meant tighter border controls, more punitive sanctions against immigration violators, and in the case of Malaysia and Thailand, undertaking massive repatriation of irregular migrants. The 1997 crisis, however, underscored that the repatriation of irregular migrants did not solve domestic unemployment. Malaysia and Thailand were confronted with a situation of high unemployment simultaneous with labor shortage in the sectors where migrants worked. Meanwhile, in the countries, particularly in the Philippines, policies and measures were also put in place to prevent irregular migration, specifically the illegal recruitment of migrant workers. By themselves, preventive approaches taken by countries of origin, and border control and sanctions undertaken by countries of destination proved to be limited in curbing irregular migration. The rise in trafficking in persons, especially women and children, has also added to the resolve of forging a regional approach to migration (Battistella and Asis, 2002a: xi).

The findings of this four-country study point to “the necessity and urgency to overcome the fragmentation of uncoordinated approaches toward migration” (Battistella and Asis, 2002a: xvi). Wickramasekera (2002: 16) refers to the “explosive growth in irregular migration” due to a combination of increased pressure to migrate and restrictive migration policies. It is estimated that irregular migrants comprise 30-40 per cent of the estimated six million migrants in Asia (Wickramasekera, 2002: 16 and 21).

The difficulties of inadequate data collection must be stressed at this point. Many countries in the Asian region lack mechanisms for collecting emigration and immigration data and this makes it difficult to be sure of the size of flows. Often data are collected from receiving countries but this usually only includes “legal” or regular migration inflows. In spite of these limitations, Section 2 of this paper provides an overview of the trends and causes of less skilled international labour flows to the Gulf States and within Asia. The increasing flows to Europe are outside of the terms of reference of this paper but will be noted briefly. A 2001 Organisation for Economic Co-operation and Development (OECD, 2001) report notes that Asia would be able “to supply the demands created this end [less skilled] of the labour market [too], if the formalities of entry into OECD Member countries were to be put in place. This explains in large part the increase in illegal immigration from Asia to OECD countries: the rise in illegal flows from mainland China being particularly perceptible” (OECD, 2001: 67).

Section 3 of the paper focuses on the rapidly emerging highly skilled migration movements, especially to OECD countries. Section 4 has a policy focus and examines sending country policies under seven sub-headings: foreign labour market development and marketing; protection of migrant workers in recruitment and employment; policy and legislative frameworks, structures and mechanisms governing labour migration; pre-departure training and orientation; remittance management; labour migration information systems and data collection; reintegration programmes; and inter-state cooperation, by means of bilateral agreements with destination countries, regional integration mechanisms and multilateral consultative processes.

Section 5 focuses on irregular migrant workers, especially female workers, and those who are trafficked as they need the most urgent and comprehensive attention. The growth of highly skilled migration, especially the temporary element that is incorporated under the General Agreement on Trade in Services (GATS), poses new challenges for countries and will be covered here as well.

The purpose of the paper is to provide information, analysis and to facilitate sharing of good practices and lessons learned for the preparatory meeting and Ministerial Consultations of Asian labour sending countries, organized by IOM in Colombo in April 2003.

## 1.2 OVERALL TRENDS OF LESS SKILLED LABOUR FLOWS FROM SELECTED ASIAN COUNTRIES TO THE GULF STATES, AND INTRA-REGIONAL MOVEMENTS IN SOUTH, SOUTH-EAST AND EAST ASIA

The economic and demographic features of Asian economies vary widely. For example, Viet Nam's per capita GNP is US\$ 310, while per capita GNP in Japan is more than 123 times greater at US\$ 38,160. Fertility rates are also markedly different. The response of Asian economies to these significant regional spatial inequalities has been to set in motion a combination of capital and labour flows. Capital flows have taken the form of direct foreign investment and joint venture investments generally, but not exclusively, from the more developed to the less developed countries. These inequalities have also given rise to substantial labour migration within, out of and into the Asian region (Stahl and Iredale, 2001: 1). International migration for economic reasons began to assume importance to countries of the region in the 1970s, though differentially.

Table 1.1 (overleaf) shows the growth from 1980 to 1999 for Bangladesh, India, Pakistan and Sri Lanka in South Asia, Indonesia, the Philippines and Thailand in South-East Asia, and China. Comparable data are not available for Nepal and Viet Nam but, where possible, data will be supplied in the text on these countries. These figures exclude a considerable amount of "irregular" migration from these countries. The importance of irregular labour migrants cannot be disputed and estimates for 1997 are shown in Table 1.2.

The overall trends of each country are compiled from a range of sources. In particular, the OECD and Japan Institute of Labour (2001) publication and the SMC database are used along with many other sources, including personal interviews that were conducted in India and Sri Lanka

TABLE 1.1

AVERAGE ANNUAL NUMBER OF MIGRANT WORKERS ORIGINATING IN LABOUR-SENDING COUNTRIES OF ASIA, AND DISTRIBUTION BY REGION OF DESTINATION (%), 1980-99

Sending country/Receiving region	1980-84	1985-89	1990-94	1995-99
<b>South Asia</b>				
Bangladesh				
Western Asia (Gulf)	92.0	95.9	83.5	...
Other Asia	1.0	0.5	15.6	...
Outside Asia	7.0	3.6	0.9	...
Number of clearances (land)	53,000	78,000	174,100	262,000 (95-98)
India				
Western Asia (Gulf)	92.4	95.8	96.0	...
Other countries	7.6	4.2	4.0	...
Number of clearances	223,500	139,800	297,225	400,275 (95-98)
Nepal	...	...	...	...
Pakistan				
Western Asia (Gulf)	97.2	99.9	99.6	...
Other Asia	0.0	0.0	0.2	...
Outside Asia	2.7	0.1	0.2	...
Number of clearances	124,500	76,800	143,000	127,075 (95-98)
Sri Lanka				
Western Asia (Gulf)	...	94.5	95.4	94.0
Other Asia	...	4.3	3.3	4.0
Outside Asia	...	1.2	1.3	2.0
Number of clearances	31,300	18,900	52,300	164,312
<b>South-East Asia</b>				
Indonesia				
Western Asia (Gulf)	64.9	78.0	40.6	38.5
Other Asia	20.5	13.1	55.5	48.4
Outside Asia	14.6	8.9	3.9	13.1
Number of clearances	24,400	63,500	118,000	321,300
Philippines				
Western Asia (Gulf)	84.8	71.8	61.6	42.2
Other Asia	11.2	22.5	30.6	39.4
Outside Asia	4.0	5.7	7.9	18.4
Number of clearances (land)	274,000	353,900	471,000	562,000
Thailand				
Western Asia (Gulf)	81.7	72.4	24.4	8.9
Other Asia	5.3	14.6	71.9	87.1
Outside Asia	13.1	13.0	3.7	4.0
Number of clearances	60,100	89,600	86,800	193,100
Viet Nam	...	...	...	...
<b>East Asia</b>				
China				
Western Asia (Gulf)	80.1	48.2	3.7	...
Other Asia	6.0	18.6	37.6	...
Outside Asia	14.4	33.3	58.6	...
Number of clearances	37,600	61,100	135,000	275,000

Sources: Zlotnik (1998, pp. 31-32), Stahl and Iredale (2001, p. 2), United Nations (2003), Wickramasekera (2002, p. 15) and Sri Lanka Bureau of Foreign Employment (2001, p. 4).

TABLE 1.2  
ESTIMATES OF IRREGULAR MIGRANTS IN SELECTED ASIAN COUNTRIES, 1997

Countries/Regions of Origin	Japan	Korea	Taiwan	Malaysia	Thailand
Bangladesh	5,864	9,033	...	246,400	....
Cambodia	...	...	...	...	68,468
China	38,957	57,722	...	...	...
Indonesia	...	2,353	2,700	475,200	...
Korea	52,854	...	...	...	...
Malaysia	10,926	...	400	...	...
Myanmar	5,957	...	...	25,600	684,676
Pakistan	4,766	5,935	...	12,000	...
Philippines	42,627	13,909	5,150	9,600	...
Taiwan	9,403	...	...	...	...
Thailand	38,191	8,200	6,000	8,000	...
Viet Nam	...	6,389	...	...	...
Others	72,242	43,448	5,750	23,200	92,135
<b>Total</b>	<b>281,157</b>	<b>148,048</b>	<b>20,000</b>	<b>800,000</b>	<b>845,279</b>

Source: Scalabrini Migration Center (SMC) (2000).

by Doloswala. Two of the authors, Siddiqui and Tirtosudarmo, are located in Bangladesh and Indonesia, respectively, and they provided comprehensive data on their respective countries. Siddiqui also compiled data on Pakistan. Data collected by IOM from eight Asian governments in the form of a questionnaire on labour migration policies, practices, statistics and issues have been widely referred to.

### 1.2.1 South Asia

#### Bangladesh

Bangladesh is a labour surplus state and a growing source of contract migrant labour. Despite the recent financial crisis in South-East Asia and concomitant measures in restricting entry of migrant workers in that region, the total official figures of Bangladeshi migrating for employment are on the rise. A large number of them also go abroad as irregular migrants and therefore the actual figure of people going abroad is much higher.

It is estimated that until 1975, 90 per cent of all international migrants from Bangladesh went to the UK (Ahmed and Zohora, 1997). Gradually such migration expanded to the newly industrialized countries of South-East Asia and the Gulf States. From 1976 to February 1999, a total of 2,679,171 people migrated from Bangladesh for overseas employment of which 1,126,539 (42%) went to Saudi Arabia. From the late 1980s onwards, Malaysia became the second largest employer and other major destinations are now the United Arab Emirates (UAE), Kuwait, Qatar, Oman and Bahrain.

The Ministry of Expatriates' Welfare and Overseas Employment is responsible for managing the labour migration process. The power of implementing the Emigration Ordinance 1982 and, accordingly, promoting, monitoring and regulating the migration sector, is vested here. The Ministries of Home and Foreign Affairs are the other important ministries. The Bureau of Employment and Training (BMET) is the executing agency of the Ministry of Expatriates' Welfare and Overseas Employment in respect of labour migration and is responsible for the development and implementation of training programmes in the light of specific labour needs, both in international and national labour market; the realization of apprentice and in-plant programmes in the existing industries; registration of job seekers for local and foreign employment; collection and analysis of labour market information; ensuring the welfare of migrant workers both within and outside Bangladesh; control and regulation of the recruiting agents and creation of self-employment programmes for the unemployed. The Government of Bangladesh has entered into only one bilateral agreement, with Kuwait, and this agreement is currently scheduled for review (Mondal, 2002: 6).

From 1976 to 1981, professionals and skilled workers outnumbered semi- and unskilled workers. However, data from BMET (2000) now indicate a consistent level of a comparatively high proportion of semi-skilled and unskilled migrant workers. Generally, the proportion of professional and skilled on the one hand, and semi-skilled and unskilled, on the other hand, has been in the region of 4:6 for almost a quarter of a century.

The present form of female labour migration began in the 1970s to cater to the labour needs of the Middle East. Such migration gradually expanded to the newly industrialized countries of South Asia in the 1990s. Female migrants from Bangladesh mostly belong to the lower end of the skill spectrum and thus are involved in low paid jobs. Official figures show that in the period 1991-99, a total of 13,544 women migrated – 0.65 per cent of the total stock (2,082,272) of official migrants. These statistics are very low, but BMET officials claim that they account for all those who “officially” went overseas for employment. The gender-segregated data for January-November 2002 reveal that there were 1,107 women migrants (5.1%) out of a total of 21,801 (Mondal, 2002: 9).

## **India**

Formal labour mobility from India to the Middle East can be traced to the period when the British East India Company began to invest there (Sasikumar, 2001: 57). These investments gave rise to a sudden growth in the demand for workers in clerical as well as skilled and semi-skilled manual occupations. The post-independence period has also seen large government and private investments in the Middle East and the transport of workers from India to work on these projects (Sasikumar, 2001: 58).

India was one of the first countries (along with Pakistan) to respond to the demand for unskilled labour in the Gulf States. The demand for this type of labour (i.e., in the construction sector) peaked in the 1980s and then demand-pull factors were seen to change. Reliable statistical data are not available for the last two decades, but estimates suggest that the majority of Indian labour migrants to the Middle East belong to the unskilled and semi-skilled categories (Sasikumar, 2001: 20). The annual outflow of labour from India to the Gulf rose from levels ranging between 100,000 to 200,000 during the period 1985-91, to in excess of 400,000 between 1992 and 1995

(Saini, 1997: 62-63). The increasing trend was reversed in the late 1990s with figures of 355,164 for 1998 and 199,552 for January to October 1999 reflecting in part a shift in the patterns of labour demand away from several categories of unskilled and semi-skilled work towards service, operations and maintenance work (Sasikumar, 2001: 33). By far the major destination in the Middle East is Saudi Arabia (64% between 1990-94), followed by the United Arab Emirates (17%).

This form of labour migration originates mostly from a few states in India, the most important being Kerala, Andhra Pradesh, Maharashtra and Tamil Nadu (Premi, 1998: 221). Nair also mentions Karnataka, Punjab, Gujarat and Goa (Nair, 1998: 260). Of all of these states, Kerala is by far the most important and accounts for 55 per cent of the total outflow of migrants from India to the Middle East (Nair, 1998: 260; Prakash, 2000: 4535). Within Kerala, the majority of migrants come from the coastal districts and areas where there is a substantial Muslim population. The unprecedented high rates of return of Kerala migrants from the Gulf States during the late 1990s is seen as being due to the imposition of unskilled labour import restrictions, the deterioration of wage rates for unskilled and skilled categories and competition from other labour sending countries (Prakash, 2000: 4,535).

## **Nepal**

There are no comprehensive figures on labour migration available for Nepal and generally the official figures are inadequate. Studies, such as that by Seddon et al. (2000), show that the majority of labour migrants still go to destinations with which there are traditional links, such as India. Nepal and India signed a bilateral agreement in 1950 that provides for free passage and trade in both directions across the border. As the movement of people is free, there are no available figures for the scale of this movement. It has been estimated, however, that there are between 1.8 to 3 million labour migrants from Nepal working in India, mainly as security guards, domestics and cooks (Mistra, 2003). There are also anecdotal NGO reports of significant trafficking of women and children for prostitution from Nepal to India.

Further, it has been estimated that there are between 800,000 and 3.2 million Indians working in Nepal (Mistra, 2003). The lack of accurate figures suggests both the “unproblematic” nature of these cross-border movements and a lack of interest and concern in the migrants involved (Watkins and Nurick, 2002: 26).

Due to economic and cultural connections, Japan is a destination for one particular Nepalese ethnic group, the Gurkhas, and between 1986-95 an estimated 19,417 went to Japan on short-term working visas (Yamanaka, 1999: 485-6). They were largely males who had previously worked in the British army in London, Hong Kong and Brunei. A proportion overstayed their three-month visa and their irregular status was tolerated as they, along with other irregulars, provided a flexible workforce that was not paid the “numerous expensive benefits, entitlements and job security” that other workers received (Yamanaka, 1999: 491). Though they do not get these benefits their hourly wages are similar to other workers and high compared to Nepal – thus the motivation for staying on is high. They have been joined by an increasing proportion of Nepalese women who work in small automotive plants. Criminal penalties for hiring irregular workers have been in place in Japan since 1990, but they have rarely been enforced, leading Yamanaka to describe Japan as having a “back door” immigration policy. She maintains that

Japan “encourages irregular migration” by not having a formal or “front door” policy, as exists in Singapore, Hong Kong and Taiwan, and that this policy enables foreigners to work in sectors shunned by the Japanese.

The distribution of migrant workers from Nepal is spreading. Gurkha ex-soldiers now work as security guards in Brunei and Hong Kong and an estimated 20,000 Nepalese have entered Hong Kong “primarily to work as unskilled laborers in major public construction projects” (Yamanaka, 1999: 488). Increasing numbers of Nepalese began heading to the Gulf States in the late 1980s, especially those who were educated but lacked job experience and personal connections with Nepalese employers (Watkins and Nurick, 2002: 13; Yamanaka, 1999: 488).

The western and eastern hill regions have had the most significant out-migration, with over two thirds of the overseas migrants from the country coming from these areas (Seddon et al., 2000: 35). The other significant areas of out-migration have been the urban and peri-urban areas of the Kathmandu Valley. Until very recently Nepal had little or no policy with regard to migration, despite its long-standing importance to households and to the economy as a whole (Watkins and Nurick, 2002: 65). The Foreign Employment Act 2042 (1985) establishes licensing requirements for agents, basic requirements governing the granting of permission to migrate, requirements governing contractual arrangements, complaints resolution and punishments, but the law is often not enforced (Doloswala, 2003).

## Pakistan

During the 1970s, the Middle Eastern countries initiated massive development projects that attracted foreign manpower as they suffered from a labour deficit. This dominance of the Gulf States for Pakistan is shown in Table 1.1. Table 1.3 shows the changing nature of Pakistani labour migration in the 1990s. There is a shift in importance from the Kingdom of Saudi Arabia (KSA) towards not only other Gulf States (e.g. the UAE) but also the emergence of countries

TABLE 1.3  
MIGRANTS FROM PAKISTAN TO SELECTED COUNTRIES, 1990-99

Year	Saudi Arabia	UAE	Oman	Qatar	Kuwait	Bahrain	Iraq	Others	Total
1990	7,943	20,083	8,364	1,367	1,338	2,516	2,076	341	115,520
1991	113,291	15,286	9,947	1,471	4,083	2,741	40	485	147,344
1992	137,694	23,816	11,664	1,935	16,812	3,551		621	196,093
1993	99,027	28,347	6,511	1,263	18,940	2,013		1,632	157,733
1994	70,444	28,750	4,248	1,492	6,124	1,735		1,247	114,040
1995	77,373	28,681	934	632	3,898	1,424	10	1,268	122,620
1996	79,036	30,851	3,724	1,453	5,574	1,583		5,563	127,784
1997	78,982	39,823	4,809	2,528	4,748	1,212		1,827	153,929
1998	44,667	44,761	2,713	1,070	3,851	2,102		3,880	104,044
1999*	11,082	33,763	1,084	1,301	2,525	985		842	41,582

\*Up to June only.

Source: Scalabrini Migration Centre (2000).

outside the region. Since these countries employed foreign workers for a specific period with certain terms and conditions, most of the workers returned after the completion of their contracts.

Pakistan has a comprehensive system for handling the emigration of its workers under the Ministry of Labour, Manpower and Overseas Pakistanis under the Emigration Ordinance 1979 (MLMOP, 2002: 3). In 1972, the Bureau of Emigration and Overseas Employment was set up to develop a realistic foreign employment policy and to function as a centralized agency to regulate the export of manpower. Later, the Emigration Ordinance 1979 and Emigration Rules 1979 were enacted and a fully fledged division was established at the federal level to lay down an overall human resources policy for the country, study employment problems and help solve them systematically. The Bureau of Emigration is now one of the attached Departments of the Manpower Division and regulates the emigration of workers under the 1979 Emigration Ordinance in the private sector. The Overseas Employment Corporation deals with public sector labour migration.

From 1971 to 1996, a total of about 2.55 million Pakistani workers were registered by the Bureau of Emigration and Overseas Employment as going abroad on foreign employment visas. Information shows that 95 per cent of the workers belonged to the age group 25 to 40 years and 99.06 per cent of migrant workers were male. Only 0.04 per cent of total migrant workers were women. Pakistan does not permit the migration of women under 45 as domestic aides. Female workers who do migrate are mainly nurses.

### **Sri Lanka**

The Sri Lanka Bureau of Foreign Employment (SLBFE) was established in 1985 under Employment Act No 21. The main objectives of the SLBFE are the promotion of foreign employment, sound management of the foreign employment field and ensuring the welfare and security of migrant employees and their families (Ministry of Employment and Labour, 2002b: 164).

Table 1.1 shows the very strong orientation of Sri Lankans towards the Gulf States since 1985. Labour out-migration commenced and continues as a means of alleviating unemployment. The overwhelming predominance of the Gulf States has continued throughout the 1990s, though more recently attempts have been made to send more people to Asia. Markets are now being sought in Europe, and Italy approved a decree in October 2002 that provided quotas for 20,500 migrant workers, including for the first time 1,000 workers from Sri Lanka (IOM Rome). The granting of privileged access to the Italian labour market is linked to cooperation in controlling irregular migration and providing regular migration avenues as an option to irregular migration.

Data compiled by the SLBFE suggests that Sri Lanka has adopted a regional, gender-based approach to the supply of migrant workers, focusing much attention and drive towards the Gulf States. This is apparent through not only statistics of migrants but also the bias towards staffing missions in these areas and the types of training provided. Table 1.4 (overleaf) shows the increasing dominance of female labour migration in SLBFE official figures.

During the 1995-2000 period 90 per cent of the 701,867 female labour migrants occupied “housemaid” and “unskilled” categories, though this percentage fell slightly towards the end of the period (88.8% in 2000 against 95.2% in 1996). Between 1995 and 1999, the top three destina-

tions for labour migrants from Sri Lanka were Saudi Arabia (37.3%), Kuwait (23.3%) and the UAE (16%), which together they received over three-quarters of all labour migrants (SLBFE, 2001: 4).

TABLE 1.4  
DEPARTURES FROM SRI LANKA FOR FOREIGN EMPLOYMENT BY SEX, 1981-2000

Year	Men	% of Total	Women	% of Total
1981-1985	85,490	60	69,263	40
1986-1990	60,419	50	69,668	50
1991-1995	131,844	31	301,826	69
1996-2000	303,781	31	701,867	69
2001	59,751	32	124,137	68

Source: SLBFE (2001, pp. 1-2), Ministry of Employment and Labour (2002a).

## 1.2.2 South-East Asia

### Indonesia

Before 1980, there was little labour migration out of Indonesia. However, illegal flows commenced to Malaysia and elsewhere and in the 1980s the Government came to see labour migration as a means of earning valuable foreign exchange and reducing unemployment. Thus it became involved in the labour export process and overseas labour migration has grown rapidly since the second half of the 1980s. The numbers nearly doubled from 1989-94 to 1994-97 (814,352), indicating even more rapid growth in the 1990s (Hugo, 2002: 279).

The major destinations of official overseas migrant workers are Saudi Arabia, Malaysia, and Brunei. But Tables 1.1 and 1.2 show that the number of irregular migrant workers going over-

TABLE 1.5  
DESTINATION OF INDONESIAN LABOUR MIGRANTS BY SEX, 1994-97

Destination	Male		Female		Total	
	No.	%	No.	%	No.	%
Saudi Arabia	20,970	7.8	246,221	48.9	267,191	32.8
Other Middle East	795	0.3	15,283	3.0	16,078	2.0
Malaysia/Brunei	218,193	70.3	174,319	34.6	392,512	48.2
Singapore/Hong Kong	19,035	6.1	61,187	12.1	80,222	9.9
Korea/Taiwan/Japan	38,361	12.4	6,895	1.4	45,256	5.6
Other	13,018	4.2	75	0.01	13,156	1.6
<b>Total</b>	<b>310,372</b>	<b>100.0</b>	<b>503,980</b>	<b>100.0</b>	<b>814,352</b>	<b>100.0</b>

Source: Tirtosudarmo and Romdiati (1998, p. 6).

seas is higher than the number going with official approval. Compared with sources such as the Philippines, most Indonesian migrant workers are less educated and have little knowledge of immigration procedures and their rights. This makes them cheaper and more vulnerable workers. The pattern of movement from Indonesia has a very distinctive gender profile as shown in Table 1.5.

Migration to Saudi Arabia has risen dramatically as Indonesian women have increasingly been taking the place of Filipino women. Culturally they may be more similar, but their position as maids and domestics is extremely vulnerable in the light of their lower levels of education and lack of support networks. In addition to the above official figures, many also arrive by going on a pilgrimage to Mecca and never returning home to Indonesia. Recruiters are active in this process. In 1997, close to 35,000 Indonesian household maids were expelled by the Saudi Arabian Government when a decision was made to expel all irregular overseas workers (Tirtosudarmo and Romdiati, 1998).

### **Philippines**

Overseas employment became an official policy in 1974 with the signing of the Labour Code by the Philippine Government. It had occurred earlier, but without the full control of the Government. Labour migrants started going first to the Middle East – men went to work on construction sites and women mostly went as domestic workers to families that had become oil rich and wanted help in the house. Low-skilled workers constitute much of the country's labour surplus and by this token they are “also the most vulnerable to abuse and exploitation, both locally and abroad” (Tomas, 1998: 1). In the 1980s, increasing numbers of women were admitted to Japan and South Korea from the Philippines, Pakistan, Bangladesh and Korea to work in factories and as dancers, waitresses and hostesses. They were followed by male compatriots who came as factory or construction workers. Table 1.1 shows the growth in contract labour migration from the Philippines from 1980.

The Middle East was the major destination for Filipinos during the 1970s and 1980s, but by the 1990s Asian destinations became most prominent. In the 1990s, more labour flows started to target Europe. Table 1.6 (overleaf) shows the changing spread of destinations in 2000-01 – the Middle East was again the major destination in 2001 with Asia experiencing a decline compared to 2000. The increasing importance of other destinations is evident in the table.

The major destinations for Filipino overseas contract workers (OCWs) in 2001 were the Kingdom of Saudi Arabia (190,732), Hong Kong (113,583, a decline of 6.7%), Japan (74,093, an increase of 17.53% over 2000), the United Arab Emirates (44,631), Taiwan, Singapore (up 15%), Italy, Kuwait, Brunei and Qatar. Thus, some countries have been reducing Filipino immigration while others have increased immigration from the Philippines. Japan and Korea in particular have increased such immigration, especially for women. In December 2000, the Inter-Agency Committee on Tourism and Overseas Employment Statistics estimated that 7.14 million Filipino nationals lived in 192 countries: 2.5 million as permanent residents; 2.9 million as temporary residents, and 1.8 million as “irregulars”. Thus irregular migration is smaller than the population of regular migrants who are widely distributed and among whom about half are female (Battistella and Asis, 2002b: 36-38).

TABLE 1.6  
DEPLOYMENT OF OVERSEAS FILIPINO WORKERS, BY WORLD GROUP, 2000-01

World Group	2000	2001	% change
Asia	292,067	285,051	-2.40
Middle East	283,291	297,533	5.03
Europe	39,296	43,019	9.47
Americas	7,624	10,679	40.07
Trust Territories	7,421	6,823	-8.06
Africa	4,298	4,943	15.01
Oceania	2,386	2,061	-13.62
Others	6,921	11,530	66.59
Total Land-based	643,304	661,639	2.85
Total Sea-based	198,324	204,951	3.34
<b>Total</b>	<b>841,628</b>	<b>866,590</b>	<b>2.97</b>

Source: Philippine Overseas Employment Agency (POEA) (2002).

The next table shows the occupational breakdown of new legal employees from 1992 to 2000. While the number of documented men has declined, the number of women has increased from 107,585 to 174,768. There were 23,146 more females in professional, technical and related occupations, 20,476 more female composers, musicians and singers and around 20,000 more domestic workers over this period.

TABLE 1.7  
DEPLOYED NEW HIRES FROM THE PHILIPPINES BY SKILL AND SEX, 1992-2000

Year	Prof., tech. & related	Choreographers & dancers	Composers, musicians & singers	Profess. nurses	Service workers	Domestic helpers	Total (all occupations)
<b>1992</b>							
Male	13,666	1,552	416	536	9,993	1,334	96,633
Female	44,308	33,979	2,572	4,230	56,929	46,243	107,585
<b>1995</b>							
Male	11,469	657	221	1,133	6,947	6,947	82,240
Female	25,158	14,498	1,220	6,295	70,851	59,698	115,927
<b>1998</b>							
Male	13,916	720	485	663	7,616	1,035	85,981
Female	41,519	25,923	7,781	3,892	72,797	45,868	133,072
<b>2000*</b>							
Male	11,230	1,063	919	1,273	7,412	1,367	70,427
Female	67,454	34,475	23,048	6,410	83,780	66,890	174,768

\*Not stated: 12,410.

Source: Scalabrini Migration Center, 2000.

This gender breakdown of new land-based deployments (as opposed to sea-based) shows an increasing proportion of females, from 50 per cent in 1992 to 70 per cent in 2000, and 73 per cent in the first half of 2002 (Philippines Overseas Employment Agency, 2002). Data from the POEA shows that female professional and technical workers represented 42.3 per cent of total female migrants and 85 per cent of this category between January and October 2002 (Dimapilis-Baldoz, 2003: 21). The importation of female “entertainers” to various countries, especially Japan and South Korea, is very noticeable and most of these come from the Philippines and Thailand.

Many Filipinos are tertiary educated and migrate to work in low skill jobs, thereby experiencing a de-skilling process – 28 per cent of temporary migrant workers have a college degree (Alburo and Abella, 2002: 8). The Philippine Government has been trying to find appropriate contract work for its overseas contract workers (OCWs), but generally they are only hired for low skill jobs.

The migration of Filipinos to Europe for work also stepped up in the 1990s. Data from the OECD show that Filipinos are most likely to migrate for work to Italy and Spain and that these migration flows, especially of females, are “linked to the development of the domestic service and health-care sectors” (OECD, 2001: 67). At 61,000, Filipinos comprised the largest Asian group in Italy in 1999, followed by Chinese, Sri Lankans and Indians, and the second largest group in Spain, after the Chinese (OECD, 2001: 67-68).

In 2002, 73 per cent of Filipinos who were deported were women. Migration often implies greater autonomy and freedom for women, but a disturbing aspect to the migration of Filipino women is their concentration in domestic services and entertainment. As these are unprotected sectors, the occupational hazards associated with domestic work and entertainment have cast serious doubts on the positive impacts of migration (e.g. Cox, 1997; Shah and Menon, 1997). Moreover, the rising trend in trafficking in women and children has magnified the risks of migration for women, threatening the integrity of their fundamental human rights (Asis, 2001: 25).

This aspect will be taken up later. Some of the migration for “entertainment” purposes to Japan and Korea also involves trafficking through a variety of “distinctly different processes (...) mediated through specialized agencies and informal networks” (Derks, 2000: 18).

## **Thailand**

Thailand began to send labour migrants in the mid-1970s and an increasing flow of migrants was directed towards the Middle East. However, a diplomatic incident in the late 1980s with Saudi Arabia resulted in a sharp decline in that migration. The labour outflow resumed in the early 1990s with the opening up of migration to Taiwan – where Thai workers are the major group. The numbers and destinations of Thai workers abroad are shown in Table 1.1 – 87 per cent were working within Asia during the period 1995-99, with Taiwan far and away the major destination. Only 8.9 per cent were working in the Gulf States.

The Thai Government has launched several programmes for sending workers in the hope of generating about US\$ 2 billion in remittances and relieving poverty and unemployment. Remittances in 1999 reached around US\$ 1.2 billion. The Government has increased funds so workers

can take advantage of low interest loans, and the Foreign Ministry uses the radio network to help people find jobs abroad and to protect job-seekers from illegal brokers. Increasing numbers are going overseas under their own arrangements, though the number of irregular Thais overseas is sketchy and difficult to obtain (Chalamwong, 2001: 294). The Overseas Employment Administration Office is the main agency in the Department of Employment that has a role in labour migration management. The three major roles are in promotion, control and protection (Permanent Mission of Thailand, 2003: 2).

In the 1990s, Thailand also started to become a country of immigration, mostly from neighbouring countries (80% from Myanmar), and before the financial crisis in 1997, there were more than one million migrants in Thailand – mostly as irregulars (Table 1.8). In 1998, around 300,000 irregular migrants were repatriated, but many have since returned (Scalabrini Migration Center, 2000). Many irregulars belong to ethnic minorities in Myanmar and consequently they have no legal status. They flee persecution and become labour migrants, making it difficult to separate refugees from migrant workers.

TABLE 1.8  
REGULAR AND IRREGULAR MIGRANT WORKERS IN THAILAND, 1997-98

Year	Migrants with work permit	Migrants without work permit	Total
December 1997	141,610	845,279	986,889
December 1998	90,472	597,937	688,409

Source: Scalabrini Migration Center (2000).

## Viet Nam

Emigration pressures have resulted in three broad groups of out-migrants from Viet Nam: the first consists of labour migrants working as contract workers in host economies; the second includes approved permanent migrants and asylum seekers, and the third comprises persons who are temporarily overseas, but who seek employment and/or extensions of their stay and persons who use unauthorized means to gain entry to a foreign country or who overstay their foreign visas. The latter group may include former labour migrants and asylum seekers who belong to the first two groups (Dang, 2003).

Compared with other South-East Asian countries, Viet Nam entered the international and Asian labour markets fairly late. When neighbouring countries such as South Korea, Singapore, Thailand and Malaysia were achieving high economic growth in the 1980s and 1990s, Viet Nam was suffering severe unemployment and low income growth. The advantages of sending out labour were recognized and national policies were adjusted. Viet Nam is different from most other Asian countries in that international labour emigration is extensively shaped and directed by the government. As a result of this, Viet Nam’s labour destinations largely include ex-socialist countries in eastern Europe, though this has changed in recent years.

In the early 1980s, the movement of Vietnamese workers to the former Soviet Union and Czechoslovakia marked the “first wave” of labour exports. However, social conflicts between Vietnam-

ese and native workers in the receiving countries led to an abrupt decrease in the outflow and a temporary halt to overseas employment. During the “second wave” in the late 1980s, thousands of workers were sent to eastern Europe, mainly to East Germany, Bulgaria and Czechoslovakia. The year 1989 marked the highest number (167,503 persons) of Vietnamese workers sent to eastern European countries and 45 per cent were female workers. Over the period 1981 to 1990, official reports indicate that a total of 217,183 Vietnamese were employed as contract workers in countries of the former socialist bloc in eastern Europe and what is particularly noteworthy is that almost half (42%) or 92,000 were female (MOLISA, 1995). But social and political changes in the Eastern Bloc resulted in amendments to bilateral agreements and a sudden halt to the admittance of guest workers. Extensive unemployment, negative attitudes to and repatriation of Vietnamese contract workers took place and, by the end of 1991, a large majority (approximately 80%) of workers had gone home before their labour contracts ended. Thus, by the early 1990s, labour agreements between Viet Nam and former Eastern Bloc countries were no longer viable. But according to reliable sources, many workers who returned to Viet Nam soon went out again, particularly to Germany where attractive income and immigration opportunities existed.

In an effort to find other markets to continue the labour export policy, the Vietnamese Government signed agreements with some countries in the Middle East and Asia. The “third wave” started in 1994 when labour migrants from Viet Nam were sent to Kuwait, Lebanon, Saudi Arabia, Libya, Japan and Korea. Migration to other Asia Pacific economies began. Since then, East Asia has become one of the major destinations for Vietnamese contract workers. The Vietnamese Government’s target destinations for labour migrants have become South Korea and Japan. These two labour importers bring in unskilled workers under their trainee programmes. By the end of 1994, there were 14,305 Vietnamese workers going to Japan each year and most of them were classed as “trainees”, that is, they received on-the-job training, in theory. By the same year, the number of labour migrants going to work in South Korea was 20,493, but by the end of 1997 this figure had risen to 22,325. Almost all of them were male. This pattern differs markedly from labour migration to the Eastern Bloc as most Vietnamese migrant workers to East Asia are contract labourers, which means that they cannot take their families with them and at the end of their contract they must return home. In East Asia, most Vietnamese workers were employed in labour-intensive small and medium industries (e.g. manufacturing, fisheries). Low wages, mistreatment and hazardous working conditions have come to be widely reported, especially among fishing workers in South Korea. The lack of job safety, health hazards, the language barrier, discrimination and restrictions on geographical movement are the most serious problems reported by migrant workers. The “trainee” status was used in South Korea to justify the huge differential between South Korean and guest workers’ wages. Trainees were not recognized or protected under South Korean labour laws as the contract was usually between the South Korean employer and Vietnamese labour recruitment agency, not with individual migrant workers.

In 2001, Viet Nam deployed 37,000 workers overseas, mostly to Taiwan, South Korea and Japan. The number increased to over 46,200 in 2002, but the destinations changed markedly. Malaysia became the most significant destination and received 19,900 migrant workers, followed by Taiwan with 13,200 and Laos with 9,100. Both Japan (2,200) and South Korea (1,200) became much less important destinations in 2002 (Tan, 2003: 9). Women accounted for only 23 per cent of migrant workers in 2002, an indication of the Government’s policy to try and protect women from exploitation.

### 1.2.3 East Asia

#### China

International contract labour migration is a growing phenomenon in China. It started in the late 1970s with the opening up of the economy, and has surged in recent years. It doubled between 1995 and 1999 compared to the period 1990-94 according to data for regular migrant workers in Table 1.1.

There are two major forms of overseas employment through the Bureau of Public Security: flows that are government organized and sponsored – “project engineering” and “international labour cooperation”; and “overseas employment of individuals” (Zhang Feng, 2001: 127). “Project engineering” comprises contracting and implementing engineering projects abroad for foreign governments, institutions, enterprises and individual employers on the basis of international competitive bidding. From January to August 2000, new contracts worth US\$ 72.23 million were secured. “International labour cooperation” refers to the sending of labourers abroad for economic, social and science/technology activities under contracts with foreign governments, institutions, enterprises and individuals employers, with the intent to earn remuneration. This has been occurring for around 20 years, and between January and August 2000, new contracts to the value of US\$ 19.55 million were secured for this work (Zhang Feng, 2001: 129).

The Chinese Government has taken a series of measures covering these schemes that include: improving regulations and rules for managing projects; opening up more channels for the export of organized labour and simplifying procedures, and improving preparatory language and cultural knowledge training before workers go abroad. Nevertheless, government-sponsored and managed schemes still carry some problems. According to Zhang Feng (2001: 129-30), the main ones are:

- the export of labour is not considered as important as trade, and so the legislation and system for managing the projects are not perfect;
- channels for export cannot meet the demand for people to go overseas to work, and so “illegal” migration exists; workers find it difficult to adapt abroad;
- legal rights and interest of labourers are not protected effectively.

The “overseas employment of individuals” refers to individual movements that are managed by employment service agencies. This has existed on a small scale only, but is now developing more rapidly. There were 70,000 labourers employed abroad under these arrangements by the end of 1999 and a further 10,000 were added in 2000. Destinations are widespread in Asia, Africa, Europe and America and the main occupations are in the agriculture, garment, housing and catering service sectors (Zhang Feng, 2001: 130). The main responsibility for handling these workers rests with the overseas employment service agencies and there were 46 at the end of 2000. Their functions include, among others, providing labour market information, job recommendation and recruitment, signing employment contracts, technology and language training, assistance with social insurance, protection of labour rights by means of mediation or legal action (Zhang Feng, 2001: 130). A new Regulation on Management of Overseas Employment Service was promulgated on 1 July 2002 (Zhang Guoqing, 2003) but numerous problems and infringements of migrant workers’ rights are still likely to occur.

Outside of this “regulated” labour migration, a large and growing undocumented flow is managed by illegal agents or “snakeheads”. Human smuggling has been going on for the last 20 years and it is estimated that around 100,000 migrants are smuggled out of China every year, bringing in around US\$ 1.3 billion for the syndicates that orchestrate the whole process. “Snakeheads” or smugglers recruit potential migrants (at around US\$ 33,500 per head on average), targeting mostly migrants from the southern province of Fujian. Migrants are then provided with forged documents and transported to transit stops such as Hong Kong and Thailand, and then to the intended country of destination (Scalabrini Migration Center, 2000).

This brief overview of each of the ten countries has provided background data on the levels and patterns of less skilled labour migration flows. The following section will focus on more highly skilled flows from Asia to OECD countries.

### 1.3 SKILLED LABOUR FLOWS TO OECD COUNTRIES

Asia is a major source of highly skilled workers, both as temporary and permanent migrants. As OECD countries strive to compete internationally and their own populations age, they are seeking out young, highly skilled workers to fill growing gaps in their labour forces and to improve their general stock of human capital. Many Asian countries have skilled workers who are highly trained and often proficient in the languages of international business and commerce. India, the Philippines, Pakistan, Bangladesh, Malaysia and increasingly China and South Korea, are the major sources. In some cases these workers exceed domestic needs, but in others it is a matter of personal choice and/or government programmes to migrate to work elsewhere on a permanent or temporary basis. The Indian and Philippine Governments, in particular, are keen to export highly skilled workers on a temporary basis and are looking towards the General Agreement on Trade in Services (GATS) to expand this.

Definitional issues make this a difficult area to describe accurately, but highly skilled workers are generally taken to be those who possess tertiary qualifications or an equivalent level of experience (Iredale, 2001). The OECD Canberra Manual (1995) uses a similar definition in relation to science and technology professionals. Movement may be intended to be permanent or temporary, but in many instances there is a change of plans. For example, gaining temporary entry to the United States may often be a deliberate strategy for achieving permanent entry or a “green card”. Around 40 per cent of permanent entrants to the US originally entered on temporary visas.

An analysis of the geographical distribution of foreign student flows shows “a very high concentration of foreign students of all origins, as 80 per cent go to only five countries: the United States, the United Kingdom, Germany, France and Australia” (Tremblay, 2002: 51). It has come to be recognized that student migration may be yet another way to achieve temporary or permanent migration. The policy changes that have occurred recently in Australia, Canada, France, Germany, the US and the UK support this possibility. For example, a survey of H-1B visa holders in the US in 1999 found that 23 per cent had adjusted from F1 student visas (Martin, 2002: 286). Table 1 in Tremblay (2002: 45) documents the options for students to change residence status.

TABLE 1.9  
INFLOWS OF FOREIGN HIGHLY SKILLED WORKERS AND SHARE OF ASIANS AMONG THEM,  
LATEST AVAILABLE YEAR

	Permanent workers	Temporary workers
<b>Australia (1999-2000)</b>		
Inflows of highly skilled foreign workers (in '000s)	35.1	30.0
As a % of total permanent labour migration	77.4	..
% of Asian workers among the highly skilled	..	27.8
<b>Canada (2000)</b>		
Inflows of highly skilled workers ('000s)	52.1	86.2
As a % of total immigrants who intend to work	43.2	..
% of Asian workers among the highly skilled	56.4	..
<b>France (1999)</b>		
Inflows of highly skilled foreign workers ('000s)	..	5.3
As a % of total labour temporary migration	..	48.3
% of Asian workers among the highly skilled	..	14.4
<b>Germany (2000-01)</b>		
Inflows of highly skilled foreign workers ('000s)	..	8.6
% of Asian workers among the highly skilled (India/Pakistan)	..	21.8
<b>Japan (2000)</b>		
Inflows of highly skilled foreign workers, ('000s)	..	129.9
As a % of total labour temporary migration	..	70.6
% of Asian workers among the highly skilled (China/Philippines)	..	53.2
<b>United Kingdom (2000)</b>		
Inflows of highly skilled foreign workers ('000s)	..	39.1
As a % of total labour temporary migration	..	50.6
% of Asian workers among the highly skilled (India/Philippines/China/Malaysia)	..	29.8
<b>United States (1999)</b>		
Inflows of highly skilled foreign workers ('000s)	24.1	370.7
As a % of total labour permanent or temporary migration	46.0 (1998)	46.3
% of Asian workers among the highly skilled	48.4 (1998)	38.9

Source: Table 1 (OECD 2002a, p. 3).

Table 1.9 shows inflows of highly skilled workers and the share coming from Asia in seven OECD countries. Three of these countries have permanent migration programmes: Australia, Canada and the US, and of these Australia has moved farthest in the direction of selecting highly skilled permanent settlers. “There has been a major policy shift in the last five years towards skilled migration”, according to Hugo (2002: 315), but as from 1999 “an increasing number of NESB [Non-English Speaking Background] applicants at perceived risk of delayed employment would be excluded from migration at point of entry, through a rigorous expansion of pre-migration English language testing (even in family-skill categories), mandatory qualifications assessment, and a range of additional modifications to the points selection process” (Hawthorne, 2002: 20). This was strengthened in 2001 by a policy change that enabled students to apply for permanent migration while they were still studying in Australia. The outcome of this change was that in 2001/02, over half of the permanent immigrants in the Skilled Independent category possessed Australian tertiary qualifications. Though the data on the percentage of skilled people from Asia are not included in the above table, other data show this to be significant.

Table 1.9 shows that Australia also takes in temporary highly skilled workers and 27.8 per cent of this flow comes from Asia. The rapid growth of the temporary programme in the last decade is partly a result of Australia adapting to an increasingly global economy and a more effective way of competing internationally for mobile professional workers, according to Hugo (2002: 317).

But it is also a pragmatic response to another problem. The non-recognition of overseas qualifications has been a perennial problem faced by permanent immigrants in Australia's highly regulated and protected labour market. Temporary migration as it has been structured does not involve any requirement for the formal recognition of overseas qualifications as the decision to hire and sponsor a temporary immigrant is entirely in the hands of employers. This dichotomy led to a debate about "equity" in the medical profession in the late 1990s and permanent and temporary doctors are now required to go through the same processes. Other debates have occurred in the IT occupational areas as displaced or unemployed Australian workers voiced their concern about the import of temporary IT workers. Further, Birrell and others have raised issues to do with national training and whether importing temporary skilled workers reduced the incentive to train Australians (Hugo, 2002: 316).

Table 1.9 shows that Canada and the US received 56.4 per cent and 48.4 per cent, respectively, of their highly skilled permanent immigrants from Asia. Legal immigration in the US was 849,807 in 2000, coming mainly from Mexico (173,919), China (45,652), the Philippines (42,474), India (42,096) and Viet Nam (26,747). Together, these five countries accounted for 40 per cent of all legal immigration (Migration Policy Institute, 2002). In 1999, Indians received 55,047 of the total of 115,000 H-1B visas issued, followed by the UK (6,665), China (5,779) Japan (3,339) and the Philippines (3,065). The US temporary (H1) work visas are mostly taken up by males with smaller numbers of women mostly going as temporary workers, nurses or nannies. Asian countries also feature highly in Canadian temporary highly skilled immigration.

The UK does not have a permanent migration programme, but it is possible to change from temporary to permanent status after four years. At the end of January 2002, the Government launched a new Highly Skilled Migrant Programme. The new programme is designed to bolster the UK's global economic competitiveness by allowing individuals with special skills and experience to immigrate to the UK, initially for a year. Successful admission is based on scoring in four key areas: educational qualifications, work experience, past earnings and prior professional achievement. Individuals receiving at least 75 points are free to look for a job and may be able to extend their residence after the first year for another three years. This is the first time in nearly three decades that foreign workers, other than nationals of EU member states, have been able to enter the UK without guaranteed employment.

A recent study in the UK of a small sample of skilled migrants showed that the latter were highly selective and mostly considered only four countries for immigration: 42 per cent only considered the UK while of the remaining 58 per cent, 34 per cent also considered the US, 15 per cent Europe and Australia/New Zealand, 9 per cent the Far East, 9 per cent Canada and 1 per cent India (NOP Business/Institute for Employment Studies (IES), 2002: 52). The motivations for migrating are multiple for highly skilled migrants, but this study found that for developing country migrants the "more advanced opportunities", a more accommodating "culture" and specialist opportunities were important factors for choosing the UK (NOP Business/Institute for Employment Studies (IES) 2002: 54).

France and Germany do not have permanent migration programmes but have recently moved to import temporary highly skilled workers. France typically takes more Africans and fewer Asians, as the figure of 14.4 per cent in Table 1.9 indicates. The opening up of these countries to temporary highly skilled workers provides a growing range of options. In particular, the rise of the IT sector in the 1990s opened up opportunities for Indians to go to destinations other than the traditional ones, viz. the US, UK, Australia, Canada.

While the numbers to these countries have grown, Germany, the Netherlands and, most recently, the Nordic countries, have begun to feature as destinations. Sweden's numbers are small, and most skilled arrivals come as asylum seekers or under family reunification schemes. In an attempt to fully utilize the skills of those who have arrived, and to encourage more highly skilled arrivals, the Swedish Government has adopted a policy of valuing diversity, especially in education and employment. Alternative methods for evaluating foreign qualifications and skills upgrading and a law to prevent ethnic discrimination have been implemented "in a labour market that has been prone to discrimination" (Gaillard, 2002: 244).

Table 1.9 shows that Japan took in 129,900 skilled workers in 2000, mainly from China and the Philippines. The number of new entrants in 2001 (excluding both re-entrants and temporary visitors) reached 351,000, a 55.8 per cent increase from 225,000 in 1996. The largest groups were Chinese (86,000) and Filipinos (85,000), followed by Brazilians (30,000). Whereas the Chinese included a large number of "trainees" and students, over 80 per cent of Filipinos arrived on an "entertainer" visa (MPI, 2002). That is, these figures include "skilled" workers other than as defined in this paper; they include "trainees" from developing countries and "skilled entertainment" workers, mostly female, who are defined as "skilled" after a four-week course. Filipinas are also increasingly going as nurse's aides to Japan where the rate of ageing is placing heavy demands on the workforce and families, but problems over accreditation of their nursing qualifications are still being negotiated between the two governments.

As Tsuda and Cornelius (2002: 29) point out, immigrants are concentrated in the peripheral labour market because of the nature of the employment system and the immigrants' sojourner mentality. Individuals "who have acquired human capital (either previously, or in Japan) are not rewarded with higher-level jobs with better incomes". They conclude that labour markets that are as homogeneous as the Japanese do not reward achieved human capital, only ascribed human capital. They found that being female and a migrant of non-Japanese descent leads not only to being confined to the peripheral labour market but also to the most severe discrimination by employers. Therefore, female migrants are the most disadvantaged.

The strategies being used by countries to deliberately send out both temporary and permanent skilled workers vary. India, for example, is actively seeking out skilled labour markets and is "almost at the top of the list of countries as far as emigration of the "brain drain" category is concerned". The "globalization of Indian talent and skills" is being hailed as having a very positive benefit for the country (Khadria, 2002: 30). As the IT boom has burst in the US, Western European countries are being viewed as a more sustainable destination and East/South-East Asia is an emerging destination. Not only IT workers but nurses, doctors, customer and financial personnel are also arriving from India. Middle and upper-class Indian students also make up a sizeable component of the growing numbers of fee-paying students going to the U.S, the UK, Australia and elsewhere, often as a means to permanent migration.

The Philippines falls into a similar category of actively seeking skilled labour markets and encouraging private colleges to train people for the overseas market. Albuero and Abella (2002: 13) note the alignment of deployments with global needs and the way in which there is increased training in such areas, or the “brain response” to use their term. This has mainly been in the engineering, nursing and increasingly the computer/ICT fields (30-50% of IT trained professionals now go abroad and 60% of physicians). The Philippines’ classification of “entertainers” as “skilled” has been discussed above and remains an anachronism.

Skilled labour flows to OECD countries from Sri Lanka are very limited except as permanent migrants or refugees fleeing conflict. But the above section on Sri Lanka shows that the Government is seeking to expand temporary skilled outflows. At the moment this flow is heavily biased in favour of males, and in 2000 female professional migrants numbered 42 compared to 881 males (SLBFE, 2001: 9-10). The other sending countries in this paper are not actively sending skilled migrants overseas, though as the Bangladesh case study showed, many have left over the last 30 years. Currently, however, the movement of students to the US, the UK, Canada, Australia and Japan must be included as potential skilled out-migration as many students do not return home. The adjustment of receiving country policies to enable easier conversion from student visas to permanent or temporary entry visas must be taken into account. This has affected students from China, India and Bangladesh and, to a lesser extent, Indonesia, in particular.

Issues in relation to skilled emigration from developing countries have received ongoing attention since the 1960s. They have recently taken on a new focus as the potential “benefits” have come to be stressed by developed countries that experience the gains, and by some developing countries. India continues to experience significant “brain drain”, but this is not seen as problematic by the Government. Emigrant or Non-Resident Indians (NRIs) are perceived as potential returnees in a real sense or as an asset in terms of providing investment funds, links with overseas firms and flows of knowledge and ideas through networks. Academics, such as Khadria (2002), are less sanguine about the outflows and see a real possibility of deteriorating domestic health and education services because of the ongoing loss of skilled personnel from India. China is increasingly a destination for student returnees and foreign nationals, and policies are now being developed to try to garner the skills needed within their economies. These countries are experiencing both “brain drain” and some return or circulation.

On the other hand, Indonesia, the Philippines, Pakistan, Bangladesh and Sri Lanka continue to experience significant “brain drain” without much circulation of overseas nationals or non-nationals. Albuero and Abella (2002: 23) are optimistic about the Philippines decreasing its skilled out-migration and increasing return migration due to “recent developments in the environment, shifts in the supply responses, and global integration”. What is clear from research just completed is that skilled return migration or circulation is neither automatic nor simple to achieve. Economic growth must be accompanied by improvements in the environment, in government administration and transparency and in the social and safety situation in the country for former migrants to be encouraged to return (Iredale et al., 2003).

The following section will discuss the management of labour migration, under eight sub-headings, and will highlight examples of good policies and practices that exist in the ten countries reviewed. Highly skilled and less skilled movements are treated together.

## 1.4 NATIONAL POLICIES AND PRACTICES ON LABOUR MIGRATION MANAGEMENT

The problems of migrant workers throughout the world are not the same, and the remedies sought in Europe may be different from those in the Middle East or Asia. Also, the problems of long-term migrant workers tend to be different from those of short-term overseas contract workers. In some countries, problems are due to individuals, such as employers, within the context of a relatively well functioning legal system, while in other countries problems are caused by governments' implementation of laws that others would view as harsh (Santiago, 2003).

The Philippines has the most elaborate policies and practices covering contract labour migrants, which is not surprising given that it is the most important labour exporter in Asia and the second largest in the world, after Mexico. But loopholes still exist and the Flor Contemplacion and other cases show the need for constant monitoring and policy adjustment.

### 1.4.1 Foreign labour market development and marketing

On the whole, countries in Asia are increasingly seeking out foreign labour markets for their workers as poverty, high unemployment and lack of development make this a desirable political, economic and social strategy. The role of states in opening up and perpetuating contract labour migration needs to be constantly examined and sending country policies should be well thought out, consistent and designed to maximize the benefits for the country/workers and protect their workers. The major strategies to promote workers overseas are the dispatch of overseas missions, development and production of promotional material, direct mailing campaigns, market research, liaison with diplomatic missions and participation in international conferences/forums on migration. Additionally, the Philippines' initiatives include "client referral assistance programmes, industry liaising and negotiations for bilateral and multilateral agreements" (Dimapilis-Baldoz, 2003: 8-9).

Sri Lanka's Bilateral Cooperation Unit collects information from missions on job opportunities. Active efforts continue to be made by the Government to expand markets in the Middle East and in Japan, South Korea and Cyprus (Watkins and Nurick, 2002: 66). In order to monitor labour market developments in labour receiving countries, missions also send monthly reports back to the Bilateral Cooperation Unit (Rahunage, 2002). There is a new Draft National Employment Policy, according to Athukorala (Ministry of Employment and Labour, 2002a), with the aim "to adopt a pro-active approach to identifying global employment opportunities and uplift the image and skills of migrant human capital by providing them with appropriate training to enhance their competitiveness".

The role of private recruitment agencies in expanding labour migration in Asia has been a very important one. Practically all migrant workers from South-East Asia have found their jobs through private recruitment companies who link up with job brokers in Taiwan, Singapore, Hong Kong, Kuwait or Riyadh. Employment agencies have been known to charge exorbitant fees for their services, but have been instrumental in expanding opportunities for migrant workers (Abella in IOM's World Migration Report 2003).

#### 1.4.2 Protection of migrant workers in recruitment and employment

At the moment, countries are competing with each other and this often leads to less protection. Protection during employment is variously managed. Some countries have a spread of labour attachés while others are unable to resource this function. The Philippine Government has progressed much farther along the route of monitoring than any other labour sending country. The profile of Filipino workers abroad and the sheer numbers that were or are affected by overseas labour migration (totalling around 10 million over time) has pushed the Philippine Government to make ever greater efforts to protect their OCWs.

By the 1980s, the Philippine Government had created two agencies: the Philippines Overseas Employment Administration (POEA) for market promotion and development, regulation of the industry through a system of licensing and monitoring, and documentation, processing and deployment of workers; and the Overseas Workers Welfare Administration (OWWA) to cover welfare and protection issues. The POEA sees government regulation as essential for controlling conditions of employment. It has entered into bilateral agreements or is seeking such agreements with 34 countries/economies. The Philippine Overseas Labour Office (POLO) maintains around 45 labour attachés in about 32 countries of destination of OCWs to provide counselling, legal assistance, conciliation and liaison services to workers in distress. According to POEA information they also link up with the home offices of the Department of Foreign Affairs and the Department of Labour & Employment to enforce obligations of recruitment agencies and employers over welfare issues (Dimapilis-Baldoz, 2003: 7). Nevertheless, various forms of illegal recruitment, contract substitutions, delayed payment or non-payment of wages, and harsh working and living conditions are still experienced, especially by women. The over-representation of women among problematic cases monitored by the Overseas Workers and Welfare Administration (OWWA) underscores their greater vulnerability. Women are often employed in unprotected work sites and gender-based discrimination, especially gender-based violence, is rife.

The Philippine Government exerts continuous pressure on labour receiving countries to sign the UN Convention on the Protection of the Rights of All Migrant Workers and Their Families. Unfortunately, many have still not done so. The Philippines also develops “model employment contracts” for different countries and different occupations that include basic standards and requirements. Rodriguez (2002: 23-24) questions whether by using model contracts as the basis for final employment contracts “the state, in effect, plays a role in disempowering workers”. For example, some contracts list participation in trade union activities as a legitimate reason for a worker’s termination and favour employers in terms of the handling of disputes. Rodriguez argues that this makes for a docile labour force.

Viet Nam has a higher degree of government control than most other countries in the region. This is evident in two ways. The northern provinces, with the exception of Ho Chi Minh City, are responsible for supplying a relatively greater share of migrant workers. This “selection” is not in response to market forces but reflects government policy intervention that is aimed at the management of social, economic and regional imbalances. Second, in the 1990s, women featured far less in numbers (18.2%) than for Indonesia (63.1%), Sri Lanka (69%) or the Philippines (59.6%). This can be attributed to the official restriction on labour contracts that allow female workers to go overseas as domestic helpers, housemaids or entertainers. The tight control maintained by countries such as Viet Nam may not be manageable under other political

systems. Moreover, the imposition of age limits or the banning of female migration may be problematic as it may lead to more irregular migration or trafficking.

The Chinese Government has also regulated labour migration, but excess demand has led to the rise of smuggling and trafficking. The Government is now trying to stamp out irregular migration by both closing down illegal agents and cooperating with other countries, such as the UK and US, in the arrest of people smugglers.

In most countries the role of agents has been crucial in expanding labour migration opportunities. For example, in India recruiting agencies mostly “search out the new areas and avenues for deployment of Indian workers abroad” (Ministry of Labour, 2003). But they are also often perceived as a major problem, and one non-governmental organization, Tenaganita, is calling for the abolition of recruiters, initially in the sphere of domestic work at least. Moves to place much of the responsibility for recruitment into the hands of private recruiting agents, including in the Philippines, is a matter of great concern. Malpractice by private recruitment agents may lead to migrants leaving on a regular basis, but when they arrive they find no job waiting for them and they fall into irregular status. As Wickramasekera (2002: 17) points out, “the share of public employment in sending workers overseas has fallen drastically, giving way to a thriving industry of intermediaries in both sending and receiving countries. (...) It is well documented that the recruitment industry has been responsible for various cases of malpractice and the growth of irregular migration in the region”.

In an attempt to curb the extortion of migrant workers by agents, the Thai Government has established the Public Overseas Placement Agency to cut down on private recruiters (Permanent Mission of Thailand, 2003: 12). Further, the establishment of a Workers Welfare Fund for skill training, pre-departure orientation and to assist the repatriation of Thai workers is also now in operation (Permanent Mission of Thailand, 2003: 11). Thailand is one of the few countries where, under the new Constitution passed in Parliament in June 1999, overseas Thais have the right to vote in general elections.

The regulation of private recruitment agencies through the development of a transparent and enforceable system for the licensing, monitoring and sanctions is obviously very important. Legislation exists in most countries to control agents. However, the strength, enforceability and transparency of these laws and regulations vary and there have been gaps in their implementation. Better mechanisms for monitoring of agents could be set up and consist of representatives of NGOs, labour organizations, civil society and the government.

Alternatively, other mechanisms for the recruitment and management of contract labour migrants could be investigated. The Philippine Seafarers’ Union is an example of a body that is owned by the workers themselves (they contribute a fee to its operation) and it locates employment, negotiates conditions and terms of employment and looks after the interests of workers once they are employed. This is a type of cooperative that could be used as a model. Other such cooperatives could be formed and administered by workers in particular industries or by NGOs.

“Model employment contracts” for different countries and different occupations are a good practice but they need to be reasonable and not infringe on labour rights or be unduly weighted in favour of employers. Contracts that tie employees to a particular employer should be eschewed as they

commoditize workers and workers “are effectively sold to employers who assume almost full control over their purchased property” (Ruhs, 2002: 49). Freedom of movement between employers should be an essential element of such contracts. The “operationalisation of this principle in practice necessitates the elimination of the sponsorship requirement that currently exists in most countries (...) as native employers can no longer be sure that they will be able to employ a certain foreign worker until recruitment costs have been recovered” (Ruhs, 2002: 50).

Ruhs (2002: 51) also argues that the “price” of foreign labour has been distorted and is usually too low. Therefore, employers choose this option over other options, such as more technology or moving their plants offshore. By charging employers a fee that is high enough to adequately reflect foreign workers’ real supply price (including all recruitment costs) and take account of industrial policies, it would “put price back into the labour market” (Bach, 2001: 115). This would lead to both greater efficiency and less labour market segmentation, as wages would not be “allowed to drop to levels that are too low to reflect the real supply price of foreign labour any longer” (Ruhs, 2002: 52). This would have obvious benefits for migrant workers as they would not be forced to accept unnaturally low wages, such as in Malaysia.

Government control is essential for managing conditions of employment through bilateral or multilateral agreements and the deployment of labour attachés. But government-to-government operation “may [also] prove ineffective in protecting migrant workers because of other factors” – such as the absence of effective mechanisms for the implementation of labour laws and human rights instruments, and lack of efficient management capabilities, policies and planning (Amin, 1998: 21). The dilemma of “promotion” versus “protection” is always present for sending countries and the perceived trade-off between ensuring labour market penetration and the labour and human rights of migrants is a complex issue. The ILO has developed detailed guidelines for the formulation of migration policies for both labour sending and receiving countries and these should be widely disseminated “because they contain good practices based on international experience” (Wickramasekera, 2002: 17).

Most countries make little provision for workers who need to be repatriated. The Philippines Republic Act 8042 provides for the establishment of a Replacement and Monitoring Center and for the repatriation of workers in distress, including the establishment of the Emergency Repatriation Fund.

In Thailand, which is also a labour receiving country, the Thai Rak Thai Party that won the 2001 elections abolished the quota system for irregular migrants temporarily in 2002 and all migrants working, or wishing to work, can now register for twelve months. Amarapibal et al. (2002: 270) see this as a “fresh approach that has the potential to deal with many of the shortcomings of the registration system”. It is not limited to particular occupations or geographical areas and it provides for a system of health and welfare support. The new Government ran for election on a platform of taking better care of emigrant workers so further policy improvements can be anticipated.

Currently, there is no Asian regional labour market strategy. A regional strategy could be developed to take on the following roles: information sharing, encouraging agreement on how to share labour market opportunities, encouraging adherence to ILO and UN conventions in negotiating agreements, developing wage agreements, overseeing a body for monitoring private agents

and improving offshore protection by encouraging the establishment of shared facilities in labour receiving countries. Such a strategy could help to ensure that there is no undercutting in terms of contracts, in particular wages, and it could be agreed that wages could only be negotiated within particular bands.

It could be much more viable for countries to collaborate and share the functions carried out by labour attachés. Shared Migrant Worker Advocacy and Welfare Centres (MWAWC) in major cities in labour receiving countries could be jointly financed by receiving country governments and employers, local trade unions, international agencies and sending countries. The advantages of such centres would be the shared services provided for migrants from different sources, migrants from countries that cannot afford attachés would have coverage, best practices could be built up and disseminated and domestic trade unions could become involved.

Further, there is no existing regional body to oversee labour migration. Other structures, such as ASEAN, SARC APEC, etc., do not have comprehensive geographic coverage. The formation of a regional body may be an option to consider.

### **1.4.3 Policy and legislative frameworks, structures and mechanisms governing labour migration**

#### **International legislation**

The UN Convention on the Rights of Migrants and Members of Their Families has been ratified by the 20 countries needed to bring it into operation, but by only three countries in Asia, the Philippines, Sri Lanka and East Timor. Asian countries should all be encouraged to accede to it and the various ILO conventions, which should be translated into domestic legislation.

#### **National legislation**

Most national legislation does not cover irregular migrants, but the Philippines' Republic Act 8042 (RA 8042), Migrant Workers and Overseas Filipinos Act of 1995, is designed to establish higher standards of protection for all migrant workers and their families. According to Asis (2001: 26), the 1995 Act was a "major step in providing the legislative framework in promoting the protection of overseas Filipino workers". In contrast to other countries, the Act covers irregular migrants and "victims of illegal recruitment and related cases can avail themselves of legal assistance from Philippines Overseas Employment Administration (POEA)". Thus, initiatives for their protection aim to bring them into the realm of regular migration, though according to Battistella and Asis (2002b: 43-45) it is difficult to measure the "effectiveness of the redress and protection provided by the government".

The RA 8042 covers many aspects from deployment to repatriation and reintegration.<sup>2</sup> Pre-departure information/education programmes on migration are the major thrust of policies to prevent irregular migration from the Philippines. The pre-departure orientation seminar, a mandatory one-day briefing, provides information on documentation, rights and obligations under the employment contract, what to expect on arrival, remittance advice, where to go in terms of health and occupational safety (Dimapilis-Baldoz, 2003: 7). But while the Act pays particular

attention to the vulnerable situation of many women, Asis (2001: 26) states that in practice “these requirements have been revised, reviewed, and waived in response to economic conditions, the demands of the market, lobbying by interest groups, and the track record of the receiving country in protecting the rights of migrant workers”.

While some governments have taken a proactive role in promoting male migration (through the promulgation of ordinances and statutes), women’s cross-border movements as principal migrants may be strictly curtailed. Such a discriminatory policy towards women may breach constitutional provisions that guarantee equal opportunity to men and women, nor does it always stop women from migrating. Rather, it may make women migrant workers more vulnerable and may have contributed to the trafficking or smuggling of women. In the absence of official opportunities, women may be trafficked or smuggled for various forms of exploitative work, such as sex work, construction, domestic work.

The interests of migrant workers as well as the interests of sending and receiving states, are best served by orderly departure programmes that have legislative backing. Legislation or policies that are unduly restrictive or that discriminate against women, are not acceptable and may only encourage disorderly movements or the recourse to intermediaries. In an important new move, the Indonesian Government is currently considering a number of new initiatives and the urgency for these to be implemented cannot be underestimated. They include:

- Meetings to be conducted between Indonesian and Malaysian officials to formulate an MOU on labour issues between the two countries;
- At the parliamentary level, after strong pressure by a coalition of NGOs advocating the rights of migrant workers, a special body has been created to prepare the draft of a Migrant Workers’ Bill;
- Two new directorates related to the issues of overseas migrant workers’ protection are to be created: The Directorate for Victims of Violence and Migrant Workers, under the Ministry of Social Affairs, and the Directorate for the Protection of Indonesian Citizens and Indonesian Legal Agency.

#### **1.4.4 Pre-departure training and orientation**

Pre-departure training and orientation may take a variety of forms and may be compulsory or voluntary. Preparation and empowerment training has been in place in the Philippines since 1983. Pre-departure orientation seminars (PDOS) are mandatory for all departing labour migrants. The seminars aim to orient migrant workers regarding working and living conditions abroad, their rights and responsibilities, programmes and services for migrants and their families, and information on where to seek assistance. Extended PDOS for vulnerable workers, such as household workers (many of whom are women), are provided by accredited NGOs.

At least 38 migrant NGOs provide a variety of services and assistance to migrant workers and their families and RA 8042 recognizes NGOs as partners in protecting migrant workers (Asis, 2001: 79). Licensed agencies also provide a variety of pre-departure information programmes through the mass media and community-based programmes. In general, information sharing and

provision is much better in the Philippines than in other Asian countries. The role of the churches in this activity cannot be underestimated, both at home and abroad (Asis, 2002). IOM provides cultural orientation seminars aimed at live-in caregivers emigrating to Canada in the Philippines, besides a course aimed at emigrants to Canada in general.

The very active place of Filipino NGOs both at home and abroad is a unique feature that should be encouraged elsewhere. A recent conference on Gender, Migration and Governance (Piper et al., 2002) found that NGOs and civil society have often attempted to address the gaps and problematic issues of migration, including pre-departure training, on-site organizing of migrant workers and reintegration training.

A common syllabus for pre-departure training has now been implemented in Sri Lanka and is being conducted through a network of public and private training facilities. NGOs and labour organizations are also becoming more involved in training programmes and awareness building initiatives.

The Government of Nepal recently introduced pre-departure training, largely based on the Sri Lanka Bureau of Foreign Employment (SLBFE) model (Barniah, 2003). It has been suggested that programmes targeting unskilled labour migration tend to discourage skill development among Nepalese workers, and such arguments have, in part, led the Government to establish some skill-training centres in different parts of the country (His Majesty's Government of Nepal Employment Promotion Commission, 2003: 3).

In India some technical skills are provided to construction workers, either through NGO networks or through sponsoring agencies in the receiving country. For example, some large Singapore construction firms provide technical skills and certification to migrants prior to their departure. This may be driven by the more favourable tax treatment accorded by the Singapore Government to companies that sponsor skilled rather than unskilled labour from overseas (Dyvadheenam, 2003). Nevertheless, it does lead to improved human capital, and presumably wages, for migrant workers.

#### **1.4.5 Remittance management**

It is evident that the foreign exchange that can be earned by nationals working abroad is one of the primary driving forces behind the adoption of a proactive labour migration policy. Migrant remittances constitute an important source of foreign exchange that can be used in debt servicing and paying for vital imports. The most direct link between migration and development in countries of origin is through remittances – the funds migrants send home.

The total value of remittances flowing to developing countries in 1999 exceeded both ODA and private debt and equity flows (Stanton Russell, 2002). Worldwide, the flow probably exceeds US\$ 100 billion with more than 60 per cent going to developing countries. ILO estimates that globally the value of remittances flowing through informal channels is as large as through official channels. At the household level it is generally agreed that remittances help to reduce poverty (Stanton Russell, 2002). India and Bangladesh ranked first and eighth respectively, worldwide, in workers remittances for 2000 (World Bank, 2002).

Over the years, Asian governments have introduced a number of policy measures to influence the flow and use of remittances. As remittances are private transfers, these policy measures have largely been in the form of incentives, but in some cases are mandatory. In India, repatriable foreign currency accounts with an active interest rate policy and foreign currency bonds have been offered to non-resident Indians to promote cash inflows.

The Government of Pakistan attaches great importance to the role of Overseas Pakistanis (OPs) in the economic development of the country, and a range of incentives is provided to OPs, ranging from separate immigration and customs counters at all international airports to free renewal of passports and duty-free allowances. Remittances are not subjected to any kind of taxation. This enables Overseas Pakistanis to remit money freely for consumption, investment or other purposes. Non-resident Pakistanis (NRPs) remitting a minimum of US\$ 10,000 through bank channels are entitled to the following benefits:

1. To avail themselves of the quota to be filled exclusively on merit reserved in all public sector professional colleges and universities.
2. The right to an annual duty-free import of items of personal convenience up to US\$ 1,200.
3. An allocation of up to 25 per cent for in Initial Public Offerings (IPOs) to be subscribed in foreign currency.
4. Ballot of choice plots in public housing schemes at attractive prices to be paid in foreign currencies.
5. Discount in the auctions of Corporate and Industrial Rehabilitation Corporation (CIRC) where payment will be made in foreign currency.
6. Special allocation of shares in privatization schemes.

The awareness in Bangladesh about the need to develop proper strategies and gear existing financial institutions, both government and private, towards the mobilization of resources has grown recently. The Government has adopted some important policy measures that include encouraging Bangladeshi banks to open correspondent relationships with financial institutions in destination countries, developing and liberalizing the existing financial instruments to attract migrant remittances and promoting remittances by allowing them tax-free status. As a result of these policy changes, remittances increased substantially in 2002.

The principal activities of large financial institutions in Bangladesh with regard to the utilization of remittances have been limited to offering a few savings and investment instruments. Micro Finance Institutions (MFIs) have now emerged as major actors in savings mobilization and credit disbursement at the grass-roots level in Bangladesh, with some form of presence in over 80 per cent of villages, and are considered one of the most sophisticated institutional networks available (World Bank, 1996). However, the existing legal framework under which they operate does not allow them to harness remittances or access them in the destination countries and this obviously is an element that needs to be looked at.<sup>3</sup>

For Sri Lanka, there is limited participation of local banking representatives in pre-departure training to raise awareness of remittance management options (e.g. foreign currency accounts, fixed deposits) and subsidized loan schemes. However, representatives of some of the banks are posted overseas and work directly with the exchange house, principally in locations where large numbers of Sri Lankans are employed. They help in the processing of remittances and provide

the required guidance and support to the remitter (CENWOR, 2001: 6). The linking up of housing loan facilities to Non-resident Foreign Currency (NRFC) Accounts, attractive lottery and gift schemes and aggressive promotional campaigns have ensured that savings are channelled to NRFC accounts (CENWOR, 2001: 20).

Banks, credit unions and regulated micro-finance institutions (MFIs) are in the best position to leverage the economic impact of remittances (Stanton Russell, 2002). In tandem with incentives, the most important step governments can take to stimulate remittance flows and to realize their development potential is to create a sound economic policy and legal environment that promote capital inflows, including formal remittances.

#### **1.4.6 Labour migration information systems and data collection**

Data collection is more advanced in the Philippines and data are publicly available on the POEA and Commission on Filipino Overseas' websites. This enables the comprehensive analysis of changing trends, including for irregular migrants. Further, an interagency committee has been given the responsibility of establishing a shared government information system for migration that will provide data and advice to prospective migrant workers, who thereby can make informed and more rational decisions.

The Philippines' Migrant Advisory Information Network (MAIN), which involves governmental and non-governmental agencies and operates under the auspices of the Commission on Filipinos Overseas, also contributes to the effective operation of the system. This system can link up with other databases, especially in the Asia Pacific region, to provide a wider range of information and therefore a better means to protect migrant workers' rights. "Prevention is a much better guarantee of protection than reliance on either Philippines or destination country legislative arrangements", according to Santiago (2003: 219).

Data on migrants in the countries of origin have largely been a by-product of exit controls intended to protect migrant workers. At the other end, in countries of destination, work permit statistics and employers' reports are the usual sources of information. IOM is supporting pilot initiatives to build databases concerning diasporas, in order to facilitate their contribution to country of origin development.

#### **1.4.7 Reintegration of returning labour migrants**

The reintegration of returning labour migrants is a often neglected aspect of labour management programmes. Some governments are attempting to assist with reintegration and many NGOs are operating to try to ensure that labour migration is not self-perpetuating, that is, that people do not need to continue to re-emigrate. The Asian Migrant Centre in Hong Kong is particularly active in providing training to Filipina domestics. Other offshore NGOs should be encouraged and/or resourced to carry out this role. The SLBFE in Sri Lanka has adopted a broad range of interventions aimed at reintegration, including discounted loan schemes and migrant children's education scholarships. However, these interventions need to be supported by capacity building programmes and on-going support mechanisms.

Local, state/province and national governments need to work together to solve migrant worker issues. Additionally, linkages with NGOs, labour organizations and civil society need to be strengthened and maintained.

#### **1.4.8 International cooperation**

International cooperation has developed slowly and in an ad hoc fashion in the region. This has caused many commentators to be critical of both sending and receiving countries. For example, Rodriguez (2002: 24) argues “that migration [only] becomes an issue when it facilitates the increased mobility of flexible labour, but it fails to be part of the agenda when it concerns migrant workers’ rights”. Wickramasekera (2002: 33) states that “labour receiving countries in the region have shown a high degree of aversion to formulation of bilateral agreements to obtain labour or provide social security to foreign workers”.

The Philippines has entered into 12 manpower agreements with host countries of Filipino labour. Most of the agreements with Middle Eastern countries focus on strengthening areas of cooperation in the fields of labour, employment and manpower development and the enhancement of the welfare, well-being and workers’ rights. European agreements are more focused and aim at particular sectors of employment, such as health professions in the UK and Norway. In recent years, the Philippines has veered away from general agreements towards more focused instruments, which are easier to negotiate and operationalize (Dimapilis-Baldoz, 2003: 13). Other countries that are currently developing general MOUs, such as Indonesia, could take this trend into account.

Over the last two decades, labour migration has become a major phenomenon in the region, and there is an increasing need to mainstream migration issues as part of regional discussions, processes and mechanisms. Strengthening collaboration between labour sending countries should ensure continued access to offshore labour markets, with better conditions for workers. The overall situation will only improve when sending countries stop competing among themselves for employment opportunities to the detriment of migrant worker rights and conditions, and develop common policy frameworks (Amin, 1998).

One step is to stabilize the price of labour so employers and recruiters will not be in a position to exploit migrant workers. There have been cases of successful campaigns and enforcement of workers’ rights, but at times these have had unintended consequences, such as when Filipinos are replaced by less organized and/or vocal nationality groups. This also creates a segmentation of workers based on nationality, ethnicity and social/human capital.

The growth triangle that incorporates Mindanao in the Philippines, Indonesia, Malaysia and Brunei is an example of broad regional economic cooperation. It provides expanded opportunities for Filipino medical and educational service providers. Albuero and Abella see this as beneficial for the Philippines, as it “improves the prospect of brain drain reversal as the expanded reach of services reduces the migration incentive” (Albuero and Abella, 2002: 21).

The efforts of the Asian African Legal Consultative Committee for the legal protection of migrant workers could be used as a model and “deserve serious consideration and support” (Amin,

1998: 24). The European experience may also provide instructive examples for developing policies, MOUs and regional cooperation in addressing migration issues.

Some countries of destination have been more inclined to establish less formal arrangements for cooperating with countries of origin on labour migration management. Multilateral consultative processes, such as those sponsored by the IOM, and bilateral Joint Commissions on Labour (a mechanism for regular consultation between the administrative authorities of the two states concerned) have provided an informal and flexible structure for dialogue.

## 1.5 GROUPS OF MIGRANT WORKERS REQUIRING SPECIAL FOCUS

It is generally agreed that the three most vulnerable groups of migrant workers are irregular workers, many women workers and trafficked people. These categories are not necessarily mutually exclusive, but this section will focus on these three groups as those needing the most urgent and comprehensive attention. The growth of highly skilled migration, especially the temporary element that is incorporated under the General Agreement on Trade in Services (GATS), provides new challenges to countries wishing to benefit from their labour migrant outflows. Governments of developing countries, in particular, are interested to know the extent and nature of this type of movement, and this will be touched on here as well.

### 1.5.1 Irregular migrant workers

Both authorized and unauthorized migrations have similar determinants and processes, and the migrants are similar, except in terms of their access to channels of migration. The high costs of migration, the inflexibility and/or brevity of some contracts and the absence of opportunities to migrate often lead to a growth in the number of irregular migrants. Thailand and Malaysia host the largest numbers of irregular workers in the Asian region and until these countries adapt their migration intake programmes to meet the needs of their economies, irregular migration will continue to grow.

Employer sanctions have a limited effect for a variety of reasons, but mostly because employers and foreign workers become dependent on each other (Ruhs, 2002: 58). Moreover, while all countries have some form of forced return policy, the deportation of irregular migrants seems to have little effect. The best means to protect the welfare of migrant workers is to preclude, by all means possible, the existence of opportunities for their exploitation by unscrupulous agents or employers.

After analysing many labour migration programmes, Ruhs (2002: 58-59) concludes that one policy principle that should be followed in all temporary labour programmes is that “irregular migrant workers who have been employed in the host country for a certain number of years without being detected and deported” should be regularized. This is a highly controversial policy option and not accepted by many governments. It is already happening in Italy and Spain, but the willingness to provide permanent settlement for temporary migrant workers is very limited in Asia or the Middle East. In the event that regularization is not an option, the safe return of irregular migrants should be guaranteed.

In April 1999, the Royal Thai Government, in cooperation with IOM, organized the “International Symposium on Migration: Towards Regional Cooperation on Irregular/Undocumented Migration” in Bangkok. The Bangkok Declaration on Irregular Migration 1999, adopted by the 18 participating (sending and receiving) states, provides a framework for future regional cooperation in combating irregular migration and trafficking. It also contains an agreement that countries cooperate regionally, and individually take strong action to stamp out the most harmful form of irregular migration, trafficking (dealt with below) (Klekowski, von Koppenfels, 2001: 13).

The long-term solutions to irregular migration are to open up more opportunities for regular migration and reduce the pressures for emigration. In the meantime, the 1990 UN Convention of the Rights of All Migrant Workers and Their Families can now come into operation, and countries should be encouraged to ratify it. If it is translated into domestic legislation it will ensure greater protection for irregular migrants. The ILO core conventions also cover the rights of irregular and regular migrants and countries could be encouraged to adhere to them.

### **1.5.2 Female migrant workers**

A growing body of literature deals with migration involving women, which is attributable to a number of factors: the feminization of international migration, especially in Asia; the distinctive migration patterns of women (domestic employment and moving/being trafficked for prostitution) and increased education levels for women and girls, resulting in many more politically active and outspoken female activists in various countries of Asia. In the Philippines, in particular, the role of articulate women in highlighting the plight of many of their sisters and their capacity for networking with women in other countries, both through various NGOs as well as more informally (the internet), has led to an intensification of the pressure in relation to the situation facing contract women workers who are overseas.

The major problems identified are:

- Women’s live-in domestic work continues to be seen as an extension of household work and therefore not properly valued or included under Employment Acts (Piper et al., 2002). This leads to a lack of protection regarding working and living conditions.
- In the case of sex work, the discussion needs to recognize the diverse, complex and contradictory processes at work. Gross economic inequalities result in different degrees of “choice” and/or “constraints”, and the tendency to use either a “victimization” or an “agency” perspective often masks the complexity of the conditions under which women work. Human rights advocacy and policy making in this area needs to pay attention to the specific contexts in which migration for sex work occurs.

There is now a wider understanding of the multiple disadvantages and the risk of exploitation and abuse that many migrant women workers experience. Women are often faced with both direct (as above for domestics) and indirect (structural) discrimination and this requires attention at the global level. The issue of sex and race discrimination towards women from developing or labour sending countries in Asia is endemic. Banning such migration is not a long-term solution as this often leads to irregular migration, especially trafficking.

### **1.5.3 Trafficked persons**

The trafficking (involving some element of coercion or force) of women and children, often for commercial sex and other exploitative and abusive purposes, is rampant in Thailand and the neighbouring countries of Viet Nam, China, Bangladesh, Nepal, India and Pakistan. NGOs were the first to highlight these practices, but now the Thai, Philippine and other governments, IOM, ILO, UNESCO and other bodies have become involved.

The Manila Process (IOM Regional Seminar on Irregular Migration and Migrant Trafficking in East and South-East Asia), held in 1996, was mainly an information sharing process. A second regional conference (referred to above) followed in Bangkok in 1999. The outcome, the Bangkok Declaration, called for a regional mechanism and strong national action for dealing with traffickers. The countries mostly pushing for this were the receiving countries, such as Australia, Japan and the Republic of Korea. But after almost four years, much work still needs to be done on the regional mechanism, and individual governments still need to introduce strong laws for apprehending and punishing traffickers. The root causes of both irregular and regular migration received much less attention in the Bangkok Declaration, in spite of the emphasis given to this aspect by sending countries.

Other initiatives have been taken in relation to trafficking, including The Asian Regional Initiative Against Trafficking in Women and Children (ARIAT), the Asia Pacific Consultations (APC) and a 1997 ASEAN Declaration on Transnational Crime. Derks (2000) provides a very useful summary of the policy and programme responses taken to combat trafficking in South-East Asia in the 1990s.

### **1.5.4 Skilled migrants**

In terms of highly skilled migration, a range of issues emerges. Clearly the definition of a “skilled” migrant is problematic, but the deliberate distortion of the concept of “skilled workers” or “skilled visas” needs addressing. The under-employment of skilled migrants is equally problematic in many countries. Many university (or similarly) qualified migrants work abroad in low skill employment, but where they can still earn more than they could at home. The downgrading of their skills is a waste of human capital.

Ruhs (2002: 59-60) argues that since all labour migration programmes are driven by economics, there is no reason for maintaining two separate temporary worker programmes: a relatively liberal one for highly skilled migrants and a more restrictive one for less skilled migrants. The conflation of the two into one programme would require a change in policy thinking and political will power, but it would perhaps ensure that migrants could be employed at levels commensurate with their human capital.

One consequence of the current skilled migration trends is that, on balance, the richest nations benefit most from the flows. Sustainable development in the rest of the world will become increasingly difficult unless poorer regions can reverse some of the flows or join major knowledge networks. At the international level, the OECD has called for greater cooperation between developed and developing nations but has not proposed specific policies. The research commis-

sioned by the ILO and the OECD has simply highlighted some of the knowledge gaps in this area (Lowell and Findlay, 2002; OECD, 2002b).

The overall perception of many developing countries in Asia is that receiving countries are tapping their skills and/or that receiving countries should “compensate” the sending countries in some way. To this end, the Committee on Science and Technology (S&T) in Developing Countries (COSTED, 2001) proposed the establishment of an Intellectual Resources Management Fund (IRMF), similar to the IMF, to address the brain drain in developing countries and to maintain and improve the standards of S&T professionals in developing countries. Countries that benefit from skilled migration flows and thereby gain human capital from other countries, especially from developing countries, should contribute to such a fund. The funds could be used to run programmes to enable additional training, exchanges, collaboration and better working conditions in less developed regions. This suggestion was proposed to the UNESCO Scientific Forum in November 2001 and overcomes many of the difficulties inherent in the attempts to directly compensate sending countries. Even if it is not implemented at the international level, it could operate bilaterally or within the region.

Countries with sizeable emigrant populations are increasingly taking steps to link their diasporas with the development in the countries of origin. A wide range of policies could be implemented for sending countries. Taiwan has developed policies since 1950, ranging from incentives and travel and other cost coverage to business support and development, and these have helped to bring back 20 per cent of its skilled personnel from the 1950s to the 1990s. Other countries could look to this model for policies to adapt to their own economies (Tsay, 2002). National policies need to be wide ranging and cover not just economic but also environmental, social and political aspects. This makes the task difficult and the challenge to make knowledge networks more productive for sending countries remains formidable one.

IOM has initiated a project to establish ties between Uruguayans living and working abroad and Uruguayan institutions. By exchanging ideas, knowledge and experience, those living abroad contribute to the economic, cultural and social development of the country. In 2002 the database of highly skilled Uruguayans abroad wishing to contribute to the development of their country of origin was consolidated, and by June 2002 the database contained the names of 2,200 Uruguayans living abroad, including their profession, area of activity, telephone and electronic mail address. A web page has been made fully operational.

Unless national and international action is taken to remedy the current situation, it seems that highly skilled personnel will continue to concentrate in and circulate between the richer economies, with a small number of less developed countries peripherally tied to this system. The remaining countries will be relegated to the margins and their basic infrastructure and health/education and other services will be undermined even further than the current unsatisfactory levels.

## 1.6 CONCLUSION

Asian workers have contributed significantly to the development and the reduction of poverty in the countries of origin, while at the same time contributing to economic prosperity and efficiency in the countries of destination. Nevertheless, migrant workers, in particular certain groups,

remain vulnerable to abuses during the migration process and in the country of destination. This paper has demonstrated that there are many good national policy options already in place in the region. The greatest weakness lies in the lack of sufficient collaboration both among sending countries and between sending and receiving countries. The consultation process provides an opportunity to address this issue and to discuss regional mechanisms for more effective labour migration programmes in future.

## ENDNOTES

1. The term “irregular migration” is used as the preferred term. It is more neutral and it does not criminalize migrants. “Undocumented migrants” is often not accurate as many irregular migrants carry documents.
2. It covers “the deployment of workers only in countries that ensure protection, to the point of banning deployment if necessary; the imposition of severe penalties on illegal recruiters; free legal assistance and witness protection programme for victims of illegal recruitment; the institution of advisory and information, repatriation and reintegration services; the priority concerns of Philippine Foreign Service posts; the establishment of the Migrant Workers and Other Overseas Filipinos Resource Center; and the creation of the Legal Assistant for Migrant Workers Affairs and the Legal Assistance Fund” (Battistella, 1998: 93).
3. The senior management of two of the largest MFIs, Grameen and BRAC, have stated that there is potential for their participation in the remittance transfer through development of correspondent relationships with banks and exchange houses abroad.

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# **CHAPTER 2**

## **PROTECTION OF MIGRANT WORKERS IN ASIA**

### **Issues and Policies\***

Over the past three decades there has been significant growth not only of trade and capital flows within the region, but also international and cross-border flows of labour, ranging from low skilled to highly skilled persons. Following the initial oil boom in the Gulf, rapid growth of the economies of the region has created demands for migrant workers as some of the most dynamic countries experienced labour shortages in some labour market segments, as tightening labour markets allowed national workers to seek higher paying and better protected jobs. Labour migration has, therefore, become a structural feature of economic growth in the region, and is likely to become more so in the future due to declining population growth and the closer integration of the regional economies through trade, tourism and investments.

Yet, unfortunately these migration processes have not always resulted in an improvement of the conditions of migrant workers. Restrictive immigration policies, commercialization of migration processes, exploitation in the workplace and trafficking have all increased significantly, thereby creating numerous problems for both sending and receiving countries of migrant labour, as well as for individual migrants. There has been serious erosion of rights of migrant workers in the process.

The objective of this paper is to highlight issues relating to protection of migrant workers in Asia.<sup>1</sup> The first part of this paper highlights features of Asian migration that have a bearing on the protection of migrants' rights. The second part briefly reviews various aspects of problems faced by migrant workers. The third section provides an overview of the international instruments that have been designed to provide protection for migrant workers, particularly the ILO instruments. The final section provides some policy options.

#### **2.1 HIGHLIGHTS OF INTERNATIONAL LABOUR MIGRATION FROM AND WITHIN ASIA**

The issue of labour migration from and within Asia has been the subject of considerable research in recent years (ISEAS, 1995; Athukorala and Manning, 1999; OECD, 2001; (Wickramasekara, 2002; IOM, 2003). Since the IOM/APMRN background paper (IOM, 2003b) deals with this issue in detail, we shall only point to some trends which have a distinct bearing on protection of migrant workers.

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### **2.1.1 Changing destinations**

Migration of workers from Asian countries has shifted from a predominantly Middle Eastern-bound flow to an intra-Asian flow within the past decade or so. This is mainly true of South-East Asian countries while South Asia has continued to rely on the Middle East labour market (Wickramasekara, 2001). The above shift has taken place notwithstanding the fact that some labour-receiving countries in Asia have no regular admission policy for unskilled workers. The result has been a substantial rise in irregular migration.

### **2.1.2 Temporary migration of labour**

Labour migration from and within Asia is mostly on the basis of fixed-term contracts, which permit only temporary migration. The short duration of the terms of employment has obvious implications for the recognition of migrant rights and their economic and social integration in receiving countries. Permanent or settler migration still takes place on a limited scale to Australia and New Zealand.

### **2.1.3 A migration flow dominated by semi-skilled and unskilled workers**

Semi-skilled and unskilled workers face numerous problems in protection in both sending and receiving countries compared to skilled workers and professionals, who move with foreign capital and enjoy more bargaining power.

### **2.1.4 Explosive growth in irregular migration**

The most alarming development in the migration process in terms of its impact on the protection of migrants' rights in Asia is the rising share of "irregular migration" – commonly referred to as "illegal", "undocumented" or "clandestine" migration. "Irregular migration" is the preferred term in international discourse, as it captures the nature of irregularities associated with different stages of the migration process (recruitment, transit, entry, stay and work). Since these workers have no legal status in the host countries, their rights are subject to frequent abuse.

The main causes of irregular migration in the region are: restrictive immigration policies in labour-shortage receiving countries; extreme poverty and unemployment problems in countries of origin resulting in acute emigration pressures; cumbersome and costly official bureaucratic procedures which push potential migrants into informal and irregular channels; ineffective border controls in some receiving countries; political suppression, persecution and armed conflict in source countries; malpractices of private recruitment agencies, and activities of criminal gangs and traffickers.

### **2.1.5 Feminization of migration**

Another pattern to emerge has been the increasing share of female workers migrating on their own for overseas employment. The majority of these women migrate for low wage occupations,

such as domestic work. Hong Kong and Singapore represent the major destinations of domestic helpers in Asia, while a sizeable number also migrate to the Middle East, especially to Saudi Arabia and Kuwait. Entertainers also represent an important group of women migrants in Asia. In all countries women migrants are one of the most vulnerable groups.

### **2.1.6 Increased trafficking of women and children**

Another disturbing aspect of labour migration from and within Asia is the increased trafficking of women and children across borders, often for commercial sex and other exploitative and abusive purposes. The Greater Mekong Subregion and the Indian subcontinent represent several transnational routes of trafficking. The working conditions of trafficked persons often amount to slavery, forced labour or long-term debt bondage.

### **2.1.7 Commercialization of the recruitment industry**

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. These range from large firms to small unregistered enterprises. The recruitment industry has been responsible for various human rights malpractices and may be held partly accountable for the growth of irregular migration.

### **2.1.8 Aftermath of the Asian crisis on migrant workers**

Among Asian countries, Indonesia, the Republic of Korea, Malaysia and Thailand were hit particularly hard by the economic crisis that set in 1997. Its effects were felt in an overall reduction in labour demand, stemming from economic downturn, which accordingly reduced demand for migrant workers. Apart from direct job losses, this led to reductions in wages and other benefits even for skilled migrant workers. At one end, Malaysia and Thailand, hosts to a large migrant worker population, mostly on an irregular basis, changed their lenient entry and stay requirements, as they proclaimed the need to save jobs for locals, and embarked on deportation of irregular workers and non-renewal of work permits for regular workers. While the predicted mass deportations obviously did not take place (Battistella and Maruja Asis, 1998), the adverse perceptions and attitudes towards foreign workers have persisted even with economic recovery.

### **2.1.9 Programmes for nationalization of the workforce and reducing dependence on foreign workers in the Gulf countries**

Most labour-receiving Gulf countries have been implementing programmes for nationalization of the workforce in the private sector, which is highly dependent on foreign workers from Asia at present.<sup>2</sup> During the oil boom, nationals were virtually guaranteed public sector jobs with attractive benefits. With the drop in oil prices and recession, unemployment of locals, especially youth, has risen sharply in countries like Saudi Arabia, Bahrain and Kuwait. The terms, “Saudization, Bahrainization, and Kuwaitization” among others, refer to these programmes. The measures

may consist of reservations, quotas, restrictions and sometimes outright bans on the employment of foreign workers in certain sectors or occupations. The countries also have set targets for reducing the share of foreign workers in the medium to long term. Asian labour sending countries should analyse the implications of these developments for their own overseas employment programmes.

## 2.2 PROBLEMS OF MIGRANT WORKERS AND PROTECTION ISSUES

The problems experienced by Asian migrant workers are well documented. Delegates at the Thirteenth Asian Regional Meeting, held in Bangkok during August 2001, noted that

Migrant workers are often the least protected. Irregular migration and trafficking expose workers to the worst forms of abuse and exploitation. Even legally admitted workers do not enjoy the same rights and level of social protection as the national workforce in most countries.<sup>3</sup>

The problems of migrant workers can also be conceptualized in terms of migration stages: pre-departure, in transit, in destination countries and on return. Protection means elimination of discrimination and exploitation and the respect for basic human rights and rights at work of all migrant workers. Yet, this is far from the case in practice. The following malpractices enumerated by the ILO Tripartite Committee of Experts in 1997 seem to be the order of the day for migrant workers in Asia (ILO, 1997a):

Malpractices exist where the treatment of migrant workers and members of their family is not in accordance with national legislation or ratified international standards and where such treatment is recurrent, deliberate and involves groups of people rather than merely individuals. Exploitation exists where such treatment incurs very serious pecuniary or other consequences, such as when migrants are charged fees bearing little resemblance to actual recruitment or placement costs, have remittance transfers imposed on them without their voluntary consent, are enticed into employment under false pretences, are made to sign work contracts by go-betweens who know that the contracts will generally not be honoured upon commencement of employment, have their passports or other identity documents confiscated, are dismissed or blacklisted when they join or establish workers' organizations, suffer deductions from wages without their voluntary consent which they can recuperate only if they return to their country of origin, or are summarily expelled without regard to their rights arising out of past employment, stay or status.

The report of the ILO Asia-Pacific Regional Symposium for Trade Union Organizations on Migrant Workers organized by the ILO Bureau of Workers Activities in Kuala Lumpur, Malaysia, from 6 to 8 December 1999, confirms the persistence of these trends (ILO, 2000):

The brief highlight of the main traits of migration in Asia-Pacific indicate that migrants are in a condition of vulnerability. Such condition derives from weaknesses in various phases of the migration system. At the recruitment stage, migrants are vulnerable to incomplete or deceitful information by recruiters, to contract substitution, to excessive fees and to the promise of non-existing jobs. In the country of destination, migrants are vulnerable to abusive working conditions, they are required to work long hours, they experience non-payment or deferred payment of salary, they lack social security and health protection, and they experience maltreatment and violence. Migrant women are particularly vulnerable to violence and sexual abuse. Irregular migrants are subject to abusive conditions under the threat of repatriation.

These problems are well known and we do not attempt to document them again in this paper. The IOM Compendium (IOM, 2003a) has summarized the most common problems stated by the labour-sending countries in Asia in regard to protection. The Philippines has summarized the major problems of Filipino workers in Asia and the Middle East as: delayed or non-payment of salaries; contract violation/substitution; maltreatment; immigration document-related problems; poor working/living conditions and health/medical problems. Delayed and non-payment of wages has been reported by most countries. For instance, the Indonesian Consulate General in Jeddah has mentioned that 37 per cent of problems reported by Indonesian workers relate to unpaid salaries.

In the following section, we shall highlight some issues relating to the protection of migrant rights within the framework of temporary migration in relation to the principles of non-discrimination and equality of treatment, which have not been adequately addressed.

### **2.2.1 Principle of non-discrimination<sup>4</sup>**

#### **Access to employment**

In most Asian countries access to employment for migrant workers is subject to strict regulations which control the sectors and conditions in which migrants may be employed. Unlike in Europe, where migrant workers can change jobs after 3 to 5 years of employment, in Asia there is hardly any freedom and flexibility to choose one's employment. This is because virtually no country has accepted the principle that foreign workers should be guaranteed free access to employment after a certain temporary period of restriction. Domestic workers in Hong Kong are given only two weeks – obviously too short a period – to find another employer in the case of job loss, while Thai workers employed in Taiwan cannot change their employers during the normal contract period of two years. In general, skilled or professional workers enjoy better conditions in this respect, such as in Singapore, where these workers can obtain permanent residence and, therefore, free access to the labour market. In Japan, permanent migrant workers may even apply for job positions which exert semi-state functions, provided their duties do not influence public policy making.<sup>5</sup>

While international instruments stress the need to ensure maintenance of residency rights in case of incapacity to work, protection in case of redundancy and need for geographical and occupational mobility, these are commonly denied to temporary migrant workers by labour-receiving countries in Asia.

Access to multiple sectors of employment has also been impeded by the commercialization of the recruitment industry and the dominant role of the private sector. This has led to considerable abuses such as contract substitution, sending workers for non-existent jobs and drops in salaries and wages. The widespread and illegal practice of confiscation of passports and identity papers by employers constitutes an added infringement to the freedom of employees. This is a practice that restricts worker mobility in a major way since it ties the worker to the same employer.

Another unfortunate trend in many Asian countries is the denial of entry to workers on the basis of HIV-AIDS tests. Such tests are mainly done for purposes of exclusion, and not for the benefit of migrants who often are not even informed of the results.

## **Equal treatment in respect of remuneration and wages for performing the same work**

The principle of non-discriminatory treatment is recognized in the labour legislation of most of the Asian labour-receiving countries, providing for equal treatment and non-discrimination especially in the matter of remuneration. The Labour Standards Law in Japan stipulates that an employer shall not engage in discriminatory treatment with respect to wages, working hours, or other working conditions by reason of nationality, creed or social status of any worker. These provisions are equally applicable to irregular migrants by virtue of the Immigration Control and Refugee Recognition Act.<sup>6</sup>

In Taiwan and in the Republic of Korea, legally admitted foreign workers are also guaranteed the same rights as national workers. In the Republic of Korea, however, although the Labour Standards Act specifically bans discrimination on the grounds of nationality, there nonetheless exist wage differentials between nationals and migrant labour. For instance, foreign workers, illegally employed, generally receive between around 40 per cent lower wages than nationals doing the same job, and trainees are paid only about 35 per cent of the average wage of Korean workers in manufacturing (Abella, 1999). In Thailand, Malaysia and Singapore, the government does not intervene in wage setting. Even registered migrant workers in Thailand may receive only one-third to one half the wages paid to Thai workers.

In the Middle East, wages paid to foreign workers bear little relation to the local labour market conditions, but seem to be determined by the labour market conditions of sending countries. This may explain the gaps in wages between different nationalities for the same type of work. In general, Filipino workers command higher wages, while South Asian workers receive much lower wages. This is the case for domestic workers also as shown by the ILO Bahrain study (Sabika al Najjar, 2002):

In Bahrain, wages are determined according to the nationality of the female domestic helpers instead of their experience. Although the nature of work and the workload is almost the same for all house workers, Filipinos, for example, and Indonesians with some years of experience, get BD 50 per month, while inexperienced Indonesians, Sri Lankans and Indians get BD 40 a month. Domestic workers from Bangladesh get the lowest salaries, BD 35 per month.

Abella (1999) concludes that: “In spite of all prohibitions, discrimination in wages appears to be the practice in many countries.”

## **Freedom of association and the right to organize**

Freedom of association and the right to organize are fundamental human rights recognized in both ILO and universal human rights instruments. The ILO Convention Concerning Freedom of Association and Protection of the Right to Organise, 1948 (No. 87) states in Article 2 that:

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Most countries, with the exception of Malaysia, allow and may even encourage foreign workers to join trade unions, while some countries prohibit them from organizing their own unions and

also impose restrictions on assuming positions of responsibility. The phenomenon of irregular workers of course poses a dilemma for both workers and unions. Irregular workers may have major reservations about joining trade unions, as it would make their presence known to the authorities.

Restrictions on the right to organize based on nationality exist in varying degrees in the legislation of several countries. Some countries, such as Thailand, make citizenship a precondition for establishing trade unions. In others, trade union affiliation of non-nationals is subject to conditions of residence. The Philippines operates a reciprocal arrangement whereby legally admitted foreign workers may establish and join organizations of their own choosing provided the same rights are accorded to Philippine workers in the country of origin of the foreign worker. At the same time, there can be widespread pressure from employers on migrants not to join trade unions, under the threat of losing their job, a risk that migrants, who have incurred huge migration costs, cannot afford.

The formation of associations of migrant workers themselves is very important for the protection of their rights. Hong Kong is unique in that several unions of domestic helpers exist there.

### **Right to social security provisions**

Both ILO Conventions, No. 97 (Art. 6(1)(b)) and No. 143 (Art. 10), provide that treatment no less favourable than that afforded to nationals must be exercised in respect of, inter alia, social security. Convention No. 97 ensures liability in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities and any other contingency, which according to national laws or regulations is covered by a social security scheme.

In the Middle East, foreign workers are excluded from general social security schemes except for employment injury. In Asia only the Philippines has ratified the ILO Equality of Treatment (Social Security) Convention, 1962 (No. 118) and the Maintenance of Social Security Rights Convention, 1982 (No. 157).

In most of Asia unskilled foreign workers are excluded from social security systems. Singapore has discontinued the scheme for unskilled foreign workers under the Provident Fund on the ground that their stay is temporary. In the Republic of Korea foreign workers legally admitted (therefore skilled) must also be covered by social security.

Policies on providing foreign workers with some insurance against work-related injuries and illness generally follow international principles. In Japan the law provides for the required insurance benefits when a worker suffers injury, disease, physical disability, or death resulting from employment regardless of the worker's nationality and regardless of whether the worker's stay or work is legal or illegal. In Korea, under the Industrial Accident Compensation Insurance Act, illegal and unregistered migrant workers can obtain protection against industrial accidents and against overdue payment under administrative guidance.

In most other countries, irregular workers have no entitlements regarding work injury and occupational safety problems.

## **The right to family reunification**

The right to family reunification has not been a major issue in Asia since low-wage unskilled workers usually cannot afford to maintain their families in their countries of employment. Those who might under certain conditions be forced to move with their family, may not in fact be able to avail themselves of the right to family reunification by virtue of their irregular status. However, in practically all countries skilled foreign workers with an employment visa are allowed to bring their families.

### **2.2.2 Most seriously affected or vulnerable categories of migrant workers**

#### **Women workers: domestic workers and entertainers**

Three countries in Asia – Indonesia, the Philippines and Sri Lanka – account for most of the reported flows of women migration for domestic work occupations. The popular destinations are the Middle East, Hong Kong and Singapore. There are also large numbers from Myanmar and Cambodia working in Thailand, but they are largely undocumented.

The very nature of domestic household work creates complex labour protection issues, but these are further complicated by the crossing of national borders (Ramirez-Machado, 2002).

The problems faced by female migrant domestic workers in Asia in the early 1990s have been widely documented (Gulati, 1993; Heyzer et al., 1994; Wickramasekara, 1995). Their continuing plight and vulnerability have given rise to a number of recent initiatives, such as the Regional Summit on Foreign Migrant Domestic Workers, 26-28 August 2002, held in Colombo and the Programme Consultation Meeting on the Protection of Domestic Workers Against the Threat of Forced Labour and Trafficking, January 2003.

The Colombo Declaration adopted by the Regional Summit on Foreign Migrant Domestic Workers on 28 August 2002 in Colombo, states (CARAM Asia, 2002):

The experiences of foreign migrant domestic workers in the migration process reveal that domestic work is still to be recognized as a socio-economic activity and valued accordingly. This leads to a serious lack of protection, vulnerability and exploitation. Multiple discriminations based on gender, race and class within the family, the community and nations and the isolated and individualized conditions of work, and lack of protection and appropriate services and information increases their vulnerabilities to exploitation and violence. It also compromises their health and human security.

The ILO (under its International Labour Migration Programme and the Gender Promotion Programme) has documented the situation of domestic migrant workers in several Middle Eastern countries – Bahrain, UAE, Lebanon and Jordan – which highlight the continuing problems of virtual slavery-like conditions. These abuses are proverbial in the Middle East and some are found even in Singapore and Hong Kong, where better labour administration systems prevail (Asian Migrant Centre, 1999). Lap-Chew (Lap-Chew, 2003) has succinctly summarized the factors which condition the employment of migrant domestic workers in Hong Kong: compulsory live-in system (e.g. issues of personal privacy, right to a personal life, isolation, vulnerability to abuse by employers, physical control of freedom of movement by employers and agencies);

restrictions on choice of employers and type of employment (e.g. issues of possibility to leave oppressive/exploitative situations, skills development possibilities); dependence of immigration status on employment status, etc.

Some practices in Asian countries amount to discrimination on the basis of sex and also the reproductive rights of individuals. It is illegal for a foreign domestic worker who holds a work permit in either Singapore or Malaysia to become pregnant or to marry a citizen of their host country. In Singapore, domestic workers must submit to a pregnancy test every six months; if a domestic worker fails the test, she may be immediately deported and would be permanently banned from returning to that country. In Malaysia, an employer must execute a security bond for the foreign domestic worker, which is forfeited if the domestic worker becomes pregnant (Gulati, 1993).

### **Trafficked persons**

International experience demonstrates that restrictive barriers placed between strong push and pull factors make trafficking and smuggling a lucrative business. According to ILO research cited in Taran and Moreno-Fontes (Patrick Taran and Gloria Moreno-Fontes Chammartin, 2002), in the Greater Mekong Sub-region (“GMS” – Cambodia, the Lao People’s Democratic Republic, Myanmar, Thailand and Viet Nam), Thailand is the main receiving country in the region. An estimated 194,180 foreign child labourers, mainly from Myanmar, Lao PDR and Cambodia were estimated to have been trafficked, and were employed in construction, small shops, fishing, footwear factories, agriculture plantations and domestic work in 1998. Some were diverted to begging, soliciting and gang work. According to another study, 80,000 women and children have been trafficked along the Thai-Myanmar border to work in the sex industry between 1990-97 (Archavanitkul, 1998). It is also estimated that at least 6,000 Vietnamese children and women have been trafficked to Cambodia for sexual exploitation, and to China for marriage and domestic work. There is also trafficking from the GMS to other countries, which generally involves Thai women going into domestic service and the “entertainment” industry in Tokyo.

The ILO South Asian Sub-Regional Programme to Combat Trafficking of Children for Exploitative Employment in South Asia notes that India is the major receiving country of trafficked women and children from Nepal, Sri Lanka and Bangladesh. Trafficking of Bangladeshis to Pakistan has been continuing for some time. Young boys from South Asia are being trafficked for camel racing to Saudi Arabia and the United Arab Emirates. Every year about 4,500 children are trafficked for bonded marriage or bonded labour to Pakistan. It is estimated that 80,000 to 100,000 Nepalese women and girls are working in the brothels of Bombay and Calcutta alone, and that some 5,000 to 7,000 women and girls are trafficked to Indian brothels every year (ILO-IPEC, 1998). Pakistan also is a major receiving country of children trafficked from Bangladesh and India, recruited to work in farming, fishing and as prostitutes.

There is also organized trafficking of Asians to Western countries through human smuggling rings, bringing untold hardships and sometimes death to would-be migrants. Moreover the fees charged by traffickers (reported to range from US\$ 30,000 to 50,000 in China for premium destinations in the West) are so high that migrants have to remain in debt-bondage for a considerable time. Hugo and Böhning (2000) have pointed out that the problem persists because the traffickers who escape punishment will carry on “business as usual”.

## **Irregular migrant workers**

The problems faced by irregular migrant workers are well known. Given their precarious legal position in the host country they are highly vulnerable and therefore easily fall prey to extortion and exploitation by employers, migration agents, corrupt bureaucrats and criminal gangs. They do not enjoy any of the benefits accorded to legal workers and receive low pay amidst poor working conditions. Women in an irregular status are doubly vulnerable owing to the high risk of sexual exploitation to which they are frequently exposed. Irregular workers often hesitate to avail themselves of support mechanisms given the perceived danger of detection and possible deportation. The basic human rights of irregular migrants are therefore often violated despite the protection they should receive under general international human rights instruments, ratified by most countries in the region.

A recent ILO Symposium on trade unions and migrant workers (ILO-ACTRAV, 2000) stated:

In the flows of migrant workers in Asia-Pacific, where the pressure to migrate is accompanied by restrictive migration policies, irregular or undocumented migration has become widespread. Whether as overstayers of legal visas, trainees turned into migrants, runaways from difficult employment conditions, or outright undocumented migrants, irregular migrants comprise between 30 and 40 percent of the estimated 6 million migrants in Asia. Their irregular situation puts them at the mercy of unscrupulous agents, employers.”

Growing concern with irregular flows led the Government of Thailand to convene The International Symposium on Migration: Towards Regional Cooperation on Irregular/ Undocumented Migration, held in Bangkok from 21 to 23 April 1999 at ministerial level, in cooperation with IOM and UNHCR. It is a major event of significance to the present Ministerial consultation as well. The major outcome was the signing of the Bangkok Declaration on Irregular Migration (Thailand Ministry of Foreign Affairs, 1999) by participating countries. It is an important event for several reasons:

- Recognition given to irregular/undocumented migration as a regional issue and the need for a regional mechanism.
- Recognition that regular and irregular migration are closely inter-related.
- Recognition given to the seriousness of the issue of trafficking of women and children and the need for regional cooperation in combating the same.
- Importance given to improvement of migration information and information sharing.
- Recognition of the need for capacity building of government machinery for improving migration administration.

Recent developments in South-East Asia have shown contrasting trends. In a positive development, Thailand implemented a regularization programme for undocumented migrant workers recognizing the need for a long-term perspective in regard to labour migration. Still, the work permits are issued for a very short period – six months – and have to be periodically renewed. Current policies, however, indicate that Thailand may be adopting much more restrictive policies in the near future. Malaysia has hardened its policy towards migrant workers, especially irregular workers, with amendments to its immigration laws. Corporal punishment of irregular migrant workers and their employers (in the form of caning as in Singapore) has been enforced. At the same time, it has carried out large deportation exercises of Bangladeshi, Indonesian and Filipino workers, and also imposed a total ban on the recruitment of Bangladeshi workers.

## 2.3 INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF RIGHTS OF MIGRANT WORKERS

For a labour-sending country, protection of migrant workers has two aspects: protection of prospective migrants before their departure from the home country, and protection of national workers while they are abroad. National laws in the country of origin can do little in helping its workers while they are in foreign countries. In a labour-receiving country, the issue mainly revolves on the protection accorded to foreign workers, whatever their status. For countries sending and receiving migrant labour, such as Thailand, there are two issues: protection of national workers while abroad, and protection of foreign workers inside the country.

Böhning (2000) has pointed out that migrant workers can be protected at three levels: national, regional and international. There are a number of regional and global instruments designed to protect migrant workers and members of their families (Wickramasekara, 2000). We shall focus on international instruments here.

Two types of international instruments may be mentioned:

- a. those specifically dealing with migrant workers;
- b. international human rights instruments which apply to migrant workers as well.

Migrant-specific instruments are useful because migrant workers may have special problems which may not be covered by more general human rights instruments. It also helps to draw attention to them as a separate target group for policy purposes.

### 2.3.1 ILO Conventions<sup>7</sup>

ILO is the only UN agency with a constitutional mandate to protect migrant workers. Indeed the Preamble to its Constitution states that one of the ILO goals is to protect “the interests of workers when employed in countries other than their own”. The recent ILO Declaration on Fundamental Principles and Rights at Work reasserts this position and recalls ILO’s commitment to protect “persons with special social needs”, particularly migrant workers and “encourage international, regional and national efforts aimed at resolving their problems”.

Protection has mainly been effected through the establishment and supervision of international labour standards, as well as through technical cooperation and advisory services guided by these standards. The following are the major ILO standards of direct relevance to migrant workers:<sup>8</sup>

- Convention No. 97 Concerning Migration for Employment (Revised) 1949;
- The accompanying Recommendation (No. 86) Concerning Migration for Employment (Revised) 1949;
- Convention No. 143 Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975;
- The accompanying Recommendation No. 151 Concerning Migrant Workers, 1975.

Convention No. 97, in its Article 11, defines a “Migrant for Employment” as:

A person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person **regularly** admitted as a migrant for employment.<sup>9</sup>

Thus, the Convention clearly applies only to migrants who are legally entitled to enter the country of employment. The Convention and accompanying (non-binding) Recommendation (No. 86) together deal with practically all aspects of the work and life of non-nationals. The standards are not only aimed at protecting the rights of migrants but also contain a series of practical suggestions for the setting up of services by migrant-sending or migrant-receiving countries (Grismann, 1999). They cover such areas as recruitment (particularly publicly sponsored group transfers), information to be made available, contract conditions, medical attention (before departure, during the journey and on arrival), customs exemption for personal effects, assistance in settling into their new environment, language and vocational training, promotion at work, job security and alternative employment, freedom of movement, participation in the cultural life as well as maintenance of their own culture, transfer of earnings and savings, family reunification and visits, appeal against unjustified termination of employment or expulsion and assistance in coping with return. Thus, they cover core human rights such as non-discrimination and freedom of association in addition to just specifically labour rights.

Convention No.143 Concerning Migrations in Abusive Conditions (1975) constitutes the international community's first attempt to tackle the questions of irregular migration movements and illegal employment that became acute at the beginning of the 1970s (Böhning, 1999). Convention No.143 extends basic human rights protection to *all* migrant workers, particularly those non-nationals who are in an irregular situation as regards their entry, stay or economic activity. Article 1, Part I, states that: "Each Member for which this Convention is in force undertakes to respect the basic human rights of **all** migrant workers".

As the Convention is divided into three parts, States do, however, have the option to exclude either Part I or Part II from their acceptance.

### **Equality of opportunity and equal treatment**

An important feature of both ILO Migrant Worker Conventions is the importance given to the principle of equality of opportunity and treatment. Both Conventions request that all Member States afford to migrant workers "treatment no less favourable than that which it applies to its own nationals" in respect of, for example, conditions of employment, social security and trade union membership. Migrant workers are to enjoy equality with nationals in legal proceedings relating to all matters referred to in the Convention. In the case of Convention No. 143, this equality guarantee is contained in Part II of that Convention, which applies only to migrants in a regular situation. Therefore, neither Convention extends the equality guarantee to irregular migrants.

That is, it is only once the worker has been admitted to a country of immigration for the purpose of employment that he or she will become entitled to the protection provided for in the Conventions, thus preserving the sovereign right of states to determine their own conditions of entry for foreign nationals.

A migrant for employment who has been admitted on a permanent basis cannot be returned to the country of origin on the grounds that the migrant is unable to follow his occupation because of illness contracted or injury sustained subsequent to entry.

## **Protection of migrant workers in irregular situations**

The principle of equality of treatment applies to irregular migrant workers in limited areas: respect of past employment as regards remuneration, social security and other benefits. Under Article 9 of Convention No. 143, in cases where his position cannot be regularized, the worker shall have the possibility of presenting his case to a competent body either himself or through a representative. States are, however, free to regularize the situation of any illegal worker. In case of expulsion of the worker or his family, the cost shall not be borne by the migrant.

## **Social security conventions**

There are two Conventions (and one accompanying Recommendation) on social security rights that aim at equal treatment with national workers:

- Convention (No. 118) Concerning The Equality of Treatment (Social Security), 1962;
- Convention (No. 157) Concerning Maintenance of Social Security Rights Convention, 1982;
- Recommendation (No. 167) Concerning the accompanying Maintenance of Social Security Rights, 1983.

The first Convention No. 118 advanced the philosophy of social welfare during the 1950s and 1960s, extending it to migrant workers and members of their families (Böhning, 1999). Convention No. 157 and the accompanying Recommendation represent “a comprehensive attempt to cover migrant workers and their family members, particularly those who, due to the temporariness of their moves and employment, may not be able to benefit from acquired rights or rights in the course of acquisition” (Böhning, 1999).

## **Status of ratification**

These standards have been developed over the past 50 years and inspired national legislation, bilateral and multilateral treaties and conventions, including the 1990 UN Convention (Cholewinski, 1997). Yet, none of the major migrant-sending or migrant-receiving countries in Asia have ratified these instruments, which implies that millions of migrant workers remain excluded from international protection. In the Asia-Pacific region, only New Zealand and the State of Sabah (Malaysia) have ratified ILO Convention No. 97, while no country has ratified Convention No. 143. However, ILO Convention No.97 (ratified by the UK in 1951) applies to Hong Kong, because it is obliged to honour international treaties and conventions ratified by the United Kingdom when it was still under UK administration.<sup>10</sup>

Because of concern over this declining ratification rate globally, the ILO carried out a general survey of the ILO instruments for the protection of migrant workers. The detailed report on the study was presented to the 1999 International Labour Conference (ILO, 1999). According to the report, the following are the major reasons cited by different countries as obstacles to their ratification of the Conventions.

- Relative insignificance of migration/migrant workers in the country;
- absence of the necessary infrastructure to apply the conventions and high cost of implementing the instruments;

- national economic problems and high unemployment rates prompting governments to give preference to nationals over foreign labour;
- complexity of national immigration legislation and practice, as well as the fact that its legislation on this subject was constantly evolving;
- the different context in which these conventions were developed: contemporary migrations movements are characterized by dominance of the private sector, feminization of migration, increase in temporary migration and growth in irregular migration.

The Committee of Experts put forward two options for consideration by the Office:

- a. maintain the status quo with the same conventions;
- b. revise Conventions Nos. 97 and 143 in order to bring them up to date and merge them into a single convention. The issue of standards will be one item on the agenda to be addressed in the International Labour conference 2004 discussion on migrant workers.

### **2.3.2 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, United Nations**

The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly on 18 December 1990, following a lengthy drafting process of about 11 years, came into force on July 2003 with the tabling of the 20 mandatory ratifications. The ILO actively contributed to the Convention which “(...) recognized and built upon the provisions contained in existing ILO Conventions, and in many ways went beyond them” (ILO, 1999). It also contains “the most comprehensive definition of ‘migrant worker’ formulated to date and clearly applies to all migrant workers and their families including those in an irregular situation” (Cholewinski, 1997). The Convention extends rights to a number of groups previously not covered by the ILO conventions, namely “frontier, itinerant, project-tied, specified employment and self-employed migrant workers”.

While the two ILO conventions have been in force for a long time, most NGOs and some constituents seem to be familiar only with the 1990 UN Convention.

Two major labour sending countries in the region – the Philippines and Sri Lanka – have ratified the UN Convention, while Bangladesh has signed, but not ratified it. Yet, the ILO Committee of Experts rightly observed:

(...) as is the case with the ILO instruments, the majority of States parties to this Convention are, on the whole, migrant-sending States which, while extremely important in terms of protection of migrants prior to departure and after return, hold little influence over the daily living and working conditions of the majority of migrant workers (ILO, 1999).

The Palermo Convention Against Transnational Organized Crime and its Protocols on Combating Trafficking in Persons and Against Smuggling of Migrants were adopted by the United Nations in December 2000 to fight organized crime. Governments which ratify these instruments, therefore, commit themselves to pass new laws and legislation criminalizing offences

committed by organized groups, sharing information, speeding up and widening the reaches of extradition of members of criminal groups, protecting victims and to cooperate for more effective law-enforcement.

### **2.3.3 Other ILO instruments**

Most Conventions and Recommendations adopted by the International Labour Conference are of general application; that is, they cover all workers, irrespective of citizenship. There are a number of instruments which contain provisions relating to them, or the Committee of Experts has referred to the situation of migrant workers in supervising their application in recent years. A number of other Conventions which apply equally to migrant workers are listed below.

#### **Other ILO Conventions and Recommendations relevant to migrant worker protection**

- the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26);
- the Forced Labour Convention, 1930 (No. 29);
- the Labour Inspection Convention, 1947 (No. 81);
- the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);
- the Employment Service Convention, 1948 (No. 88);
- the Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- the Equal Remuneration Convention, 1951 (No. 100);
- the Maternity Protection Convention (Revised), 1952 (No. 103);
- the Abolition of Forced Labour Convention, 1957 (No. 105);
- the Indigenous and Tribal Populations Convention, 1957 (No. 107);
- the Discrimination (Employment and Occupation) Convention, 1958 (No. 111);
- the Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111);
- the Workers' Housing Recommendation, 1961 (No. 115);
- the Employment Policy Convention, 1964 (No. 122);
- the Human Resources Development Recommendation, 1975 (No. 150);
- the Occupational Safety and Health Recommendation, 1981 (No. 164);
- the Termination of Employment Convention, 1982 (No. 158);
- the Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169);
- the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168);
- the Indigenous and Tribal Peoples Convention, 1989 (No. 169);
- the Private Employment Agencies Convention, 1997 (No. 181);
- Private Employment Agencies Recommendation, 1997 (No. 188);
- The Worst Forms of Child Labour Convention, 1999 (No. 182);
- Worst Forms of Child Labour Convention Recommendation, 1999 (No. 190).

Attention should be drawn to the fundamental human rights Conventions of the ILO. The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session, on 18 June 1998, marked a renewed universal commitment amongst Members, even if they have not ratified the Conventions in question, to respect, promote and realize these principles: freedom of association, effective recognition of the right to collective bargaining, elimination of all forms of forced and compulsory labour, effective abolition of child labour, and elimination of discrimination in respect of employment and occupation.<sup>11</sup> Many of these have provisions which apply to migrant workers. The Declaration (ILO, 1998) clearly states:

All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.

Table 2.1 (opposite) shows the status of ratification of these Conventions in the Asia-Pacific region, which shows a much better record than that of conventions dealing specifically with migrant workers. The trafficking of women and children and the related human rights abuses will be covered by fundamental Conventions Nos. 29, 105 and 182, which commit countries to abolish all forms of forced or compulsory labour, in addition to those covering the abolition of worst forms of child labour.

### **2.3.4 Universal Human Rights Instruments of the United Nations**

Similarly, several other United Nations instruments, while having no direct relevance to migrant workers, are of potential importance in terms of protecting them from discrimination and exploitation on grounds other than their non-national status. Again, the record of Asian countries in respect of ratification of universal human rights instruments is much better (see Table 2.2) than migrant-specific instruments. Yet, the record is poor compared to Africa, Europe and the Americas.

Cholewinsky (Cholewinski, 1999) argues that

(...) migrant workers are not devoid of international protection in the Asia Pacific. Although the countries in this region have generally not accepted specific standards safeguarding the rights of migrant workers, such as ILO Conventions Nos. 97 and 143 or the UN Convention, other important instruments are applicable.

## **2.4 CONCLUSIONS AND POLICY IMPLICATIONS**

### **2.4.1 Some key messages**

Some key messages based on the preceding discussion on the protection of migrant workers need to be highlighted:

TABLE 2.1

INTERNATIONAL LABOUR ORGANIZATION:  
RATIFICATIONS OF THE FUNDAMENTAL HUMAN RIGHTS CONVENTIONS BY COUNTRY  
IN ASIA AND PACIFIC FROM INTERNATIONAL LABOUR STANDARDS, ILOLEX  
(as of 28 March 2003)

Country	Freedom of association and collective bargaining		Elimination of forced and compulsory labour		Elimination of discrimination in respect of employment and occupation		Abolition of child labour	
	Conv. 87	Conv. 98	Conv. 29	Conv. 105	Conv. 100	Conv. 111	Conv. 138	Conv. 182
Afghanistan				X	X	X		
Australia	X	X	X	X	X	X		
Bahrain			X	X		X		X
Bangladesh	X	X	X	X	X	X		X
Cambodia	X	X	X	X	X	X	X	
China					X		X	X
Fiji	X	X	X	X	X	X	X	X
India			X	X	X	X		
Indonesia	X	X	X	X	X	X	X	X
Iran (Islamic Republic of)			X	X	X	X		X
Iraq		X	X	X	X	X	X	X
Japan	X	X	X		X		X	X
Jordan		X	X	X	X	X	X	X
Kazakhstan	X	X	X	X	X	X	X	X
Kiribati	X	X	X	X				
Korea, Republic of					X	X	X	X
Kuwait	X		X	X		X	X	X
Kyrgyzstan	X	X	X	X	X	X	X	
Lao People's Democratic Rep.			X					
Lebanon		X	X	X	X	X	X	
Malaysia		X	X	D	X		X	X
Mongolia	X	X			X	X	X	X
Myanmar	X		X					
Nepal		X	X		X	X	X	X
New Zealand			X	X	X	X		X
Oman			X					X
Pakistan	X	X	X	X	X	X		X
Papua New Guinea	X	X	X	X	X	X	X	X
Philippines	X	X		X	X	X	X	X
Qatar			X			X		X
Saudi Arabia			X	X	X	X		X
Singapore		X	X	D	X			X
Solomon Islands			X					
Sri Lanka	X	X	X	X	X	X	X	X
Syrian Arab Republic	X	X	X	X	X	X	X	
Tajikistan	X	X	X	X	X	X	X	
Thailand			X	X	X			X
Turkmenistan	X	X	X	X	X	X		
United Arab Emirates			X	X	X	X	X	X
Uzbekistan		X	X	X	X	X		
Viet Nam					X	X		X
Yemen	X	X	X	X	X	X	X	X
<b>Total of 42</b>	<b>20</b>	<b>25</b>	<b>36</b>	<b>29</b>	<b>34</b>	<b>32</b>	<b>21</b>	<b>29</b>

TABLE 2.2  
STATUS OF RATIFICATIONS OF THE PRINCIPAL INTERNATIONAL HUMAN RIGHTS TREATIES  
(as of 28 March 2003)

State	ICCPR (1)	ICESCR (2)	CAT (3)	ICERD (4)	CEDAW (5)	CRC (6)	MWC (7)	OPT (8)	OPT2 (9)
Afghanistan	X	X	X	X		X			
Australia	X	X	X	X	X	X		X	X
Bahrain			X	X		X			
Bangladesh	X	X	X	X	X	X			
Brunei Darussalam						X			
Cambodia	X	X	X	X	X	X			
China		X	X	X	X	X			
Democratic People's Republic of Korea	X	X			X	X			
Fiji				X	X	X			
India	X	X		X	X	X			
Indonesia			X	X	X	X			
Iran (Islamic Republic of)	X	X		X		X			
Iraq	X	X		X	X	X			
Japan	X	X	X	X	X	X			
Jordan	X	X	X	X	X	X			
Kazakhstan			X	X	X	X			
Kiribati						X			
Korea, Republic of	X	X	X	X	X	X		X	
Kuwait	X	X	X	X	X	X			
Kyrgyzstan	X	X	X	X	X	X		X	
Lao PDR				X	X	X			
Lebanon	X	X	X	X	X	X			
Malaysia					X	X			
Mongolia	X	X		X	X	X		X	
Myanmar					X	X			
Nepal	X	X	X	X	X	X		X	X
New Zealand	X	X	X	X	X	X		X	X
Oman						X			
Pakistan				X	X	X			
Papua New Guinea				X	X	X			
Philippines	X	X	X	X	X	X	X	X	
Qatar			X	X		X			
Saudi Arabia			X	X	X	X			
Singapore					X	X			
Solomon Islands		X		X		X			
Sri Lanka	X	X	X	X	X	X	X	X	
Syrian Arab Republic	X	X		X		X			
Tajikistan	X	X	X	X	X	X	X	X	
Thailand	X	X			X	X			
Turkmenistan	X	X	X	X	X	X		X	X
United Arab Emirates				X		X			
Uzbekistan	X	X	X	X	X	X		X	
Viet Nam	X	X		X	X	X			
Yemen	X	X	X	X	X	X			

Col. (1) the International Covenant on Civil and Political Rights (ICCPR) (1966); Col. (2) the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966); Col. (3) the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984); Col. (4) the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Col. (5) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), (1979); Col. (6) the International Convention on the Rights of the Child (ICR) (1989); Col. (7) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC); Col. (8) the Optional Protocol to the ICCPR (OPT) ; Col. (9) the Second Optional Protocol to the ICCPR (OPT2);

Note: X= ratification; Office of the United Nations High Commissioner for Human Rights.

Website address: <http://www.unhchr.ch/>

- Respect for universal human rights instruments and the ILO Declaration on Fundamental Principles and Rights at Work would go a long way towards protection of basic human rights of migrant workers even where specific migrant worker conventions have not been ratified. This is because many current violations relate to basic human rights of migrant workers. The preceding analysis has shown that there are a variety of international instruments – specific and more general – which can protect the rights of migrant workers under international law. Most countries have also pledged at global conferences to respect the basic human rights of migrant workers and so, in this sense, these rights should in theory be well protected, especially in host countries in Asia. Needless to add that mere ratification would not guarantee protection. Actual protection, however, depends on countries incorporating these international standards into national laws and instituting effective means for their enforcement.
- To address more complex situations such as those posed by trafficking and those attendant to the migration of domestic workers, it is important to use a multi-pronged approach and draw upon the synergy of a number of instruments relating to migration, child labour, forced labour and transnational crime, etc.
- Much can be done by and within sending countries themselves to improve protection of their migrant workers. To quote from the message issued by the Mr. Mahinda Samarasinghe, the Honourable Minister for Labour and Employment, Sri Lanka, on International Migrants Day (18 December 2001):
 

The need of the times is to take necessary steps, as early as possible, to ensure that countries abide by rules and regulations laid down by the International Labour Organization. Due to the delay in fulfilling this need, job security, wages and human rights of workers have been undermined and consequently their dream of a better life has not been fully realized. I consider it a bounden duty of our Government to change this situation (Samarasinghe, 2001).
- Labour-sending countries in Asia have to carefully balance between “**promotion**” of overseas employment and “**protection**” of their migrant workers abroad. The best long-run solution to unemployment and poverty and reducing migration pressures is sustained growth of the home economies, which would ensure rewarding opportunities at home. The Republic Act 8042: The Migrant Workers and Overseas Filipinos Act of 1995, unequivocally states that “the State does not promote overseas employment as a means to sustain economic growth and achieve national development”.
- Given the complexity of migration processes and problems experienced, it is clear that no single party or agency can ensure protection of migrant workers. Efforts must be taken at several levels: national, regional and international. Similarly, all stakeholders must join hands in this task. ILO’s traditional partners – governments, employers and workers – and civil society organizations and organizations of migrant workers themselves. Networking of unions, employers’ organizations, NGOs and migrant associations between sending and receiving countries is essential. These partnerships are especially important for protecting the “least protected”: women migrant workers and irregular migrant workers. Employers and recruitment agencies should adopt and follow voluntary codes of conduct and ethical practices.

## **2.4.2 Some possible lines of action**

### **Adoption of transparent and orderly migration policies**

The first point to note is that migration is likely to increase rather than decrease in the future and that it should not be thought of as a transient or temporary phenomenon. Therefore, labour-receiving countries should attempt to formulate appropriate migration policies based on longer-run considerations of labour market needs rather than on ad hoc decisions. Adoption of regulated and transparent admission policies are necessary to meet persistent long-term labour market needs. This will go a long way towards reducing irregular migration flows and associated human rights abuses. At the same time, migrant-sending countries should attempt to reduce undue dependence on overseas employment through efforts to develop local economies and reduce emigration pressures at home in the long term.

ILO has produced two detailed manuals to provide guidance to both labour-receiving and labour-sending countries. These are practitioner's manuals (now translated into a number of languages), incorporating international good practice, which can be used by tripartite partners, especially governments, for the formulation of migration policies.

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

### **Bilateral and regional consultations**

Given the international nature of migration processes, it is imperative to pursue bilateral and regional consultations. However, there is a marked reluctance among countries in the region to enter into agreements even of limited scope, which leaves the field open for abuses by market forces. Abella (Abella and Lonroth, 1995) has clearly shown that orderly migration policies are possible only when there is cooperation between sending and receiving countries. The ASEAN forum must be used more directly to discuss labour mobility issues although member nations have been reluctant to do so up to now. There has been little progress on the regional mechanism proposed by the Bangkok Symposium on Irregular/Undocumented Migration.

### **Protection of basic human rights of all migrants through ratification of international instruments**

Countries should ensure the basic human rights of all migrants, whatever their legal status. ILO Conventions and the UN Conventions provide ample guidelines for formulating migration policy consistent with their basic rights and human dignity. Therefore, priority consideration should be given to supporting and ratifying ILO and UN Conventions or enacting legislation consistent with the spirit of these instruments. The recent ILO review of Conventions on migration has made a number of important observations in this regard. Abella (2000) has suggested that a different approach is necessary in persuading countries to ratify migrant conventions in view of current trends, which have led to negative perceptions on migration movements. The emphasis should be on demonstrating to countries that such adoptions are consistent with their national interests. All sections of society should join in the attempt to promote the ratification of these instruments.

## **Coordinated and multi-pronged approach to protection of women migrant workers, especially domestic workers**

Important recent initiatives, such as ILO research on national legislation regarding domestic work (Ramirez-Machado, 2002), the Colombo Declaration adopted by the Regional Summit on Domestic Workers (CARAM Asia, 2002) and the Hong Kong Consultation meeting on the protection of Domestic Workers Against the Threat of Forced Labour and Trafficking have provided valuable information and guidelines on the protection of domestic workers.

A framework of the principles for legal protection of migrant domestic workers has to be comprehensive and go beyond labour issues. It must address violation of rights, abuse, torture, health matters, invasion of privacy and withholding of documents. The inter-relatedness of rights and the inter-relatedness of abuse in developing the framework must be considered. It must be based on the basic principles such as the universality and indivisibility of human rights and gender justice (Tati Krishnawati and Asia Pacific Forum on Women in Law and Development, 2002).

The ILO *Gender Promotion Programme* has developed an information guide for preventing discrimination, exploitation and abuse of women migrant workers consisting of six booklets covering the entire migration and return process (ILO, 2003). Plans are under way to validate it and disseminate it through a regional consultation in Asia.

### **Greater role by social partners in migration issues**

Civil society organizations – national and international NGOs – already play an important role in providing protection and redress to migrant workers, especially women workers, in receiving countries, but the role of social partners has been limited. Trade unions as well as employers organizations should take an active role in migration policies in their countries. The Asia Pacific Regional Symposium for Trade Unions (ILO-ACTRAV 2000) made a number of recommendations to trade union organizations in both sending and receiving countries: awareness raising, lobbying governments for ratification of international conventions, monitoring recruitment agencies and traffickers, provision of referral services to migrant workers, promotion of union membership by migrants, promoting social and cultural integration of migrants, and facilitating reintegration of returning migrants.

Employers also need to share social responsibility for the plight of migrant workers and provide them equal treatment in respect of pay and working conditions. Employers organizations can also exert pressure on the recruitment industry to prevent abuses. Networking among employers and workers organizations in sending and receiving countries should be attempted. At the same time, formation of associations of migrant workers should be encouraged so that they can provide self-help support services, among other things.

### **Regulation of the recruitment industry**

It is readily acknowledged that private employment agencies play a crucial role in facilitating migration. At the same time, they are responsible for a number of unethical practices that promote irregular migration and result in serious human rights violations of actual and potential migrants.<sup>12</sup> ILO has therefore devoted attention to streamlining their activities in line with international standards, especially the Convention No. 181 (1997).

The 1997 ILO Meeting of Experts (ILO, 1997a) formulated guidelines for special protective measures for migrants recruited by private agents for employment overseas. It advocated several measures, such as promotion of bilateral labour agreements between countries; enhancing the public employment services in both sending and receiving countries for dealing with migrant workers; promotion of cooperation between public and private employment agencies; close supervision of the activities of private recruitment by means of appropriate national laws or regulations and in consultation with representative organizations of employers and workers; imposition of adequate sanctions against abuses or malpractices. Some innovative work in evolving a regulatory framework for private recruitment agencies has been recently carried out in Indonesia (Böhning and Noriel C., 1999).

### **Elimination of trafficking of women and children**

Traffickers are among the worst violators of human rights of migrants, particularly of migrant women and children. Asian countries should take a firm stand on trafficking of women and children. It is a major humanitarian issue and the organized syndicates and traffickers should be harshly dealt with as accepted by the Bangkok Declaration. To quote:

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 (Thailand Ministry of Foreign Affairs, 1999).

These should be complemented by preventive and rehabilitation measures for victims of trafficking.

### **Information campaigns and orientation**

Public information campaigns on the risks and dangers of irregular migration and the phenomenon of migrant trafficking and related abuses should be launched as a preventive measure. Similarly, information on the rights of migrants and available instruments should be disseminated to all parties.

## **ENDNOTES**

1. Parts of this paper draws upon some material in: Piyasiri Wickramasekara, *Migrant workers in Asia and the Pacific: Issues in Human Rights and the Principle of Non-discrimination*, Paper presented at the Asia-Pacific Regional Seminar of Experts in preparation for the World Conference on Racism, Xenophobia and Related Intolerance, organized by the Office of the High Commissioner for Human Rights (OHCHR) and UN ESCAP, 5-7 September, 2000, Bangkok, Thailand.
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4. Some information contained in this section draws upon Abella, 1999.
5. Legal Aspects of Social Integration of Migrant Foreigners in Japan, by Kozo Kagawa, 2000.
6. Legal Aspects of Social Integration of Migrant Foreigners in Japan, Kozo Kagawa, 2000.
7. This section draws upon Grimsman, 1999; Böhning, 1999.
8. The full text of these standards is available at the ILO website: <http://www.ilo.org/>
9. Emphasis inserted by the author.
10. See [http://www.justice.gov.hk/interlaw\\_e.htm#International%20Labour%20Conventions](http://www.justice.gov.hk/interlaw_e.htm#International%20Labour%20Conventions).
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# CHAPTER 3

## CAPACITY BUILDING AND INTERSTATE COOPERATION TO PROTECT MIGRANT WORKERS AND FACILITATE ORDERLY LABOUR MIGRATION\*

### 3.1 INTRODUCTION

In the twenty-first century, international labour migration or the movement of people across borders for employment is at the top of the policy agendas of many countries, be they countries of origin, transit or destination. It is estimated that today between 60 and 65 million persons are economically active in a country other than their own, with or without authorization, accompanied by as many dependants.<sup>1</sup> Three key determining factors – the “pull” of changing demographics and labour market needs in many industrialized countries, the “push” of population, unemployment and political crises pressures in less developed countries, and established inter-country networks based on family, culture and history – will continue to fuel this kind of movement for many years yet. An alarmingly large proportion of labour migration takes place illegally, and there is a ready clandestine industry, including criminal, to abet it. Increasingly, governments at both ends of the migration spectrum are developing regulatory mechanisms to manage labour mobility to their individual and mutual benefit, and that of the migrant.

In Asia it is estimated that every year some 2.6 million workers left their countries under contracts to work abroad over the period 1995-99. The south Asian countries accounted for 46 per cent of this outflow. South-East Asians, mainly Filipinos, Indonesians, Thais, Burmese and Vietnamese made up 50 per cent (see IOM, World Migration Report). A large proportion of workers from South and South-East Asia continue to leave for the Gulf states to perform all kinds of service, trade and construction jobs. New patterns of labour migration have also emerged in the region over the last decade. There has been a significant outflow of professionals and technical workers to North America and Europe, mostly from India, the Philippines and Thailand, especially in the information technology and nursing sectors. Intra-regional labour migration has also grown rapidly, particularly from South-East Asia to the developed or emerging East Asian economies.

Labour sending countries in Asia range from those that are experiencing a migration transition, characterized by both labour import and export (e.g. Thailand), established labour sending countries (e.g. the Philippines and South Asian countries) to those that are relative newcomers (e.g. Viet Nam) to organized labour migration. Nevertheless, as countries of origin they all face some common issues. Briefly, these are:

- Challenges in protecting migrant workers from exploitative recruitment and employment practices and in providing appropriate assistance to migrant workers in terms of pre-departure, welfare and reintegration services.

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\*By Nilim Baruah, Head of the Labour Migration Service Area, Migration Management Services Department, IOM Geneva.

- Challenges in optimizing benefits of organized labour migration, particularly the development of new markets and increasing remittance flows through formal channels, as well as influencing remittance use.
- Building institutional capacity and inter-ministerial coordination to meet labour migration challenges.
- Increasing cooperation with destination countries for the protection of migrant workers, access to labour markets and the prevention of irregular migration.

In response to these migration challenges, Asian countries have responded with a set of policies, structures and procedures that seek to protect their migrant workers and facilitate orderly migration.

## 3.2 NATIONAL POLICIES AND STRUCTURES TO PROTECT MIGRANT WORKERS AND FACILITATE ORDERLY LABOUR MIGRATION

The main policies introduced by Asian countries to protect their migrant workers focus on exit controls, curbing abuses in recruitment, setting standards for employment contracts, welfare services for migrants, the posting of labour attachés abroad and cooperation with countries of destination.

### 3.2.1 Exit controls

In democracies, a generally accepted rule of international migration is the right of individuals to leave the territory of a State (including one's own). In Asian labour sending countries, for the stated reason of protection, varying degrees of exit controls are however practised. In the Philippines it is mandatory for migrant workers to have clearance from the Philippines Overseas Employment Administration (POEA) before leaving the country. Pakistan, Bangladesh and Indonesia have varying degrees of restrictions on female migrant workers leaving the country. In India, emigration clearance is required for certain blue-collar occupations.

In the case of socialist China and Viet Nam there is no automatic right to seek employment abroad and leave the country of origin.

Asian labour sending countries have in the past also banned employment in specific destination countries for a certain period owing to abuses in that country.

### 3.2.2 Licensing requirements

Private recruitment agencies have played a vital role in expanding labour migration in Asia. At the same time, they have been responsible for many of the abuses. This has led states to intervene by controlling recruitment activities. All Asian sending countries prohibit the recruitment of their nationals by persons or entities other than those licensed by the state to do so. Licensing requirements generally require licensees to be resident nationals in order that they can be held accountable for any recruitment violations. It is now also common for countries to require that

licensees put up financial guarantees against claims that may be brought by the government or migrants. Limits have been put on recruitment fees that agents may charge.

### **3.2.3 Employment contracts**

Ensuring employment contracts that guarantee a fair wage and basic provisions have been an important part of efforts to protect nationals abroad. Administratively set standards, highlighted in model employment contracts, are the basis for permitting the employment of nationals abroad. However, in the absence of any agreement with the states of employment to ensure their implementation, it is very easy for contract substitution to take place. Authorities in the countries of employment would have to assume the responsibility of ensuring that violations of contracts are penalized, as the Labour Department of Hong Kong does.<sup>2</sup> Otherwise much of the effort to ensure minimum standards in employment contacts in countries of origin is of little use.

### **3.2.4 Migrant services**

Asian countries have instituted a number of services over the years for nationals migrating for work that range from pre-departure orientation, welfare fund assistance, presence of labour attachés in host countries and planning for return and reintegration.

### **3.2.5 Administration of labour migration**

Governments in Asia are committing more technical and financial resources to the formulation and implementation of labour migration policies. Over the last two decades a number of specialized institutions have come up to address concerns over foreign employment. Some experts note that the “bureaucratization” of labour migration policy has reached very sophisticated levels in some Asian countries (Abella, 2000). Nevertheless, some experts point out that research into the issue of institutional capacity to effectively administer international labour migration has been neglected.<sup>3</sup>

The administration of labour migration is governed by an Emigration Act or Decree in most Asian countries (refer to Table 3.1 overleaf). The main ministry responsible for the implementation of the relevant legislation is usually the Ministry of Labour, but in some cases a separate Ministry has been created for overseas employment (Bangladesh). Within the Ministry, most countries have a Foreign Employment Bureau or its equivalent responsible for protection, welfare and promotion. In the case of the Philippines, there are two entities, one for protection and promotion functions (POEA), and another for welfare and adjudication functions (Overseas Workers Welfare Administration or OWWA). In addition to a Foreign Employment Bureau, some countries have a public sector arm for recruitment (Bangladesh, Pakistan). The two other ministries engaged in the labour migration process are usually the Ministry of Home Affairs (Interior Ministry) for passport issuance and immigration, and Foreign Affairs (MFA) for promotion and interstate cooperation. The supporting role of the MFA is clearly an important one. Table 3.1 refers to the labour migration administration structures in nine Asian countries.

TABLE 3.1

LEGISLATION RELEVANT TO LABOUR EMIGRATION AND MAIN AUTHORITIES  
AND ADMINISTRATIVE BODIES RESPONSIBLE FOR EMIGRATION FOR EMPLOYMENT

Country	Legislation relevant to labour migration	Main authorities and administrative bodies responsible for emigration for employment
Bangladesh	Emigration Ordinance 1982 Bangladesh Control Entry Act Bangladesh Passport Act Bangladesh Immigration Act	Ministry of Expatriates' Welfare and Overseas Employment and its Bureau of Manpower, Employment and Training (BMET); Bangladesh Overseas Employment and Services Limited (BOESL).
China	Decree No. 15 on Administrative Regulations on Overseas Employment Intermediary Activities	Ministry of Labour and Social Security; Ministry of Public Security; State Administration of Industry and Commerce of China; Ministry of Foreign Trade and Economic Cooperation.
India	Emigration Act 1983	Ministry of Labour and its Protector General of Emigrants; Ministry of External Affairs (Passport Offices, Indian missions); Ministry of Home Affairs (Airport Immigration Authorities).
Indonesia	Ministerial Decree KEP 104 A/MEN, 2002	Minister of Manpower and Transmigration; Coordinating Board of Indonesian Overseas Employment.
Pakistan	Emigration Ordinance, 1979	Ministry of Labour, Manpower and Overseas; Bureau of Emigration and Overseas Employment (for work abroad in the private sector); Overseas Employment Corporation (for work abroad in the public sector).
Philippines	Republic Act No. 8042, Migrant Workers and Overseas Filipinos Act of 1995	Department of Foreign Affairs; Department Of Labour and Employment (DOLE) and its Philippine Overseas Employment Administration (POEA), and Overseas Workers Welfare Administration (OWWA).
Sri Lanka	Sri Lanka Bureau of Employment Act No 21 of 1985	Ministry of Employment and Labour and its Sri Lanka Bureau of Foreign Employment, Ministry of Foreign Affairs; Ministry of Interior; Ministry of Women Affairs; Ministry of Vocational training.
Thailand	Recruitment and Job-Seekers Protection Act, B.E. 2528 (A.D: 1985)	Ministry of Labour and Social Welfare and its Overseas Employment Administration Office.
Viet Nam	Decree No. 152/1999/ND-CP	The Ministry of Labour, Invalids and Social Affairs and its Department for Administration of Foreign-Employed Labour Force; Ministry of Foreign Affairs; Ministry of Public Security; Ministry of Finance; Ministry of Planning and Investment; Ministry of Health; Ministry of Trade; State Bank of Viet Nam.

Source: IOM, Labour Migration Compendium for Asian Labour Sending States, 2003.

TABLE 3.2

## AREAS OF GOVERNMENT INTERVENTION AND SPECIFIC MEASURES TAKEN BY COUNTRIES

Government Intervention	Bangladesh	India	Sri Lanka	Philippines
<b>Standard Setting and Enforcement</b>				
Minimum standards for work contracts	X	X	X	X
Pre-employment briefing				X
Pre-deployment briefing	X		X	X
Restriction on passport issue	X	X	X	
Emigration clearance to leave country	X	X	X	X
Trade test requirement		X	X	X
State-subsidized skills training	X	X	X	X
Negotiation of supply agreements	X	X	X	X
Social security arrangements			X	X
Performance bond from worker		X	X	X
Repatriation bond or fund		X	X	X
<b>Supervision of Private Recruitment</b>				
Licensing/regulation of private recruiters	X	X	X	X
Ban/restriction on direct hiring	X	X	X	X
State operation of recruitment agency	X	X	X	X
Periodic inspection of recruitment agency	X	X	X	X
Limit recruitment fee charged to worker	X	X	X	X
Cash/security bond requirement	X	X	X	X
Regulation of job advertising	X	X	X	X
Renewal of contract clearance				X
Joint and individual liability			O*	X
Client referral service				X
Regulation of advertising and promotion	X	X	X	X
<b>Settlement of Claims/Disputes</b>				
Conciliation on site/upon return	X	X	X	X
Adjudication system				X
Fund to cover unpaid claims/benefits		X	X	X
<b>Welfare Services</b>				
Contribution to Welfare Fund	X		X	X
Labour Attaché assistance	X	X	X	X
Welfare Centres			X	X
Welfare Officers			X	X
Low-cost insurance	X		X	X
Legal aid to worker in distress on site	X	X	X	X
Repatriation assistance	X	X	X	X
Social welfare services	X		X	X
Education facilities	X		X	X
Scholarships for children of workers			X	X
Health/medical facilities				X
Livelihood programmes for family				X
Financial loan programme			X	X
Employment assistance for returnee				X
Returnee training programme				X
Trauma care centre for returnees			X	
Duty-free privileges	X	X	X	X

\*Sri Lanka adopted verbatim POEA provisions in its Special Power of Attorney, but according to former SLBFE Chairman David Soysa, said provision has not been implemented due to opposition from recruitment agencies (Achacoso, 2002).

Source: Achacoso, 2002.

Table 3.2 (previous page) illustrates the interventions made by the government in the labour migration process in selected Asian countries. Over the years and as a result of experience some Asian states have developed good capacities in certain aspects of labour migration administration.

Nevertheless, there are aspects where capacity building is still necessary, namely:

1. **Migrant services:** The Governments of the Philippines, Bangladesh, Pakistan, Thailand and Sri Lanka have generated resources from foreign employers in a Welfare Fund for migrants. The fund is often used as an emergency fund to help workers in the host country, including repatriation. The Welfare Fund is an innovative and sustainable means of assisting workers in the host country. An assessment of its effectiveness and a sharing of experience will be of much assistance to countries that similarly wish to introduce such measures. Most countries have a short pre-departure orientation for migrant workers, and in the Philippines accredited NGOs provide this service as well. Worker education, including through targeted pre-departure courses, is another area where the sharing of curricula among sending countries will be of mutual practical assistance to them. The establishment of Migrant Resource Centres (funded by the Welfare Fund) in host countries on the lines of the Philippines example to assist migrants abroad is another important practical measure that governments should consider taking.
2. **Development of new markets for labour migration:** While Asian states are relatively well versed in labour migration opportunities in West Asia and East Asia, except for one or two countries, opportunities in Europe have been under-utilized. Clearly, building market research and marketing capacity and having the MFA working closely with the labour entities (both aspects evidenced in the Philippines) is important. Some Asian countries have begun to pursue the creation of bilateral labour agreements in Europe that provide for privileged access to labour markets and constitute an alternative to irregular migration. Italy approved a decree in October 2002 that provides quotas for 20,500 migrant workers, including for the first time 1,000 workers from Sri Lanka (IOM Rome, 2002). The granting of privileged access to the Italian labour market is linked to cooperation in controlling irregular migration and providing regular migration avenues as an alternative to irregular migration.
3. **Labour migration information systems:** Data on migrants in the countries of origin have largely been a by-product of exit controls intending to protect migrant workers. Therefore, countries with exit controls also have more comprehensive data available. Such data are supplemented by work permit statistics, employer reports and embassy registration in the country of destination. Computer based information on stocks and flows of migrant workers (including irregular migrants) in destination countries are vital for migration statistics, and appropriate policy formulation, planning and protection for both countries of origin and destination.
4. **Reintegration Assistance:** Of the nine Asian countries surveyed, only two had reintegration counselling and programmes for returnees in place. Clearly this is a relatively new area of intervention for Asian countries, and the experience of countries such as the Philippines and international organizations such as IOM can be brought to bear.

### 3.3 INTERSTATE COOPERATION TO PROTECT MIGRANT WORKERS AND PROMOTE ORDERLY MIGRATION

Despite all the efforts made by Asian countries to protect migrant workers, migrant workers continue to experience numerous problems in destination countries, particularly vulnerable groups such as female domestic workers. There are clear limits to what a state can do to protect its migrant workers without the active cooperation of the states of employment. In a questionnaire response by governments participating in the Asian Labour Migration Ministerial Consultations at Colombo (April 2003) while the high placement fees by domestic recruitment agencies were reported as a problem in two countries, most states cited problems occurring in the country of employment – contract substitution and violations, late, no or lower payment of agreed wages and non-fulfilment of return air fare obligations. Harassment by employers was a major complaint expressed by female workers of a sending country with a monitoring system in place.

#### 3.3.1 Formal mechanisms

##### **Bilateral labour agreements**

Recognizing this, countries of origin have pursued bilateral labour agreements (BLA) with destination countries. Bilateral labour agreements are the most common mechanism to regulate interstate labour migration. Labour agreements formalize each side's commitment to ensure that migration takes place in accordance with agreed principles and procedures. Agreements may provide for quotas. Furthermore, such agreements may also be motivated by political reasons, to reflect friendly relations or to reinforce cooperation in managing irregular migration. Agreements on short-term employment of less than a year (seasonal employment) exist between a number of countries. In that way economic sectors with seasonal manpower requirements (e.g. agriculture, tourism, construction) tap human resources lacking in the domestic labour market, while the migrant and the country of origin benefit from increased earnings. For example, bilateral agreements for the employment of seasonal workers exist between France and Morocco, Tunisia, former Yugoslavia and Poland (Council of Europe) and Canada and the Caribbean states.<sup>4</sup>

Regarding the Gulf States, Asian sending countries have generally managed to achieve framework agreements, or statements of mutual cooperation, concerning recruitment and protection of workers rather than specific agreements. Bangladesh, India, Indonesia, Pakistan and the Philippines have entered into agreements with destination countries in the Gulf. However, as mentioned by the Philippine Government, it takes a long time for bilateral labour agreements to be reached and implemented. In general, there has been a lack of interest on the part of receiving states in Asia to engage the states of origin in any bilateral or multilateral agreement to establish rules to govern international labour migration. This is particularly true of the Gulf States.

The Philippines has entered into 12 labour agreements with various host countries of Filipino labour, out of which four are with European countries. Agreements with European countries are more focused. For instance, the agreement with Switzerland involves the exchange of professionals and technical trainees for short-term employment; the agreement with the United King-

dom aims to facilitate the recruitment of Filipino health professionals and the Philippines-Norway agreement aims to develop cooperation to reduce the need for professionals in the health sector in Norway and to promote employment opportunities for Filipino health personnel.

The Philippines has recently entered into a manpower cooperation agreement with Indonesia, itself a labour sending country. The agreement seeks to enhance the effective management of migration in order to promote and protect the welfare and rights of Filipino and Indonesian migrant workers. According to the Philippine Government, although bilateral labour agreements have proved to be effective in addressing issues and concerns affecting the employment of workers, it takes a long time for these agreements to be developed and implemented. In recent years, the Philippines has veered away from the formulation of general agreements and worked towards the adoption of more focused/specific agreements which are easier to negotiate and make operational with host countries (Questionnaire response by the Philippine Government for the Asian Labour Migration Ministerial Consultations at Colombo, April 2003).

Western European countries requiring foreign labour enter into bilateral agreements with partner states for targeted labour exchange programmes that steer inward flows to specific areas of labour demand, while undercutting the need for irregular migration by such legal alternatives. Once established in principle, these programmes require special administration to ensure their smooth operation, including the promotion of the programme in countries of origin, the recruitment, testing and certification of applicants for the programme, timely data flow and information sharing between the two countries, the migrants and the consular offices concerned, and efficient travel logistics. IOM supports government efforts to put these elements into place, and directly provides the services in the context of bilateral selective migration programmes.

Spain and Ecuador have signed a bilateral labour agreement under which IOM assisted the first group of labour migrants in 2002 to travel to Spain and work in the hospitality sector. Candidates were selected by a Spanish delegation, based on the skills and experience recorded in IOM's database, which, at the end of 2002, contained over 18,000 files. IOM also assisted with the drafting of contracts and securing of visas, passports and airline tickets for the journey to Spain. All selected labour migrants were given employment contracts.

In recent years, the increasing needs of the labour market, on the one hand, and the constant flow of irregular migrants on the other, have led Italy to negotiate readmission agreements (for the return of irregular migrants) with 24 countries, while promulgating special decrees in 2001 and 2002 that foresee entry quotas for foreign labour migrants. In accordance with an agreement between Italy and Albania, IOM worked with the Italian Ministry of Labour to develop a pilot mechanism for the management of regular labour migration from Albania. IOM assisted with skills assessment and the selection of the migrants in Albania, interviews to assess professional qualifications and verification of migrants' credentials and proficiency in the Italian language. A database on selected candidates was developed and transferred to the Italian Ministry of Labour for further dissemination to employment offices and other concerned government bodies. A final database of 6,724 Albanian workers is available for Italian entrepreneurs requiring personnel. IOM Rome will prepare a comprehensive description of the mechanism as a useful model for other interested parties. IOM is also assisting in the implementation of BLAs and arrangements between Spain and Colombia, and the Netherlands and Poland.

## Regional mechanisms

Regional mechanisms for interstate cooperation in managing labour migration have been relatively more successful than global ones and hold greater potential. The first significant agreement to deal with the movement of persons was concluded by Denmark, Finland, Norway and Sweden in 1954. Nationals of a member country were permitted to work in another without the need for a labour market test or work permit. In 1958, the Benelux Economic Union was formed which established free movement of the citizens of Belgium, the Netherlands and Luxembourg within these countries. In the European Community (EC) the forces of economic integration gradually led the EC to move to the free movement of nationals of member states within the European Union (EU) borders (crystallized in the Schengen Agreement in 1985).

Some of the other regional blocs have also incorporated specific provisions facilitating movement of labour. The Asia-Pacific Economic Cooperation (APEC) has instituted a Business Travel Card (ABTC) that facilitates entry for business travellers in member states. The North American Free Trade Agreement (NAFTA) facilitates business travellers and allows employment of certain categories of highly skilled workers without a labour market test. In Africa a protocol on free movement and residence was signed in 1979 by 16 members of the Economic Community of the West Africa States (ECOWAS). The first provision (visa-free entry) came into force in 1980. The second provision (on rights of residence) has not yet come into force.

## Multilateral agreements

At the multilateral level there is no global agreement or convention in place to manage migration flows, in contrast to refugee flows. One of the existing mechanisms to regulate some aspects of interstate labour migration on a multilateral basis is the **General Agreement on Trade in Services (GATS)** under the aegis of the World Trade Organization (WTO). The supply of services entailing the temporary migration of persons, otherwise referred to as Mode 4, is one of the four ways of trading services under GATS. Commitments made by member states so far for GATS Mode 4 have been limited to intra-company transferees (of MNCs), self-employed service providers and specialists (such as architects, artists, engineers, lawyers, news correspondents) on specific assignments, and short business visitors.

A new round of negotiations was launched in January 2000. Developing countries are interested to have a wider range of commitments that would also include lower skill levels. The developed countries are reluctant to make commitments for lower skilled labour movement under GATS or to have special visa/work permit regimes for GATS movement. So far, GATS has been a limited mechanism to facilitate the interstate cooperation in labour migration. Clearly political realities in destination countries do not allow regular global movements of labour symmetrical to that of the flows in goods and capital, although the liberalization of such labour flows could lead to overall economic gains in countries of origin and destination.

Wide ratification of the **UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)** would lead to a comprehensive approach to labour standards for migrants. However, signatories among destination countries have been limited so far.

### **3.3.2 Less formal and consultative mechanisms**

#### **Joint Commissions on Labour**

When effectively implemented, BLAs can promote orderly migration and protect migrant workers. In general and particularly in the Gulf, countries of destination have been more inclined to establish less formal mechanisms for cooperating with countries of origin on the management of labour migration. Joint Commissions on Labour are now increasingly being relied on by Asian governments to achieve greater cooperation from governments of Arab states as well as of Asian countries of employment (Abella, 2000). These are in essence a mechanism for informal consultations between administrative authorities of the countries of origin and destination (usually the Ministry of Labour and Employment) on mutually agreed issues. There are examples of how Joint Commissions contributed to the reversal of rules found to be unfair to migrant workers (Abella, 2000).

#### **Regional Consultative Processes**

Regional Consultative Processes are another example of non-binding fora bringing together migration officials of states of origin and destination to discuss migration-related issues in a cooperative way. IOM has been engaged in promoting dialogue and cooperation in managing migration among countries of origin, transit and destination at the regional and subregional levels. One such regional consultation was the Puebla Process (Central and North America, initiated 1996). The Puebla Process (Regional Conference on Migration) was initiated by Mexico and its main goal is the management of irregular migration in and through the region. A Plan of Action was agreed in 1997 and new goals discussed in 2000. The Plan of Action was largely achieved – seminars on specific topics have been held, information exchange has occurred and technical assistance carried out and there have been many instances of one-off assistance among states. IOM provided the secretariat.<sup>5</sup> In the Asia-Pacific region, three regional consultative processes were launched over managing irregular migration, counter-trafficking and on refugees and displaced persons. These are the IOM Regional Seminar on Irregular Migration and Migrant Trafficking in East and South-East Asia (Manila Process, initiated 1996); Inter-Governmental Asia Pacific Consultations on Refugees and Displaced Persons (Asia-Pacific, initiated 1996) and the Bangkok Declaration on Irregular Migration (Asia-Pacific, April 1999).

There are two basic characteristics common to the regional consultative processes. The processes are informal and the results, though consensual, are non-binding. Although the focus of regional processes depends on the interests of the parties involved, a key in the successful functioning of the process is the basic acknowledgement of a shared interest in migration management, despite national interests and experiences. The most important role regional consultative processes can play is to encourage the government representatives of various countries to talk to each other and address issues in a multilateral setting. Talking and sharing experiences serves to develop relationships, enhance knowledge and mutual understanding, and to build confidence and trust which is essential in view of the complexity of the issues being addressed. As a result of a step-by-step approach to confidence building, areas of potential cooperation begin to expand. In this regard, regional consultative processes serve as a focal point for enhancing the understanding of the causes and effects of factors leading to migration trends, and also as a practical vehicle for maintaining and sharing reliable and up-to-date data and documentation on

trends, programmes and policies related to these factors (IOM, Presentation on Regional Consultative Processes, MPRP, Geneva, 2002).

### **Round Table Meetings**

Other formats for non-binding consultations between countries of origin and destination have been round tables and study committees or working groups. There are still no established structures for regular consultations at a multilateral level among countries of labour origin and destination in Asia. One formula tried by ILO in the past is Round Table Meetings (Abella, 2000). The aim was to provide an opportunity for the frank exchange of views on contentious issues without any pressure to agree or to arrive at a formal conclusion. The three Arab-Asian Round Table Meetings organized probably achieved this, but there was no follow-up machinery (Abella, 2000).

### **Working Groups and Study Committees**

A way of ensuring follow-up is the formation of Working Groups/Task Forces or what in international trade negotiations has been used to good effect, Study Committees. The establishment of a multilateral working group or study committee on labour migration would be a non-contentious and practical way of coordinating migration policies of the major countries of origin and destination in Asia.

## **3.4 CONCLUSIONS**

Of the estimated 150 million migrants worldwide, 120 million are thought to be labour migrants. An estimated 2.6 million left from Asian countries between 1995 - 1999 every year under contract to work abroad. The management of migration flows is crucial given this magnitude and that international labour migration is likely to increase in the future. The main policies that Asian states have put in place to protect their migrant workers focus on exit controls, curbing abuses in recruitment, setting standards for employment contracts, welfare services for migrants and the posting of labour attachés abroad, and cooperation with countries of destination. The governments of Asian countries are now committing more technical and financial resources to the formulation and implementation of labour migration policies. Over the last two decades a number of specialized institutions have come up to address concerns around foreign employment. This reflects the importance of labour migration as a national development strategy for Asian countries, both as a means of generating foreign currency through remittances, and to increase employment opportunities for its nationals and to protect its workers from abuses.

Over the years and as a result of their experience, some Asian countries have developed good capacities regarding certain aspects of labour migration administration. But there are areas where capacity building and the sharing of experience will be very useful, particularly for countries in Asia relatively new to organized labour migration. These concern, first, the strengthening of services provided to migrants through the creation and operation of welfare funds, enhancing the effectiveness of pre-departure orientation and the establishment of Migrant Resource Centres in host countries and, second, the effective tapping of new markets for foreign employment, particularly in western Europe. A third area concerns the establishment and effective operation

of labour migration information systems and the exchange of information between sending countries and countries of origin and destination. Fourth, reintegration assistance is a relatively new area of intervention for Asian countries and calls for further attention in capacity building and the sharing of experience.

Despite all the efforts made by Asian states to protect migrant workers, migrant workers continue to encounter numerous problems in the destination countries, particularly vulnerable groups such as female domestic workers. There are clear limits to what a state can do to protect its migrant workers without the active cooperation of the states where they are employed. Where possible, focused bilateral agreements and regional integration agreements are effective in facilitating orderly labour migration and protecting migrant workers. Often, however, such agreements are difficult to achieve, particularly among the Gulf States. In this case, non-binding consultative mechanisms such as Joint Commissions on Labour, Regional Consultative Processes and Working Groups are a more effective tool for interstate cooperation.

## ENDNOTES

1. ILO, Governing Body, 283rd Session, Geneva, 2002 (GB283-2-12002-01-0191-IEN.Doc/V2).
2. Abella M., "Policies and institutions for the orderly movement of labour abroad", ILO Briefing Paper, Geneva, 2000.
3. Achacoso, T., "International Labour Migration Institutions of Bangladesh, India, Sri Lanka in Ferment. The Philippines as a Catalyst", paper prepared for IOM Dhaka, November 2002.
4. An illustrative list of BLAs including those mentioned regarding France is contained in "Temporary Migration for Employment and Training Purposes", Council of Europe, at <http://www.social.coe.int>.
5. "The role of regional consultative processes in managing international migration", prepared for IOM by Amanda von Koppenfels, *Migration Research Series*, No.3, 2001.

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## **PART II**

### **Compendium of Labour Migration Policies and Practices in Major Asian Labour Sending Countries**



# COMPENDIUM OF LABOUR MIGRATION POLICIES AND PRACTICES IN MAJOR ASIAN LABOUR SENDING COUNTRIES

## INTRODUCTION

In the context of the Labour Migration Ministerial Consultations for countries of origin in Asia, IOM is pleased to provide this compilation of labour migration information from nine Asian states. A questionnaire was sent by IOM to all participating governments asking for a range of information relating to labour migration policies, procedures and statistics. This compendium is a compilation of the responses received. Apart from editing to clarify responses and ensure consistency of presentation, no attempt has been made to analyse or draw conclusions from the information presented here.

The questionnaire was designed to collect selected, recent and relatively concise information to provide a snapshot view of key labour migration issues, policies and practices in the region. We believe that the responses are useful and illuminating. The process of compiling this information points to the continuing need for improved information and the sharing of data among the Asian labour-sending states. States outside the region intending to pursue organized labour migration will also benefit from the labour migration information contained herein.

This document presents some comparative tables first, followed by country sections on government labour migration structures, labour migration statistics, labour migration related legislation, measures for the protection of migrant workers and migrant services, foreign market development and remittances, and inter-state cooperation.

I wish to sincerely thank the governments of the participating countries for making this compendium possible. Special thanks also go to Sophie Nonnenmacher, Joerg Kühnel, Ilse Pinto-Dobernig, Filipina Barroza and M.A. Barrozo-Sucaldito for their assistance in preparation of the document.

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Head, Labour Migration  
Migration Management Services

TABLE 1  
TOP FIVE DESTINATIONS FOR CONTRACT MIGRANT WORKERS  
BY COUNTRY OF ORIGIN, 2002

Country of Origin	Destination	Number of Migrants
<b>Bangladesh</b>	<b>Saudi Arabia</b>	<b>1,030,558</b>
	Malaysia	113,325
	United Arab Emirates	293,244
	Kuwait	160,954
	Qatar	60,030
<b>India (2001)</b>	<b>Saudi Arabia</b>	<b>78,048</b>
	United Arab Emirates	53,673
	Kuwait	39,751
	Oman	30,985
	Singapore	27,886
<b>Indonesia</b>	<b>Saudi Arabia</b>	<b>309,036</b>
	Malaysia	245,200
	Taiwan	58,326
	Hong Kong	54,701
	Singapore	48,252
<b>Pakistan (Jan. – Nov. 2002)</b>	<b>Saudi Arabia</b>	<b>94,852</b>
	United Arab Emirates	29,593
	Kuwait	2,755
	Bahrain	955
	Qatar	410
<b>Philippines</b>	<b>Saudi Arabia</b>	<b>170,126</b>
	Hong Kong	94,084
	Japan	63,610
	United Arab Emirates	44,841
	Taiwan	40,189
<b>Sri Lanka</b>	<b>Saudi Arabia</b>	<b>300,000</b>
	Kuwait	161,700
	United Arab Emirates	130,500
	Lebanon	80,000
	Qatar	40,000
<b>Thailand</b>	<b>Taiwan</b>	<b>94,126</b>
	Singapore	20,411
	Israel	12,163
	Brunei	8,607
	Hong Kong	6,488
<b>Viet Nam</b>	<b>Malaysia</b>	<b>19,900</b>
	Taiwan	13,200
	Laos	9,100
	Japan	2,200
	South Korea	1,200

TABLE 2

LEGISLATION RELEVANT TO LABOUR EMIGRATION AND MAIN AUTHORITIES  
AND ADMINISTRATIVE BODIES RESPONSIBLE FOR EMIGRATION FOR EMPLOYMENT

Country	Legislation	Main Authorities and Administrative Bodies
Bangladesh	Emigration Ordinance 1982 Bangladesh Entry Control Act Bangladesh Passport Act Bangladesh Immigration Act	Ministry of Expatriates' Welfare and Overseas Employment and its Bureau of Manpower, Employment and Training (BMET); Bangladesh Overseas Employment and Services Limited (BOESL).
China	Decree No. 15 on Administrative Regulations on Overseas Employment Intermediary Activities	Ministry of Labour and Social Security; Ministry of Public Security; State Administration of Industry and Commerce of China; Ministry of Foreign Trade and Economic Cooperation.
India	Emigration Act, 1983	Ministry of Labour and its Protector General of Emigrants; Ministry of External Affairs (Passport Offices, Indian missions); Ministry of Home Affairs (Airport Immigration Authorities).
Indonesia	Ministerial Decree KEP 104 A/MEN, 2002	Minister of Manpower and Transmigration; Coordinating Board for Indonesian Overseas Employment.
Pakistan	Emigration Ordinance, 1979	Ministry of Labour, Manpower and Overseas; Bureau of Emigration and Overseas Employment (for work abroad in the private sector); Overseas Employment Corporation (for work abroad in the public sector).
Philippines	Republic Act No. 8042, Migrant Workers and Overseas Filipinos Act of 1995	Department of Foreign Affairs; Department of Labour and Employment (DOLE) and its Philippine Overseas Employment Administration (POEA), and Overseas Workers Welfare Administration (OWWA).
Sri Lanka	Sri Lanka Bureau of Employment Act No. 21 of 1985	Ministry of Employment and Labour and its Sri Lanka Bureau of Foreign Employment, Ministry of Foreign Affairs; Ministry of Interior; Ministry of Women Affairs; Ministry of Vocational Training.
Thailand	Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D: 1985)	Ministry of Labour and Social Welfare and its Overseas Employment Administration Office.
Viet Nam	Decree No. 152/1999/ND-CP	The Ministry of Labour, Invalids and Social Affairs and its Department for Administration of Foreign Employed Labour Force; Ministry of Foreign Affairs; Ministry of Public Security; Ministry of Finance; Ministry of Planning and Investment; Ministry of Health; Ministry of Trade; State Bank of Viet Nam.

TABLE 3  
SERVICES AVAILABLE TO MIGRANT WORKERS

<b>Pre-departure Orientation</b>	
Bangladesh	Briefing Centre in the Bureau of Manpower, Employment and Training (BMET).
China	Compulsory Certificate of Training, including skills and law.
India	None
Indonesia	Orientation programme given by IOE on, among others, culture and customs, drug abuse, dealing with possible problems.
Pakistan	Orientation and Briefing Centres in Protector of Emigrants (P.E.) Offices in Karachi, Lahore, Rawalpindi and Peshawar. All the migrants workers registered with the P.E. Offices are given pre-departure briefings on their country of employment (culture, legal norms, etc.).
Philippines	<p>The pre-departure orientation seminar (PDOS) is a one-day mandatory briefing session given to workers by entities duly accredited by the Overseas Workers Welfare Administration (OWWA), such as recruitment agencies or their associates, and NGOs. It includes information on necessary documents, rights and obligations under the employment contract, where to go in times of crisis, travel tips, how to remit earnings, health and occupational safety matters, the risks and rewards of working abroad and reminders about obligations to themselves, their families, communities and the country.</p> <p>A Labour Assistance Centre at the airport assists workers in a final check of their documents before they proceed to the Immigration Counters.</p>
Sri Lanka	<p>Training for housemaids: Separate training for those who travel to Middle Eastern and other countries.</p> <p>Training for workers who travel to Korea.</p>
Thailand	The Department of Employment provides pre-departure orientation for workers, including information on relevant laws, the culture, traditions and working conditions in the receiving country.
Viet Nam	<p>Migrant workers are trained in the foreign language and the work they will perform in the country of destination. They are also given an orientation session on the host country's laws, customs related to working, living, residence and transport, as well as vocational training.</p> <p>Regarding certain host countries, the migrant workers are assisted in the form of a training fee.</p>

<b>Welfare Fund</b>	
Bangladesh	<p>The objective of the welfare fund is to:</p> <ul style="list-style-type: none"> <li>- provide financial assistance for all legal support in host countries;</li> <li>- provide cash support for initial sustenance;</li> <li>- repatriate migrant workers from host countries;</li> <li>- render legal support to family members in the home country.</li> </ul>
China	No information provided.
India	A proposal is under consideration to set up an Indian Overseas Workers' Welfare Fund, which will cover assistance activities for Indian workers abroad by making payments to the Embassies or High Commissions to arrange for return tickets for workers who become stranded abroad, or to repatriate the bodies of workers who died abroad, and to assist workers who become partially or permanently disabled, and for other similar purposes.
Indonesia	None
Pakistan	The welfare fund is managed by the Overseas Pakistanis Foundation (OPF) for the welfare of migrant workers and their dependants in Pakistan. Education, training, housing, medical facilities and other services are organized for the families of Overseas Pakistanis by the OPF.
Philippines	<p>All Filipino workers going abroad are required to be covered by a welfare fund system administered by the Overseas Workers Welfare Administration (OWWA). A membership fee is charged for land-based workers and for seafarers, shared by the employer and the worker. In the case of irregular or undocumented workers, it is usually the worker who pays the fee under a voluntary membership and promotional programme, which is intended to encourage such workers to regularize their status.</p> <p>The OWWA is headed by a Board of Trustees and chaired by the Minister of Labour and Employment. The fund finances the provision of on-site facilities and personnel who work under the leadership of Labour Attachés in addressing the welfare needs of workers. The range of benefits also includes pre-departure and business loans, scholarships for families, life insurance and medical coverage, death benefits, training and worker education (such as the pre-departure seminar programme) and reintegration assistance, among others.</p>
Sri Lanka	The welfare fund is financed through a fee of US\$ 25 levied on employers abroad when an employment contract is signed. The money of the welfare fund is solely used for welfare activities for the migrant workers.
Thailand	The Overseas Workers Welfare Fund was established to help Thai workers who face problems in the receiving country to return to Thailand. This fund is also being used for organizing skills training courses and pre-departure orientation. Employers or recruitment agents contribute to the fund. In addition, a credit for working overseas project was launched to enable job seekers to borrow money for going to work overseas.
Viet Nam	None

<b>Special Programmes to Encourage Remittances through Official Channels, Enhance the Contribution to National Economic Development</b>	
Bangladesh	<p>Speed case system to facilitate remittances.</p> <p>Appointment of banking representatives in major labour importing countries.</p> <p>Agreements with the banks in host countries to facilitate remittances.</p> <p>Arrangements for investments in privatized industries.</p> <p>Granting of special savings incentives in the form of a Wage Earners Bond.</p> <p>Provision of housing facilities on government estates.</p>
China	None
India	No information provided.
Indonesia	No information provided.
Pakistan	<p>In June 2001 the Ministry of Finance announced a number of measures for Pakistanis abroad remitting through banking channels:</p> <p>For Overseas Pakistanis remitting US\$ 2,500 per year: Separate immigration and customs counters at all international airports; free renewal of passports on a priority basis; duty-free import of items of personal convenience up to a value of US\$ 700/year.</p> <p>Non-resident Pakistanis (NRPs) remitting a minimum of US\$ 10,000 per year, are granted special access to the merit-based quota system assigned in all public sector professional colleges and universities; duty-free import up to a value of US\$1,200/year; an allocation of up to 25% for Initial Public Offerings (IPOs), special offers in public housing schemes, discount in the auctions of Corporate and Industrial Rehabilitation Corporation (CIRC) – all to be paid in foreign currencies; special allocation of shares in privatizations.</p> <p>Bona fide remittances made by Overseas Pakistanis will not be subject to any kind of taxes. An ordinance is being issued in this regard.</p> <p>Banks have been directed to reorganize their arrangements for remittances to ensure outreach to labour migrants, share information on company arrangements, to speed up the remittance process and prompt delivery by establishing prior contacts with the recipients.</p> <p>Measures to encourage the participation of Professionals: Exclusive Investment Products will be designed and marketed by NIT for investment by Non-resident Pakistanis (NRPs). Banks will also be encouraged to offer new products for NRPs. A market for private pension funds will be developed and promoted with a view to attracting investment from NRPs. A website will be developed to host the information about charities for the benefit of NRPs.</p> <p>The Board of Investment (BOI) will develop a strong focus on some of the most successful NRPs in the field of investment. For this purpose, BOI is developing a database on such Pakistanis and will contact them personally.</p> <p>An implementation committee has been set up in the Ministry of Finance to ensure the expeditious implementation of incentives stated above.</p>
Philippines	<p>Pag-Ibig Overseas Programme (POP) is a voluntary savings programme, which also give access to housing loans.</p> <p>The Development Bank of the Philippines (DBP) Kinabukasan Investment Certificates (KIC) is a savings mechanism where future redemption values can be used to finance tuition fees of OFW beneficiaries and to cover hospitalization costs when the need arises. Purchase of KICs entitles every certificate holder to a life insurance coverage equivalent to the amount of certificates purchased. KICs are issued in units of Php 5,000 for a seven-year term and can be redeemed after a holding period of at least two years.</p>
Sri Lanka	The Migrant Workers are permitted to operate foreign currency accounts called Non-resident Foreign Currency Account and enhanced duty-free allowance.
Thailand	No information provided.

<b>Reintegration Programmes</b>	
Bangladesh	A study has been conducted for the comprehensive reintegration of migrant workers, focusing on their expertise and technical know-how.
China	None
India	None
Indonesia	None
Pakistan	No such programme. However, it is being planned to register the returnees with specific details for a programme of reintegration.
Philippines	<p><i>Network.</i> Creation by DOLE and OWWA of a National Reintegration Network of OFWs and their families (counselling, information on available services).</p> <p><i>OWWA reintegration desks and programmes.</i> OWWA has reintegration desks at the airport and local government units to provide information on reintegration programmes. OWWA operates reintegration programmes in more than 20 countries and 27 major cities (training, seminars, individual counselling).</p> <p><i>Training.</i> Livelihood skills and entrepreneurial training are offered by the Technology and Livelihood Resource Center (TLRC) and the Technical Education and Skills Development Authority (TESDA).</p> <p><i>Livelihood and Business Development Assistance.</i> The Department of Trade and Industry (DTI) offers business development services for would-be entrepreneurs and small and medium enterprises (SMEs), including OFW families/dependants, through its Bureau of Small and Medium Enterprise Development (BSMED). It provides, e.g., consultancy services and training. OWWA has a livelihood programme that offers similar types of services on business development, as well as DOLE through partnerships with NGOs.</p> <p><i>Credit and Microfinance.</i> OWWA offers livelihood loans to OFW families, re-entry loans and group assistance loans. Beginning from the first quarter of 2003, OWWA will make available self-employment non-secured loans for the micro-business ventures of OFW families.</p> <p>The DOLE has its Kalinga microfinance programme, which OFW families can also access. It has established partnerships with various NGOs with livelihood/credit facilities such as OFW Net International Holdings and TSPI Development Corporation, which have credit windows for OFW families and dependants.</p> <p><i>Housing.</i> Pag-Ipbig Housing Loans.</p> <p><i>Psychological counselling</i> for OFWs , their families and dependants provided by DOLE together with NGOs.</p> <p>25 <i>Family Welfare Officers</i> devoted to the improvement of new and existing projects for family groups and development of new projects.</p>
Sri Lanka	<p>A loan scheme is available for migrant workers who wish to invest in self-employment activities.</p> <p>Currently, the Sri Lanka Bureau of Foreign Employment is conducting a family development programme in five districts. The objective of this programme is to help families to mobilize their saving in self-employment and prepare the families to face difficulties they may encounter as a result of the spouse migrating for employment.</p>
Thailand	No information provided.
Viet Nam	<p>The Government has adopted policies to encourage and assist migrant workers to seek a job and settle down after returning home.</p> <p>The Government encourages those who have savings to set up their own small or medium-size business. They are offered enterprise management courses and facilitated access to bank loans.</p>

TABLE 4  
BILATERAL LABOUR AGREEMENTS

Country of origin	Bilateral agreement with
Bangladesh	Kuwait
China	No agreement
India	Qatar, Lebanon
Indonesia	MOU Jordan
Pakistan	Jordan, Qatar
Philippines	Switzerland, UK and Northern Ireland, Norway, Commonwealth of Northern Mariana Islands, Taiwan, Papua New Guinea, Jordan, Qatar, Iraq, Libya, Kuwait, Indonesia
Sri Lanka	No agreement
Thailand	-
Viet Nam	-

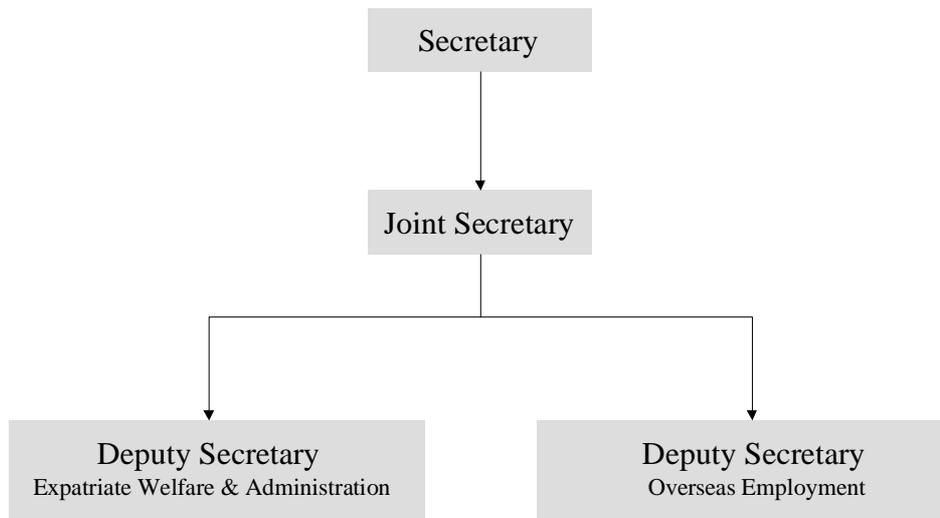
(-) No information provided.

# BANGLADESH

## 1. Government Labour Migration Structure

Government agencies involved in labour migration management and their roles:

### ORGANIGRAM OF THE MINISTRY OF EXPATRIATES' WELFARE AND OVERSEAS EMPLOYMENT



Regarding other government agencies involved in labour migration and their roles, please refer to the Annex for the functions of the:

- Ministry of Expatriates' Welfare and Overseas Employment;
- Bureau of Manpower, Employment and Training;
- Bangladesh Overseas Employment and Services Ltd. (BOESL).

## 2. Labour Migration Statistics

Number of contract migrant workers who have departed in the year by sex, age group, education, expected occupation and country of employment:

Please refer to Tables 6 and 7 in the Annex.

TABLE 5  
TOP FIVE COUNTRIES OF DESTINATION FOR CONTRACT MIGRANT WORKERS

Country	Number of Migrants
Saudi Arabia	1,030,558
Malaysia	113,325
UAE	293,244
Kuwait	160,954
Qatar	60,030

## 3. Legislation

### Stated labour migration or overseas employment policy, objectives and priorities

There are several relevant migration laws:

- Emigration Ordinance, 1982
- Bangladesh Entry Control Act
- Bangladesh Passport Act
- Bangladesh Immigration Act

Efforts are being undertaken to consolidate the laws and to revise and update them.

## 4. Protection of Workers

### Problems faced abroad by Bangladeshi migrant workers in terms of employment and living conditions and exploitation by domestic recruitment agencies

- Non-payment and underpayment of wages
- No food
- No medical facility allowed.

### **Measures to regulate recruitment and have exit controls**

- Bureau of Manpower, Employment and Training (BMET) verifies the genuineness of the work visa.
- Initially it is also checked, verified and endorsed by the Labour Attaché (where posted).

### **Pre-departure orientation and services available to migrant workers**

- Briefing Centre in BMET
- BMET transport facility
- Facilitated exit procedures via a welfare desk in the airport.

### **Services from the state of origin available to migrant workers facing problems in the destination countries**

#### **Bangladesh Missions in the host countries:**

- Receive and hear the complaints of migrant workers;
- Take up the matter with the employers;
- Provide legal assistance;
- Arrange repatriation to stranded migrant workers;
- Repatriation of remains of workers who have died abroad.

#### **Welfare fund for migrant workers:**

Bangladesh operates a welfare fund which provides the following services:

- Financial assistance for legal support in host countries;
- Cash support for initial sustenance;
- Repatriation of migrant workers from host countries;
- Legal support to family members in country of origin.

## **5. Foreign Market Development, Remittances, Return and Reintegration**

### **Measures taken by the state to expand labour migration of its nationals:**

- Bangladesh missions contact the major employers;
- Recruiting agents contact the foreign employers;
- Bangladesh Ambassadors and Ministers also meet with the Labour Ministers and the Chamber of Commerce and Industry in host countries.

### **Role of the private sector (recruitment and employment agencies) in expanding labour migration:**

The recruiting agents contact the major employers in the receiving countries.

### **Estimates of the proportion of migrants using official channels to remit funds, incentives to encourage migrants to remit funds via official channels, and measures taken to harness remittances for development purposes:**

- The Government has introduced a “speed case system” to facilitate remittance;
- Appointment of bank representatives in major labour importing countries;
- Agreements with banks in host countries to facilitate remittance;
- Encourage/facilitate investments in privatized industries;
- Special savings incentives in the form of a Wage Earners Bond;
- Housing facilities on government estates.

### **Specific programmes and services to assist with the reintegration of returning migrants:**

A study has been conducted for the comprehensive reintegration of migrant workers, focusing on their expertise and technical know-how.

## **6. Inter-state Cooperation and Data Collection**

### **Bilateral labour agreements:**

An agreement has been concluded with the Government of Kuwait. It is under review.

### **Institutions gathering data on labour migrants, type and frequency of data collection:**

- Bureau of Manpower, Employment and Training
- Bureau of Statistics
- Bangladesh Association of International Recruiting Agencies (BAIRA)
- Some NGOs.

## BANGLADESH – ANNEX

### **Ministry of Expatriates' Welfare and Overseas Employment**

#### **Main functions:**

1. Welfare of Bangladeshi expatriates and protection of their rights.
2. Complaints by expatriates and their redress.
3. Facilitation of investments by expatriates in Bangladesh.
4. Projects for the participation of expatriates in economic and social welfare activities in Bangladesh.
5. Registration of recruitment agencies.
6. Overseas employment at all levels.
7. Matters relating to Bangladesh Overseas Employment Services Limited.
8. Organizations and companies in the public sector dealing with overseas employment, including BMET.
9. Administration of Labour Wing in Bangladesh Missions abroad and appointment of staff.
10. Administration of Wage Earners' Welfare Fund.
11. Promotion of Bangladeshi culture among expatriates abroad.
12. Liaison with associations of Bangladeshi abroad.
13. Secretarial administration, including financial matters.
14. Administration and control of subsidiary offices and organizations under this Ministry.
15. Liaison with international organizations and matters relating to international treaties relating to subjects falling within the responsibility of this Ministry.
16. All laws on items falling within the responsibility of this Ministry.
17. Inquiries and statistics on any of the subjects falling within the responsibility of this Ministry.
18. Fees in respect of subjects falling within the responsibility of this Ministry, except fees taken in courts.

### **Ministry of Expatriates' Welfare and Overseas Employment: Bureau of Manpower, Employment and Training**

#### **The functions allocated to this Department are:**

1. To promote employment service at home and abroad.
2. To protect the interests of immigrants.
3. To ensure the welfare and remittances of Bangladeshis serving abroad.
4. To provide vocational guidance and employment counselling.
5. To promote self-employment in both rural and urban areas through distribution of tool-kits, and the organization and preparation of investment schedules.
6. To maintain liaison with international agencies, e.g. ILO, UNDP, World Bank, regarding development of training and employment.
7. To compile and publish reports on employment information and to carry out research and studies on action-oriented programmes.

## **Bangladesh Overseas Employment and Services Limited (BOESL)**

### **The objectives for which the company is established are:**

1. To do and carry on the business of recruitment agents for employment of Bangladeshis abroad and to carry on the business of export of manpower as recruitment agents and consultants of manpower worldwide (except Israel, Taiwan and South Africa) where the company obtains the mandate to do so either through individual efforts, negotiation or as the agent of a foreign company/Government agency/employer with due permission from the appropriate authority of the Government of the People's Republic of Bangladesh.
2. To secure and execute Site Management of Construction Projects of Civil, Mechanical and Electrical works in foreign countries.
3. To secure and execute consultancy contracts for the design and construction of civil, mechanical and electrical projects abroad by tender or by negotiation either as main contractor or as sub-contractor.
4. To project Bangladesh as a reliable source of quality manpower by means of regular publicity and advertisement in the international print media.
5. To undertake effective employment promotion campaigns in the countries requiring manpower, to secure employment offers from European, American and Japanese firms working in the Middle East; to procure and process demands from Government departments of foreign countries and from any other foreign employer.
6. To arrange for employment-tests, medical tests, tickets and other facilities for persons selected for foreign employment and charge fees as may be determined by the Board of Directors from time to time.
7. To do and carry on the business as travel agent, tour operators, conductors by air, land and sea within and outside Bangladesh, either independently or in cooperation with any other organization of any country.
8. To acquire and take over any concern carrying on the business of export of manpower and travel agents and other allied business within and outside Bangladesh.
9. To motivate and mobilize Bangladeshi citizens living abroad for productive investment in Bangladesh and set up joint ventures and commercial enterprises in and outside Bangladesh.
10. To establish branches, agencies or offices of the company in any part of Bangladesh or outside Bangladesh.
11. To establish and maintain any other companies, firms, sole proprietorships, concerns and organizations or any agencies under such name and style as the company may deem fit in Bangladesh or in any other part of the world, as may be necessary or useful for carrying on the business and objectives of the company.
12. To insure with any other company and persons against losses, damage, risks and liabilities which may affect the company.
13. To enter into any agreement and contracts with any lending agencies, Sangstha, public or private corporations and banks, whether local or foreign, that may be conducive to the pursuit of the company's objectives.
14. To borrow or raise and secure the payment or repayment of loans or debts in such a manner as the Directors may think fit and, in particular, through issuing of debentures or the creation of mortgages, the charging of mortgages on the undertakings of the company or any part of its assets and properties, both present and future, including the uncalled capital of the company

for the time being or any other property or rights of the company, and with such security and on such terms and conditions as to priority or otherwise, and generally to borrow money in such a manner as may be agreed upon between the lender and the Directors of the company and to apply the same for all or any of the purposes of the company.

15. To enter into partnership or any arrangement for sharing profits, union of interest, cooperation, joint venture, reciprocal concession or amalgamation with any person, firm or company carrying on, or engaged in, any business transactions capable of being conducted so as to directly or indirectly benefit the company.
16. To promote any other company, firm or concern in pursuit of any of the objectives of the company or for the purpose of acquiring all or any of the business, property, rights, liabilities of this company or for any other purposes which may seem directly or indirectly to benefit this company.
17. To advance money with or without security, for the purpose of the company's business to such persons and upon such terms and conditions as the company may think fit.
18. To acquire by purchase, lease, exchange or otherwise land, buildings and hereditament of any tenure or description or any estate or interest in or any rights over or connected with land and either to retain the same for the purpose of the company's business or to turn the same to account as may seem expedient.
19. To enter into and carry into effect any working amalgamation or arrangement with any companies, corporations, firms, persons, Government or authorities to obtain any order, licences, rights, powers, authorities, privileges and concessions from them and to exercise such licences, rights, powers, authorities, privileges and concessions.
20. To enter into any arrangements with any Government, municipal or local authority that may seem conducive to achieving the company's objectives and to obtain from any such Government or authority rights, concessions and privileges which the company may think desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
21. To sell or dispose of the undertaking of the company or any part thereof for such considerations as the company may think fit and, in particular, the shares, debentures or securities of any other companies having objects similar to those of this company.
22. To enter into collaboration with any persons or parties whether local or foreign for the purposes of the business of the company.
23. To invest and deal with the capital of the company not immediately required in such manner as may from time to time be determined by the Board of Directors of the company.
24. To remunerate any person, firm or company for any services rendered or to be rendered to the company, or for placing or assisting to guaranteeing the placing or selling of shares, debentures or debenture stocks of the company or other securities on the acquisition of any property, plant and machinery by the company or the conduct of its business.
25. To merge with any other company, firm or body corporate formed and registered in Bangladesh or elsewhere established with objects similar to those of this company.
26. To distribute all or any assets or properties of the company among the members in specie or kind.
27. To appoint agents or constitute agencies of the company in Bangladesh and elsewhere for administration of the affairs of the company and to manage its business either generally or in respect of any particular sphere of its activities, in doing and performing any or some or all the objects mentioned in the Memorandum of Association, or as incidental or conducive to the attainment of these objects.

TABLE 6  
OVERSEAS EMPLOYMENT  
(December 2002)

Country	Bangladeshi Workers Working Abroad, up to Oct/02	Nov/02 BMET, Clearance	Nov/02 Total, 213	Jan-Nov/02 BMET	Jan-Nov/02 Clearance, Visa by Embassy	Jan-Nov/02 Total (5+6)
Afghanistan	28		28	28		28
Australia	5,000		5,000	1		1
Azerbaijan	7		7	7		7
Bahrain	46,831	431	47,262	4,917		4,917
Brunei	8,002	1	8,003	153		153
China	22	3	25	9		9
Cyprus	703		703	10		10
Egypt	300		300	0		0
Ethiopia	10		10	0		0
Germany	50,000		50,000	0		0
Greece	10,000		10,000	0		0
Hong Kong	1		1	2		2
Indonesia	300		300	1		1
Iran	9,578		9,578	0		0
Ireland	45	16	61	104		104
Italy	45,000		45,000	18		18
India			0	0		0
Japan	10,000		10,000	1		1
Jordan	4,300	104	4,404	499	1,273	1,772
Korea	14,001		14,001	27		27
Kuwait	160,954	1,096	162,050	6,792	7,497	14,289
Lebanon	10,001		10,001	1		1
Libya	9,591	150	9,741	1,383		1,383
Malaysia	113,325		113,325	80		80
Maldives	5,571		5,571	10		10
Mauritius	1,200		1,200	60		60
Myanmar			0	0		0
Netherlands	503		503	34		34
Nepal			0	0		0
Oman	125,507	268	125,775	3,623		3623
Pakistan			0	0		0
Qatar	60,030	10	60,040	91	461	552
Saudi Arabia	1,030,558	16,654	1,047,212	151,377		151,377
Singapore	44,270	492	44,762	6,409		6,409
Sudan	10		10	3		3
Sri Lanka			0	0		0
Sweden			0	0		0
Syria			0	0		0
Thailand			0	0		0
UAE	293,244	2,572	295,816	22,709		22,709
USA	250,004		250,004	4		4
UK	350,002	1	350,003	15		15
Viet Nam	10		10	0		0
Others	40	3	43	72		72
<b>Total</b>	<b>2,658,948</b>	<b>21,801</b>	<b>2,680,749</b>	<b>198,440</b>	<b>9,231</b>	<b>207,671</b>

TABLE 7  
MIGRANT WORKERS BY SEX

Month	Men	Women	Total	Country (Women Workers)
January/02	15,041	24	15,065	Saudi Arabia (8), UAE (16)
February/02	11,761	52	11,813	Saudi Arabia (52)
March/02	15,736	58	15,794	Saudi Arabia (56), UAE (1), Singapore (1)
April/02	16,460	25	16,485	Bahrain (24), Saudi Arabia (1)
May/02	12,561	136	12,697	Saudi Arabia (68), UAE (40), Bahrain (28)
June/02	17,251	38	17,289	Saudi Arabia (35), UAE (3)
July/02	20,087	70	20,157	Saudi Arabia (50), UAE (20)
August/02	19,954	127	20,381	Saudi Arabia (125), UAE (1), Bahrain (1)
September/02	22,938	111	73,049	Saudi Arabia (104), UAE (7)
October/02	23,860	335	24,195	Saudi Arabia (242), Jordan (30), Hong Kong (1), Bahrain (1)
November/02	21,670	131	21,801	Saudi Arabia (15), Kuwait (1), Oman (1), UAE (45), Jordan (69)

# CHINA

## 1. Government Labour Migration Structure

### **Government agencies involved in labour migration management and their role:**

- The Ministry of Labour and Social Security (MOLSS) is in charge of overseas employment management.
- The Ministry of Public Security (MPS) is in charge of maintaining the orderliness of entry and exits in relation to overseas employment.
- The State Administration of Industry and Commerce of China (SAIC) is in charge of registration of overseas employment agencies and for maintaining and supervising the economic orderliness of the market where overseas employment intermediary activities are conducted.
- The Ministry of Foreign Trade and Economic Cooperation (MFTEC) is in charge of labour in relation to construction works.

## 2. Labour Migration Statistics

Number of contract migrant workers who have departed in 2002 (or 2001, if statistics for 2002 are not yet available), by sex, age group, education, expected occupation and country of employment. Top five countries of destination:

Such statistics have not been implemented yet, but are expected to be available as from next year.

## 3. Legislation

### **Stated labour migration or overseas employment policy, objectives and priorities:**

Most of the objectives and priorities are described in “Administrative Regulations on Overseas Employment Intermediary Activities”, promulgated by Decree No. 15 of the Ministry of Labour and Social Security of the People’s Republic of China, the State Administration of Industry and Commerce. For details, see the Annex.

### **Labour migration law in place:**

China does not have one.

#### **4. Protection of Workers**

##### **Problems faced abroad by Chinese migrants in terms of employment and living conditions and exploitation by domestic recruitment agencies:**

The more frequent and serious problems are: excessive working hours, salaries that are too low or not paid and a pervasive lack of social insurance for migrant workers.

##### **Measures to regulate recruitment and have exit controls:**

See Decree No. 15, Administrative Regulations of Overseas Employment Intermediary Activities, in the Annex.

##### **Pre-departure orientation and services available to migrant workers:**

Each migrant worker must get a certificate of training, including training in skills and relevant law before they are allowed to work abroad.

##### **Services from the state of origin available to migrants facing problems in the destination countries:**

Information on relevant laws.

#### **5. Foreign Market Development, Remittances, Return and Reintegration**

##### **Measures taken by the state to expand labour migration of its nationals:**

Such measures are still very few.

##### **Role of the private sector (recruitment and employment agencies) in expanding labour migration:**

Some private intermediary agencies help to expand labour migration through their service.

##### **Estimates of the proportion of migrants using official channels to remit funds, incentives provided to encourage migrants to remit funds via official channels and measures taken to harness remittances for development purposes:**

China does not compile such statistics.

**Specific programmes and services to assist in the reintegration of returning migrants:**

There are no such programmes and services in China.

**6. Inter-state Cooperation and Data Collection**

**Bilateral labour agreements:**

No such agreements have yet been concluded by China.

**List of institutions gathering data on labour migrants, type and frequency of data being gathered:**

China will start to collect such data as from next year through the International Exchange and Service Centre.

## CHINA – ANNEX

### **Intermediary activities**

Promulgated by Decree No. 15 of the Ministry of Labour and Social Security of the People's Republic of China, the Ministry of Public Security of the People's Republic of China, the State Administration of Industry and Commerce of the People's Republic of China, effective as of July 1, 2002.

### **Chapter I. General Provisions**

**Article 1** These Regulations are formulated in accordance with the Labour Law of the People's Republic of China and relevant rules and regulations issued by the State Council, with a view to regulating overseas employment intermediary activities and protecting the legitimate rights and interests of overseas Chinese workers.

**Article 2** These regulations apply to overseas employment intermediary activities within the territorial boundaries of the People's Republic of China.

For the purpose of these Regulations, overseas employment refers to any employment of a Chinese citizen under a labour contract entered into by and between the same and an overseas employer, to provide services overseas and to receive a remuneration in exchange.

Overseas employment intermediary activities shall mean services provided to Chinese citizens who are employed outside the territorial boundaries of the People's Republic of China, or to overseas employers who recruit Chinese citizens to work abroad. An entity engaged in said activities, when duly licensed, shall be known as an overseas employment intermediary.

**Article 3** Any overseas employment intermediary activities are subject to prior administrative authorization. No entity or individual shall be allowed to engage in overseas employment intermediary activities unless duly approved or registered.

**Article 4** The Departments of Labour and Social Security shall be charged with regulating, supervising and inspecting overseas employment related activities.

The Department of Public Security shall be charged with ensuring the orderly entry and exits in relation to overseas employment.

The Administrative Departments of Industry and Commerce shall be charged with the registration of overseas employment agencies and with maintaining and supervising the economic orderliness of the market where overseas employment intermediary activities are conducted.

## Chapter II. Establishment of an Agency

**Article 5** An applicant for participation in overseas employment intermediary activities shall meet the following requirements:

- a) Comply with the conditions governing the establishment of a legal person.
- b) Full-time professional staff competent in law, foreign languages and accounting. Draw up comprehensive working rules and codes of conduct for the staff.
- c) An escrow deposit of no less than RMB 500,000.
- d) Other conditions provided for by relevant laws and regulations.

**Article 6** An entity applying for a licence to carry on overseas employment intermediary activities (hereinafter referred to as Applicant) shall submit an application to the provincial Department of Labour and Social Security where the said Applicant is located for preliminary assessment and approval. With the consent of the Department of Public Security at the same level, the Applicant shall submit the application, via the provincial Department of Labour and Social Security (MOLSS) for final evaluation and authorization. The MOLSS shall, within sixty (60) days upon receipt of the application, reply in accordance with the results of the final evaluation. A newly licensed agency shall complete the firm or business name pre-registration with the local administration of industry and commerce prior to submitting the application to MOLSS. Upon the approval by MOLSS, a copy shall be forwarded to the Ministry of Public Security, and MOLSS shall issue the Licence of Overseas Employment Intermediary Activities (hereinafter referred to as the licence) thereafter. A licence shall be valid for three (3) calendar years from the date of issue. Any overseas agency, individual or mission in China are prohibited from participating in overseas employment intermediary activities.

**Article 7** When applying for a licence, an agency shall submit the following documents to the appropriate authority for prior assessment and approval:

- a) A completed application form of eligibility for overseas employment intermediary activities.
- b) A confirmation notice of firm or business name pre-registration.
- c) Personal data and relevant qualifications or certificates of the legal representative or candidate for the same, and/or key officers and personnel intended to be employed by the agency.
- d) A balance sheet produced by a certified financial assessment agency with legal qualifications.
- e) A certified copy of the Articles of Association and internal rules and regulations.
- f) A feasibility report of employment intermediary activities and the administrative regions within which the said activities are intended to be conducted.
- g) Verification of residence and business location.
- h) Proof of the required funds in an escrow deposit account certified by the provincial Department of Labour and Social Security.
- i) Other documents required by MOLSS.

**Article 8** An applicant shall, within thirty (30) calendar days upon the receipt of the licence, register with, or alter a previous registration at the local administration of industry and commerce and shall, within ten (10) calendar days from the registration or modification of registra-

tion, proceed for records with the local Department of Labour and Social Security and Department of Public Security at the provincial level.

### **Chapter III. Operation and Management**

**Article 9** An agency may conduct the following business in accordance with the law:

- a) Provide Chinese citizens with information and consultation with respect to overseas employment.
- b) Recommend and recruit needed staff as indicated by overseas employers.
- c) Provide pre-departure orientation to overseas workers and assist them with formalities such as notarization of vocational qualifications.
- d) Assist overseas workers with formalities and documents such as passport, visa, materials for notarization, medical examination and vaccination.
- e) Pay contribution to social insurance schemes as indicated by overseas workers.
- f) Provide legal assistance to overseas workers in the form of mediation, arbitration or lawsuits to protect their legitimate rights and interests.

**Article 10** An agency shall fulfil the following obligations in accordance with the law:

- a) Examine and confirm documents regarding an overseas employer, such as certificate of business existence, level of capitalization and credit and permission for overseas recruitment approved by immigration authority or other competent authorities of a state or region where the said employer is located.
- b) Assist and instruct an overseas worker to enter into a labour contract signed by the worker and an overseas employer, and confirm the provisions of the contract.
- c) The minimum provisions of the contract, which shall include, but shall not be limited to, term of validity of the contract, working site, job description, working hours, working conditions, remuneration, social insurance, occupational protection, rest and leave, food and accommodation, conditions for the modification or termination of the contract and provisions on settlement of disputes and liabilities for breach of contract.

**Article 11** A service agreement of overseas employment shall be signed by and between an agency and the overseas worker in accordance with applicable laws, determining, among others, mutual rights and duties, wages, service items, fees, liabilities in case of breach of contract and damages.

**Article 12** A signed overseas employment service agreement and a confirmed labour contract are to be filed with the Department of Labour and Social Security at provincial level. If there is no objection from the Department within ten (10) calendar days, an agency may issue a certificate of overseas employment. The local Department of Public Security shall issue the necessary entry and exit documents based on that certificate.

**Article 13** Establishment of branches and extension offices shall be subject to procedures of application for evaluation and permission, registration and record, as provided in Chapter II hereof.

**Article 14** No agency shall contract or subcontract overseas employment programmes to unlicensed entities or individuals.

**Article 15** No agency shall organize illegal entry and exit activities or recruit Chinese citizens abroad who engage in activities that constitute a crime under Chinese law.

**Article 16** Advertisements on overseas employment services shall be first approved by the local administration of industry and commerce at provincial level. No advertisement shall be released without said approval.

**Article 17** An agency may charge overseas workers and employers a service fee as it deems reasonable and necessary. The fee standard shall be subject to the inspection of local pricing departments.

**Article 18** An agency shall display, at a conspicuous place on the premises of the establishment, among others, lawful certificates, service items, fee standards, supervisory authorities and their phone numbers, and shall be subject to inspection and supervision by the local Department of Labour and Social Security and other relevant departments.

**Article 19** In the case of transfer or change of business name, residence or business venue, or the legal representative of an agency, the agency shall apply for alteration of its licence through the procedure laid down in these Regulations. Thereafter, such transfer or change, as indicated by the new licence, will be registered with the former business registration authority for the records.

In the particular case of a change of business name, the agency shall submit certified permission from the local administration of industry and commerce. Other changes or transfers shall be subject to existing rules and regulations pertaining to business registration.

**Article 20** An agency which intends to continue to participate in overseas employment intermediary activities upon expiration of its licence shall, within ninety (90) calendar days before expiration, apply for renewal of the licence through the procedure prescribed herein. An agency that fails to apply for renewal by the date of expiration of its licence shall be delisted by MOLSS.

**Article 21** Agencies shall be subject to an annual evaluation. Each agency shall submit reports on business performance, among others, to the local department of labour and social security at provincial level.

An agency which fails to observe said evaluation shall be reported to the MOLSS by provincial departments and shall be delisted or cancelled by MOLSS. MOLSS shall communicate this to the departments of public security and administration of industry and commerce concerned.

**Article 22** Prior to bankruptcy or cessation of activities, an agency shall submit a written application for cancellation of its licence and measures for matters arising therefrom to the local department of labour and social security at provincial level and proceed to the cancellation of the licence.

**Article 23** The licence issuing authority shall advise, in a timely manner, departments of public security and administration of industry and commerce of the operational performance of cancelled agencies.

A cancelled agency shall surrender its licence to the issuing authority within ten (10) calendar days from the date of receipt of the cancellation notice, and shall apply to the previous business registration authority for the cancellation or modification of the registration.

**Article 24** Any legal representative or principal officials of an agency who are responsible for the revocation of its licence by reason of a violation of the provisions in these Regulations, are prohibited from participating in overseas employment intermediary activities for three (3) calendar years subsequent to said revocation.

#### **Chapter IV. Deposit in Escrow Account**

**Article 25** An escrow account shall be created for the purposes of overseas employment intermediary activities. The deposit shall be used for damages, money claims and fines in cases where legitimate rights and interests of served parties are harmed through the fault of an agency.

**Article 26** An agency shall reserve its escrow account at a state-owned commercial bank designated by the local Department of Labour and Social Security at provincial level. The deposit shall be used only for the prescribed purpose.

**Article 27** The deposit in an escrow account and accrued interest shall be monitored by the local departments of labour and social security. No entities or individuals shall use the deposit without authorization of said departments.

**Article 28** The deposit and accrued interest shall be the possession of the agency. In the case of bankruptcy or cessation of activities, the deposit and interest shall be deemed as part of the assets of that agency and shall be disposed of according to the relevant rules and regulations.

**Article 29** If an agency is not able to pay the damages or fines imposed by an arbitration tribunal or a people's court, it may apply in writing to the monitoring authorities for the use of the deposit in an escrow account. If an agency refuses to pay the fine or to execute aforesaid rulings, it shall be subject to enforcement procedures.

**Article 30** If the amount of funds deposited in an escrow account is in excess of the damage caused to serviced parties, an agency shall assume civil liability according to the relevant rules and regulations.

**Article 31** An agency shall replenish the amount which had been withdrawn within sixty (60) days from the date of such withdrawal. Failure to replenish within said period shall lead to the automatic suspension of its licence.

**Article 32** A licensed agency which ceases its activities voluntarily, or is bankrupt or delisted, as the case may be, shall be entitled to the refund of the deposit and interest at the bank following

clearance by the monitoring authorities, provided that no complaints or lawsuits are filed against the agencies within two (2) calendar years from the date of cancellation under the aforementioned circumstances.

## **Chapter V. Penalties**

**Article 33** Any units or individuals participating in overseas employment programmes without authorization by the Departments of Labour and Social Security, or registration in the Department for Industry and Commerce, shall be banned by the above administrations. The business assets and illegal earnings shall be confiscated. As to any damage to the serviced party caused by illegal overseas employment, the agency shall be liable to pay compensation.

**Article 34** If the agency has committed any of the violations enumerated below, the Department of Labour and Social Security should correct its activities. A fine of up to 10,000 RMB shall be imposed on the agency with no illegal gains, while a fine of not less than three times the illegal earnings, but not more than 30,000 RMB, shall be imposed on the agency which has benefited from illegal gains. The agency shall be liable to compensate the damage suffered by the serviced party. It shall assume criminal responsibility for any criminal acts committed by it.

- a) Providing false or altered documents to obtain the licence.
- b) Subcontracting or sub-letting any non-licensed agencies or individuals overseas employment programmes without authorization.
- c) Refusal to fulfil the responsibilities prescribed under Article 10 herein.
- d) Acting without the service agreement on overseas employment with serviced parties.
- e) Failure to replenish the escrow deposit within the prescribed period, while continuing service activities.
- f) Any violation of these Regulations which caused severe damage to the legitimate rights and interest of overseas workers.

**Article 35** Any agency which operates without documentation of labour contracts and service agreements on overseas employment, in violation of Article 12 of these regulations, shall be fined up to 1,000 RMB by the administration of labour and social security.

**Article 36** As to submitting false testimonies and false documents for entry and departure, an agency which has not benefited from illegal gains shall be fined up to 10,000 RMB, while an agency with illegal gains shall be fined not less than three times the illegal gains, but no more than 30,000 RMB. If a crime was committed, it shall be subject to the corresponding criminal responsibility.

**Article 37** In case of any violation of the rules and regulations of industry and commerce, the administration of industry and commerce shall investigate and prosecute. Any release of advertisements on overseas employment without authorization shall be banned by the administration of industry and commerce. An agency which has not benefited from illegal gains shall be fined up to 10,000 RMB, while an agency with illegal gains shall be fined not less than three times the illegal gains, but not more than 30,000 RMB.

## Chapter VI. Supplementary Provisions

**Article 38** The application form for overseas employment and the Licence of Overseas Employment shall be formulated by MOLSS.

**Article 39** An agency holding a licence for overseas employment dating from before the enactment of these Regulations, shall reapply for a new licence and register within ninety (90) calendar days from the date of the implementation of these Regulations.

**Article 40** MOLSS shall publicize the list of licensed and of delisted agencies on time.

**Article 41** Provincial, autonomous regional or municipal departments of labour and social security shall, together with the department of public security and administration of industry and commerce at the same level, formulate implementing regulations, which shall be submitted and documented to the Ministry of Labour and Social Security, Ministry of Public Security and State Administration of Industry and Commerce.

**Article 42** Intermediary services for citizens from the Chinese mainland to work in the Hong Kong Special Administrative Region, Macau Special Administrative Region, and Taiwan are not subject to these Regulations.

**Article 43** These Regulations shall enter into force on July 1, 2002. The former *Regulation Supervising Overseas Employment Service Agency*, promulgated on November 14, 1992, shall be terminated simultaneously.

# INDIA

## 1. Government Labour Migration Structure

### **Government agencies involved in labour migration management and their roles:**

The *Ministry of Labour* of the Government of India is the nodal Ministry administering the Emigration Act, 1983. The *Protector General of Emigrants* in the Ministry of Labour, through the eight offices of the Protectors of Emigrants, supervises the emigration of Indian workers. The other Ministries involved in the emigration of Indians abroad are the Passport Issuing Authority and Indian Missions, under the Ministry of External Affairs, and the Airport Immigration Authorities of the Bureau of Immigration under the Ministry of Home Affairs.

The *Passports Offices* throughout the country issue passports of two categories: (i) Emigration Check Required (ECR) and (ii) Emigration Check Not Required (ECNR). Persons holding “ECNR” passports are free to go to any country without having to obtain prior clearance from emigration authorities.

The *Indian Missions* play an important role in keeping the Government informed with their first-hand knowledge of the realities relating to Indian expatriate workers. They interact with the foreign governments and foreign employers in redressing any problems pertaining to Indian migrant workers. In respect of certain countries, emigration of Indian workers is permitted only after prior verification by the Indian Missions.

The *Immigration Authorities* posted in all the international airports check the emigration clearance granted by the Protector of Emigrants, allow the cleared persons to go abroad, and check illegal emigration.

The three Ministries mentioned above meet quite often to review and suggest improvements to the procedures, as well as to ensure proper coordination.

## 2. Labour Migration Statistics

Number of contract migrant workers who have departed in the year by sex, age group, education, expected occupation and country of employment:

TABLE 8  
THE DISTRIBUTION OF ANNUAL LABOUR OUTFLOWS FROM INDIA  
BY DESTINATION (1997-2001)

Country	1997	1998	1999	2000	2001
Bahrain	17,944	16,997	14,905	15,909	16,382
Kuwait	13,170	22,462	19,149	31,082	39,751
Oman	29,994	20,774	16,101	15,155	30,985
Saudi Arabia	14,420	105,239	27,160	58,722	78,048
UAE	10,945	134,740	79,269	55,099	53,673
Singapore	-	21,298	19,468	18,399	27,886
Qatar	-	-	-	-	13,829
Malaysia	-	-	62	4,615	6,131
Libya	-	-	1,129	1,198	334
Others	29,951	33,654	22,309	32,003	11,645
<b>Total</b>	<b>416,424</b>	<b>355,154</b>	<b>199,552</b>	<b>243,182</b>	<b>278,664</b>

Note: Information in respect of the age, sex, education and occupation is not maintained separately.

TABLE 9  
TOP FIVE COUNTRIES OF DESTINATION FOR CONTRACT MIGRANT WORKERS

Country	Number of migrants
Saudi Arabia	78,048
United Arab Emirates	53,673
Kuwait	39,751
Sultanate of Oman	30,985
Singapore	27,886

## 3. Legislation

### Stated labour migration or overseas employment policy, objectives and priorities:

The Government of India does not have a labour migration or overseas employment policy. However, the Emigration Act of 1983, which came into effect on 30 December 1983, deals with the emigration of Indian workers for overseas employment on a contractual basis, and seeks to safeguard their interests and ensure their welfare.

## **Labour migration law in place:**

The Emigration Act, 1983, came into effect on 30 December 1983, replacing the earlier Emigration Act of 1922.

A proposal is under consideration to constitute a Central Manpower Export Promotion Council and set up an Indian Overseas Workers' Welfare Fund for the purpose of meeting such contingencies by making payments to the Embassies or High Commissions to arrange for return tickets for the workers who become stranded abroad, or for the repatriation of deceased workers, and to grant assistance to workers who become partially or permanently disabled, or other similar purposes.

## **4. Protection of Workers**

### **Problems faced abroad by Indian in terms of employment and living conditions and exploitation by domestic recruitment agencies:**

Most of the complaints received from Indian emigrants relate to non-payment or delayed payment of wages, irregular working hours, modification of the labour contract to their disadvantage by the foreign employers, poor working and living conditions, workers becoming stranded because of the foreign employers' unwillingness to meet them on arrival, non-availability of jobs after arrival in the foreign country, non-payment of compensation in the case of injuries resulting from accidents in the course of, or arising out of, the employment and which result in partial or total disability, delays in the transport of deceased workers to India by the foreign employers, etc. Reports of physical abuse of domestic workers, especially housemaids, are often received from countries like Kuwait. Most complaints are received from workers in the Gulf region and South-East Asian countries, like Malaysia.

### **Measures to regulate recruitment and have exit controls:**

Section 22 of the Act provides that no citizen of India shall emigrate unless he obtains emigration clearance from the Protector of Emigrants. However, 17 categories of persons are exempt from this requirement. They are placed in the "Emigration Check Not Required" (ECNR) category. 50 countries have also been placed in the "Emigration Check Not Required" (ECNR) category.

Under the Act, only the Recruiting Agents registered with the Ministry of Labour and who have been issued a Registration Certificate (RC) can conduct the business of recruiting for overseas employment. The Certificate is granted after checking, among others, the Recruiting Agent's financial soundness, trustworthiness, adequacy of premises, experience in the field of dealing with manpower export, and after depositing financial security ranging from Rs. 3 lakh to Rs. 10 lakh in the form of a bank guarantee.

Under the Act, a foreign employer can recruit any Indian citizen for employment abroad either through a Recruiting Agent competent under the Act to make such recruitment, or directly in

accordance with a valid permit issued by the Government. Indian workers are also deployed by Indian project exporters on project sites abroad. The recruiting agents are authorized to collect service charges from each worker, as fixed by the Government.

**Pre-departure orientation and services available to migrant workers:**

No pre-departure orientation and services are yet available to migrant workers.

**Services from the state of origin available to migrants facing problems in the destination countries:**

All Indian missions in countries where there is a large concentration of Indian expatriate workers, have a separate Labour Attaché/Welfare Officer. All possible help is provided by the Indian Missions, including assistance with the settlement of disputes by taking up the matter with the foreign Government/employer.

**Welfare fund for migrant workers:**

Although at this time, no welfare fund has been created, it is the intention of the Government to constitute one.

**Measures taken by the state to expand labour migration of its nationals:**

The Union Government does not assume any promotional role at present. However, some of the State Governments have set up State Manpower Corporations to promote the export of manpower from their States.

**Role of the private sector (recruitment and employment agencies) in expanding labour migration:**

The role of the private sector, although not defined, is significant in expanding labour migration. Mostly, the recruiting agencies search out the new areas and avenues for deployment of Indian workers abroad.

**Estimates of the proportion of migrants using official channels to remit funds, incentives provided to encourage migrants to remit funds via official channels and measures taken to harness remittances for development purposes:**

No information regarding the use by emigrants of official channels to remit funds is available. However, according to the records of the Reserve Bank of India, private remittances of Rs. 57,821 crore (equivalent to US\$ 12,125 million) were received during the period from 1 April 2001 to 31 March 2002. Private inward remittances are exempt from Income Tax.

### **Specific programmes and services to assist in the reintegration of returning migrants:**

The Government of India does not have any specific programmes and services to assist in the reintegration of returning migrants.

## **5. Inter-state Cooperation and Data Collection**

### **Bilateral labour agreements:**

The Government of India has signed bilateral labour agreements with the Governments of Qatar and Lebanon in 1989 and 1990.

### **List of institutions gathering data on labour migrants, type and frequency of data being gathered:**

The Government collects data on labour migrants concerning the number of workers going abroad after getting clearance from the Protectors of Emigrants.

# INDONESIA

## 1. Government Labour Migration Structure

Indonesian Overseas Employment is regulated by the Decree issued by the Minister of Manpower and Transmigration of the Republic of Indonesia, No. KEP 104A/MEN/2002 of 2002, and Presidential Decree No.29 of 1999 in connection with the Presidential Decree No. 46 of 2000 concerning the Coordinating Board of Indonesian Overseas Employment.

Based on this decree, the Minister of Manpower and Transmigration of the Republic of Indonesia assumed the functions of the Chairman of the Board.

The members of this board are:

1. Minister of Home Affairs
2. Minister of Foreign Affairs
3. Minister of Justice and Human Rights
4. Minister of Education
5. Minister of Finance
6. Minister of Transportation and Telecommunication
7. Minister of Religious Affairs
8. Minister of Health
9. Minister for Women Empowerment
10. Head of Indonesian National Police

The government institutions (as listed above) related to the programme of the Indonesian Overseas Employment perform their responsibilities in accordance with their respective main tasks and functions. For instance, the main responsibility of the Department of Home Affairs is the issuing of identity documents for the Indonesian Overseas Worker (TKI) in their place of origin. The Department of Justice and Human Rights in the Directorate General of Immigration is responsible for the issuance of passports. The Ministry of Transportation is responsible for transportation for the Indonesian workers, and the Ministry of Health is responsible for the health of the Indonesian workers, especially for the pre-departure medical check up. The Department of Finance is responsible for issues related to insurance, etc.

The government institutions concerned maintain close relations and have an integrated approach towards labour migration issues. The collaboration between the government institutions should be harmonized to ensure that the programme of Indonesian Overseas employment works smoothly.

## 2. Labour Migration Statistics

**Number of contract migrant workers who have departed in the year by sex, age group, education, expected occupation and country of employment:**

Please refer to the Annex.

TABLE 10  
TOP FIVE DESTINATIONS FOR CONTRACT MIGRANT WORKERS

Country/Region	Number of migrants
Saudi Arabia	309,036
Malaysia	245,200
Taiwan	58,326
Hong Kong	54,701
Singapore	48,252

## 3. Legislation

**Stated labour migration or overseas employment policy, objectives and priorities:**

Indonesia has an overseas employment policy with the following objectives and priorities:

*Objectives:*

- To reduce the national unemployment rate.
- To increase protection for the Indonesian workers.
- To generate and to increase foreign revenue from the migrant workers.
- To increase the economic power and social welfare.
- To increase the quality of Indonesian human resources.

*Priorities:*

- **Labour Empowerment should:**
  - provide accurate, complete and true information.
  - provide excellent service spread evenly throughout the regions, with easy procedures to allow the effective and efficient achievement of the set goals.
- **Implementation of the process of exporting manpower in a professional and effective manner:**
  - to apply a standard measure and to assess the Indonesian Overseas Agencies (domestic recruitment agencies) prior to issuing licences enabling them to operate.

- To enhance the manpower capability to enable them to compete on the international labour market.
- **Consolidation:**
  - Ensure coordination among the different sectors, both domestically and abroad.
  - Ensure that supervision and law enforcement are consistently observed, without any discrimination.
- **Institutions and Management Information System Development:**
  - Install a Management Information System network for overseas employment services through the use of IT-based technology.
  - Establish and empower the support for the Indonesian Manpower Institutions that work for the manpower placement overseas, be it at the local or central office.
- **To establish and to complete the System of Overseas Manpower Placement:**
  - Formulate legislation at the national level in accordance with global changes.
  - Increase the supporting system in accordance with the increase in human and financial resources.
  - Create a national campaign programme on Indonesian Overseas Manpower Placement.

#### **Labour migration law in place:**

Indonesia does not yet have a labour migration law. The legislation currently available is in the form of a Ministerial Decree No. KEP 104A/MEN/2002 concerning overseas manpower placement.

## **4. Protection of Workers**

### **Problems faced by Indonesian migrants in terms of employment and living conditions and exploitation by domestic recruitment agencies:**

Several Indonesian workers have faced problems related to their employment abroad, such as unpaid salaries, verbal abuse, physical abuse, sexual harassment, among others.

The scale of the problems as reported by Indonesian Consulate General in Jeddah is as follows:

- Unpaid salaries      37.4 %
- Verbal Abuse        16.9 %
- Physical Abuse      8.0 %
- Sexual harassment   2.6 %

According to the most frequent data reported, Malaysia is the country where the Indonesian migrant workers faced most problems, followed by Saudi Arabia.

One of the problems faced by Indonesian workers are the illegal domestic recruitment agencies, which make it impossible for the workers to leave, not to mention the high cost of recruitment fees that the migrant workers have to pay to the illegal agencies. To solve the problem, the Government of the Republic of Indonesia issued the Ministerial Decree No: 104A/MEN/2002 regulating the recruitment of the Indonesian workers. The recruitment/placement must be effected through agencies that have already been licensed by the Department of Manpower and Transmigration. To obtain the licence, the recruitment/placement agencies must have recruitment agreements, job orders, employment contracts, and placement agreements. In that way, Indonesian workers who are recruited by legitimate placement institutions can be sure of the time of their departure, and would be protected.

### **Measures to regulate recruitment and have exit controls:**

#### *The mechanism of handling labour supply and placement:*

The Indonesian Overseas employment agencies (IOEA) must request a licence in writing from the Director of Labour Promotion and Placement (of the Ministry of Manpower and Transmigration) authorizing them to recruit Indonesian workers for a certain region.

The number of workers requested by IOEA must be in accordance with the Job Order. They then have to determine the “region of placement”, i.e. the Middle East or the Asia Pacific region.

Indonesia has an allocation control policy, which is a mechanism to control the placements made by IOEA. Their recruitment activities have to be in accordance with their capacity to ensure proper and complete services to the candidate workers.

#### *Pre-departure orientation and services available to migrant workers:*

Pre-departure orientation is available. It is given to workers who are ready to be placed. The IOE is responsible for the implementation of this programme, in coordination with the Directorate General of the Overseas Manpower Placement and Development. Pre-departure orientation is intended to inform workers about the culture and customs of the country of destination, the danger of drug abuse, how to deal with problems, to whom to report, etc.

#### *Services from the state of origin available to migrants facing problems in the destination countries:*

The Government of the Republic of Indonesia provides workers with advice on how to deal with problems in the country of destination. The Indonesian embassy will assist Indonesian workers with any problems and help them to solve them by, e.g., arranging for lawyers and giving legal support to the Indonesian workers if necessary.

#### *Welfare fund for migrant workers:*

The programme for Indonesian Overseas Employment does not yet have a welfare fund.

## **5. Foreign Market Development, Remittances, Return and Reintegration**

### **Measures taken by the state to expand labour migration of its nationals**

*The measures taken by the state to expand labour migration or to increase the number of placement and their quality are:*

In principle, the Government offers Indonesian workers who want to go and work abroad the opportunity to do so. To this end, procedures have been established to deal with the necessary documents and training units were created for the candidates to give them the opportunity to choose whether they want to work in their own country or abroad.

*Means of expanding the international market:*

- Officials visit certain countries to promote the placement of Indonesian workers there.
- By recommending the Overseas Employment Agencies who are trying to expand their market. The recommendations are given to the Indonesian Embassy in the country where the Overseas Employment Agencies are trying to expand the market, so that the Indonesian Embassy in that country is able to support them.

### **Role of the private sector (recruitment and employment agencies) in expanding labour migration:**

In respect of the limitations that the Indonesian Government has in running the overseas manpower placement, private employment agencies are helping the Government to implement some tasks in the process of Overseas Indonesian manpower placement in accordance with the existing regulations. IOEAs who have been licensed by the Government, have to meet certain technical and financial requirements.

### **Estimates of the proportion of migrant workers using official channels to remit funds, incentives provided to encourage migrants to remit funds via official channels and measures taken to harness remittances for development purposes:**

Estimates of the proportion of migrant workers using official channels to remit funds tend to increase with every year. So far, no data on incentives given to encourage migrants to remit their money through official channels are available. The official channel for remitting funds is the National Bank appointed by the government Department of Manpower and Transmigration.

The estimated amounts of the remittances are as follows (in US dollars):

TABLE 11  
ESTIMATED REMITTANCES

Year	Amount (US\$)
1999	1,295,446,057
2000	1,312,740,473
2001	1,923,989,365
2002	1,028,882,224

## 6. Inter-state Cooperation and Data Collection

TABLE 12  
BILATERAL LABOUR AGREEMENTS

Country/Region	Type	Process	Details
Brunei Darussalam	MoU	Not formulated yet	Annex becomes MoU informal and formal
Singapore	MoU	Not formulated yet	
Malaysia	MoU	Addendum	
South Korea	MoU	Not formulated yet	Discussed in Dept. Foreign Affair
The Philippines	MoU	Counter draft	
Taiwan	MoU	Counter draft	Discussed in TETO
Hong Kong	MoU	Not formulated yet	
Middle East - Saudi Arabia	Minutes of Meeting		
Arab – non Saudi - Jordan	MoU	Signed 2 May 2001	
- Qatar	Agreement	Counter draft	
- Kuwait	MoU	Arrangement prepared	
- Oman	MoU		
- United Arab Emirates	MoU		

Although MoUs concerning manpower placement have been signed, problems still arise, which indicates a need for further improvement.

## INDONESIA – ANNEX

TABLE 13  
NUMBER OF INDONESIAN MANPOWER PLACEMENTS:  
JANUARY TO NOVEMBER 2002

No.	Country/Region	Formal Sector		Informal Sector		Sub Total		Total
		Male	Female	Male	Female	Male	Female	
<b>I</b>	<b>Asia Pacific</b>							
1	Malaysia	76,815	22,108	2,092	54,384	78,907	76,492	155,399
2	Singapore	12	0	68	13,881	80	13,881	13,961
3	Brunei Darusalam	2,589	483	31	3,866	2,620	4,349	6,969
4	Hongkong	0	0	1	16,840	1	16,840	16,841
5	Taiwan	2,723	225	323	31,997	3,046	32,222	35,268
6	South Korea	3,100	593	217	30	3,317	623	3,940
7	Thailand	1	0	0	0	1	0	1
8	Japan	388	3	0	0	388	3	391
	<b>Total I</b>	<b>85,628</b>	<b>23,412</b>	<b>2,732</b>	<b>120,998</b>	<b>88,360</b>	<b>144,410</b>	<b>232,770</b>
<b>II</b>	<b>Middle East &amp; Africa</b>							
1	Saudi Arabia	854	800	16,973	187,409	17,827	188,209	206,036
2	United Arab Emirates	167	16	163	7,113	330	7,129	7,459
3	Kuwait	0	0	36	15,470	36	15,470	15,506
4	Bahrain	0	0	0	653	0	653	653
5	Qatar	2	15	53	808	55	823	878
6	Oman	0	0	2	1,028	2	1,028	1,030
7	Jordan	89	13	0	920	89	933	1,022
8	Yemen	0	0	0	12	0	12	12
9	Cyprus	0	0	0	18	0	18	18
	<b>Total II</b>	<b>1,112</b>	<b>844</b>	<b>17,227</b>	<b>213,431</b>	<b>18,339</b>	<b>214,275</b>	<b>232,614</b>
<b>III</b>	<b>America</b>							
1	USA	33	0	0	0	33	0	33
	<b>Total III</b>	<b>33</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>33</b>	<b>0</b>	<b>33</b>
<b>IV</b>	<b>Europe</b>							
1	Spain	11	0	0	0	11	0	11
2	England	1	1	0	0	1	1	2
3	The Netherlands	23	32	0	0	23	32	55
	<b>Total IV</b>	<b>35</b>	<b>33</b>	<b>0</b>	<b>0</b>	<b>35</b>	<b>33</b>	<b>68</b>
	<b>Grand Total</b>	<b>86,808</b>	<b>24,289</b>	<b>19,959</b>	<b>334,429</b>	<b>106,767</b>	<b>358,718</b>	<b>465,485</b>

# PAKISTAN

## 1. Government Labour Migration Structure

### Government agencies involved in labour migration management and their roles:

The Ministry of Labour, Manpower and Overseas Pakistanis is responsible for the foreign employment of the Pakistani work force. The Bureau of Emigration and Overseas Employment regulates the emigration of the work force in the private sector in accordance with the 1979 Emigration Ordinance. The Overseas Employment Corporation deals with the Emigration of labour in the public sector. The emigration of Pakistanis, other than for foreign employment and immigration, is controlled by Ministry of Interior through its departments, i.e. Federal Investigation Agency, Directorate General of Passports and Immigration and National Database and Registration Authority.

## 2. Labour Migration Statistics

### Number of contract migrant workers who have departed in the year by sex, age group, education, expected occupation and country of employment:

Data on sex, age group and education are not available. For data on emigration of Pakistanis by occupation between January and November, 2002, please refer to the Annex.

TABLE 14  
TOP FIVE COUNTRIES OF DESTINATION FOR CONTRACT MIGRANT WORKERS

Country	Number of Migrants (Jan.-Nov. 2002)
Saudi Arabia	94,852
UAE	29,593
Kuwait	2,755
Bahrain	955
Qatar	410

### **3. Legislation**

#### **Stated labour migration or overseas employment policy, objectives and priorities:**

Pakistan has a comprehensive system of emigration of its workers under the supervision of the Ministry of Labour, Manpower and Overseas Pakistanis, in accordance with the Emigration Ordinance of 1979.

#### **Labour migration law in place:**

The principal rules regarding Overseas Employment are laid down in the Emigration Ordinance, 1979, and in the regulations adopted under that Ordinance.

### **4. Protection of Workers**

#### **Problems faced abroad by Pakistani migrant workers in terms of employment and living conditions and exploitation by domestic recruitment agencies:**

In some cases, the workers are paid less than what is mutually agreed in the Foreign Service Agreement.

#### **Measures to regulate recruitment and have exit controls:**

Recruitment for foreign employment is regulated through the Emigration Laws. The exit control system is being strengthened to check irregular migration.

#### **Pre-departure orientation and services available to migrant workers:**

Orientation and Briefing Centres are functioning in Protector of Emigrants (P.E) Offices, in Karachi, Lahore, Rawalpindi and Peshawar. All the migrant workers registered with the P.E. Offices are given pre-departure briefing about their countries of employment. They are also informed about the customs, local conditions and relevant laws in the country of destination.

#### **Services from the state of origin available to labour migrants facing problems in the destination countries:**

Community Welfare Attachés (Labour Attachés) are posted in the manpower importing countries. They maintain liaison with the Pakistani workers and provide them with the necessary help to solve problems in coordination with the host authorities.

### **Welfare Fund for migrant workers:**

Under the Emigration Ordinance of 1979, a welfare fund has been created. It is being managed by the Overseas Pakistanis Foundation (OPF) for the welfare of migrant workers and their dependants in Pakistan. Education, training, housing and medical facilities, etc. are organized for the families of Overseas Pakistanis by the OPF.

## **5. Foreign Market Development, Remittances, Return and Reintegration**

### **Measures taken by the state to expand labour migration of its nationals:**

The Government has taken measures to improve the skills and attitude of the workers in demand abroad in accordance with international norms and standards.

### **Role of the private sector (recruitment and employment agencies) in expanding labour migration:**

Foreign employment is primarily operated by overseas employment promoters in the private sector. About 70% foreign employment is managed by the Licensed Overseas Employment Promoters for Pakistani workers and the rest of the overseas employment is obtained by the individuals through their own efforts. Public sector foreign demand is processed by the Overseas Employment Corporation.

### **Estimates of the proportion of migrants using official channels to remit funds, incentives provided to encourage migrants to remit funds via official channels and measures taken to harness remittances for development purposes:**

The majority of the emigrants remit their saving through the official channel. The Government of Pakistan has banking arrangements in some of the manpower importing countries. For more information on incentive packages for overseas Pakistanis to attract remittances through official channels, refer to the Annex.

### **Specific programmes and services to assist in the reintegration of returning migrants:**

Accurate details of returning migrant workers are not available at present. However, it is planned to register the returnees with specific details for a programme of rehabilitation.

## 6. Inter-state Cooperation and Data Collection

TABLE 15  
BILATERAL LABOUR AGREEMENTS

Country	Title of Protocol/Agreement	Signed on/at
Jordan	Agreement on exchange of labour force between the Hashemite Kingdom of Jordan and the Islamic Republic of Pakistan.	29-4-1978 Islamabad
Qatar	Agreement between the Government of the State of Qatar and the Government of the Islamic Republic of Pakistan concerning the Organization of Pakistani manpower employment in the State of Qatar.	28-3-1987 Doha (Qatar)

### **List of institutions gathering data on labour migrants, type and frequency of data being gathered:**

The Bureau of Emigration and Overseas Employment keeps data of all Pakistani migrants who go abroad on a foreign employment visa. Data of immigrants and refugees are being kept by the Ministry of Interior and States and Frontier Regions Division.

## PAKISTAN – ANNEX

TABLE 16  
EMIGRATION OF PAKISTANI WORKERS,  
JANUARY - NOVEMBER 2002, BY CATEGORY OF ACTIVITY

Serial No.	Categories	January-November 2002
1	Engineer	696
2	Doctor	440
3	Nurse	353
4	Teacher	120
5	Accountant	270
6	Manager	584
7	Welder	1,249
8	Secretary/Stenographer	59
9	Storekeeper	196
10	Agriculturist	3,961
11	Clerk Typist	497
12	Foreman Supervisor	862
13	Mason	9,188
14	Carpenter	7,727
15	Electrician	4,833
16	Cook	1,821
17	Plumber	2,329
18	Water Br.	775
19	Steel Fixer	4,636
20	Painter	2,463
21	Labourer	35,398
22	Technician	7,283
23	Mechanic	3,011
24	Cable Jointer	96
25	Driver	15,192
26	Operator	1,882
27	Tailor	3,167
28	Surveyor	147
29	Fitter	781
30	Denter	942
31	Computer Programmer, Analyst	334
32	Designer	232
33	Goldsmith	188
34	Pharmacist	15
35	Rigger	65
36	Salesman	2,419
37	Draftsman	45
38	Blacksmith	47
39	Photographer	19
40	Artist	346
41	Others	0
	<b>Total</b>	<b>114,668</b>

## **Package of incentives for those who send their remittances through banking channels**

The present Government attaches great importance to the role of Overseas Pakistanis (OPs) in the economic development of the country. OPs have a great potential to improve Pakistan's balance-of-payments. In this regard, a package of incentives for OPs who send their remittances through official banking channels has been announced by the Finance Minister in his budget speech on 18 June, 2001. OPs remitting US\$ 2,500 per annum through banking channels to Pakistan will be entitled to the following benefits:

- Ops remitting US\$ 2,500 per annum through banking channels to Pakistan will be entitled to the following benefits:
  - Separate immigration and customs counters at all International Airports for handling at arrival and departures.
  - Free renewal of passports on a priority basis.
  - Duty-free import of items of personal convenience up to US\$ 700 during any year.
- Non-resident Pakistanis (NRPs) remitting a minimum of US\$ 10,000 through banking channels will be entitled to the following benefits:
  - Special access to the merit-based quota system assigned in all public sector professional colleges and universities.
  - Duty-free import of items of personal convenience of a value of up to US\$ 1,200 per year.
  - An allocation of up to 25% for Initial Public Offerings (IPOs) to be subscribed in foreign currency.
  - Ballots of choice plots in public housing schemes at attractive prices to be paid in foreign currencies.
  - Discount in the auctions of Corporate and Industrial Rehabilitation Corporation (CIRC) where payment is made in foreign currency.
  - Special allocation of shares in privatizations.
- In recognition of the importance of Overseas Pakistanis and of their remittances through banking channels to the economy of Pakistan, *bona fide* remittances made by Overseas Pakistanis will not be subject to any kind of taxes. This will enable the Overseas Pakistanis to remit money freely for consumption and investment or any purpose to their families in Pakistan without any interference by tax authorities. An ordinance is being issued to provide necessary protection in this regard.
- The income of Pakistani seafarers working on foreign vessels remitted to Pakistan through normal banking channels is exempt from income tax.
- Banks have been directed to reorganize their arrangements for remittances to ensure outreach to labour migrants, company exchange arrangements, and to speed up the remittance process and prompt delivery by establishing prior contacts with the recipients.

- The following measures are being adopted to encourage the participation of professionals:
  - Exclusive Investment Products will be designed and marketed by NIT for investment by Non-resident Pakistanis (NRPs).
  - Banks will also be encouraged to offer new products for the NRPs since they are free to hold and manage their own foreign currency deposits.
  - The market for private pension funds will be developed and promoted with a view to attracting investment from NRPs.
  - A website will be developed to host the information about charities for the benefit of NRPs.
- Both residents and non-residents can now maintain foreign currency accounts without any risk of freezing or seizure.
- The Government has directed the Board of Investment (BOI) to develop a strong focus on some of the most successful NRPs in the field of investment. For this purpose, BOI is developing a database on such Pakistanis and will contact them personally.
- The Government is developing the modalities to make incentives operational. They will be communicated shortly through Pakistani Missions abroad.
- An implementation committee has been set up in the Ministry of Finance to ensure the expeditious implementation of incentives stated above.

# PHILIPPINES

## 1. Government Labour Migration Structure

The Philippine Overseas Employment Administration (POEA) is an agency attached to the Department of Labour and Employment (DOLE), which is responsible for managing the country's overseas employment programme.

The POEA was created in 1982 through Presidential Decree No. 797 to promote and develop the overseas employment programme and protect the rights of migrant workers.

In 1987, Executive Order 247 reorganized the POEA and expanded its functions to regulate private sector participation in recruitment and overseas placement, maintain a registry of skills and secure the best terms of employment for Filipino contract workers.

In 1995, Republic Act 8042 and the Migrant Workers and Overseas Filipinos Act of 1995 defined specific policy thrusts for the POEA such as: tripartite decision making; full disclosure of the terms of employment; deregulation of regulatory functions; selective deployment to countries where workers' rights are amply protected; development of systems and information technology for labour market information; a one-country-team approach to synergize services to Filipinos overseas; an expanded grassroots outreach education programme to enable potential Overseas Filipino Workers (OFWs) to make informed decisions, and restructuring of the judicial system for the adjudication of cases relating to overseas employment.

Pursuant to Article IV, Section 23 of RA 8042, Government Agencies have the following roles:

- Department of Foreign Affairs (DFA) – The Department, through its home office or foreign posts, shall take priority action or make representations to the foreign authorities concerned to protect the rights of migrant workers and other overseas Filipinos, and extend immediate assistance to them, including the repatriation of distressed or beleaguered persons.
- Department of Labour and Employment (DOLE) – The Department of Labour and Employment shall see to it that labour and social welfare laws in foreign countries are fairly applied to migrant workers and, whenever applicable, to other overseas Filipinos, including the grant of legal assistance and the referral to proper medical centres or hospitals.
- Philippine Overseas Employment Administration (POEA) – as stated above.
- Overseas Workers Welfare Administration (OWWA) – The Welfare Officer or, in his/her absence, the coordination officer shall provide the Filipino migrant worker and his family all the assistance they may need in the enforcement of contractual obligations by agencies or entities and/or by their principals. In the performance of this function, s/he shall make representations and may invite the agencies or entities concerned to conferences or conciliation meetings for the purpose of settling complaints or problems brought to his attention.

## 2. Labour Migration Statistics

**Number of contract migrant workers who have departed in the year by sex, age group, education, expected occupation and country of employment:**

Please refer to the Annex.

TABLE 17  
TOP TEN DESTINATIONS FOR CONTRACT MIGRANT WORKERS

Top Ten Destinations for Overseas Filipino Workers (OFWs)	Deployment January to October		
	2002	2001	% change
1. Kingdom of Saudi Arabia	170,126	168,442	1.00
2. Hong Kong	94,084	101,973	-7.74
3. Japan	63,610	59,682	6.58
4. United Arab Emirates	44,841	38,502	16.46
5. Taiwan	40,189	34,928	15.06
6. Singapore	23,943	22,684	5.55
7. Kuwait	22,747	18,906	20.32
8. Italy	19,226	20,103	-4.36
9. United Kingdom	12,300	8,893	38.31
10. Brunei	10,381	11,427	-9.15

## 3. Legislation

Republic Act No. 8042 – Migrant Workers and Overseas Filipinos Act of 1995.

An Act to institute the policies of overseas employment and establish a higher standard of protection and promotion of the welfare of migrant workers, their families and overseas Filipinos in distress and for other purposes. Enacted 7 June 1995.

## 4. Protection of Workers

**Problems faced abroad by Filipino migrant workers in terms of employment and living conditions and exploitation by domestic recruitment agencies:**

Overseas Filipino Workers face a number of problems in terms of employment and living conditions, and exploitation by domestic recruitment agencies.

### *Employment terms and conditions*

The terms and conditions of their employment violated the most concern wages, payment of the airfare, and working hours.

Problems relating to wages include delayed or non-payment as well as under-payment of the wages stipulated in the contract, unauthorized deductions and restricted remittances.

Problems relating to the airfare include non-provision both on departure and return as well as non-provision upon completion of the employment contract. Covering the cost of air transport is also a serious problem whenever the worker needs to be repatriated for having terminated his/her employment earlier with an abusive employer. Working hours are also a subject of complaint in terms of non-payment of overtime or forced extended working hours.

Such violations were most frequently observed in Saudi Arabia, Libya, Kuwait, Taiwan.

### *Living conditions*

The principal complaints concern accommodation and food provision, and difficulties in coping with cultural and security restrictions on social interaction, worship practices, entertainment and leisure, and country-wide mobility.

The workplaces where such difficulties regarding the provision of food and accommodation are most frequently observed are in Libya, Iraq and small establishments in Saudi Arabia.

The Gulf countries are culturally restrictive on worship, country-wide mobility, entertainment and social interaction with the opposite sex.

In countries of extreme temperatures in summer and winter, provision for air/heat conditioning in accommodation is also a point of concern.

### *Recruitment abuses*

Overcharging of placement fees is the most common complaint. Such overcharging is often associated with the layered recruitment system where labour brokers in the country of work connive with recruiters from the Philippines. In between these brokers and recruiters or working independently from them, there are also suspected “invisible middle men”. Taiwan, Hong Kong and Israel are cited as destinations where such overcharging has been observed.

Non-disclosure of the real terms and conditions of employment is also frequent. Some recruitment agencies do not disclose the actual terms and conditions of employment. While recruitment agencies are obliged by government rules and regulations to provide a mandatory pre-departure orientation seminar and to brief their workers on employer-specific information, a number of them just provide workers with a certificate of attendance.

Quite a number of Filipino migrant workers have experienced ill treatment and exploitation in the workplace. This is attributable to a combination of factors that may include lack of preparation prior to deployment, host countries’ prejudicial labour policies due to socio-cultural considerations, and weak welfare protection mechanisms for foreign workers that somehow reinforce recruitment agencies’ and employers’ exploitative practices.

As one of the stakeholders in the overseas employment of Filipinos, recruitment agencies play a crucial role in protecting the rights of Filipino workers abroad. In principle, they should be at the forefront in warranting the full implementation of all the provisions in service contracts, as legally agreed on by both the Filipino migrant workers and their employers. Nonetheless, some recruitment agencies fail to scrupulously act on this mandate with the result that the rights of some Filipino migrant workers have been grossly violated.

In terms of geographical distribution, the most frequent and serious problems on site are the following, as monitored by the Satellite Offices of OWWA where they are present:

### **Asia Pacific**

1. Delayed/non-payment of salaries
2. Contract violation/substitution
3. Ill treatment
4. Immigration/document related problems
5. Poor working/living conditions
6. Health/medical problems

### **Middle East**

1. Delayed/non-payment of salaries
2. Contract violation/substitution
3. Ill treatment
4. Poor working/living conditions
5. Health/medical problems

### **Europe and Saipan**

1. Delayed/non-payment of salaries
2. Health/medical problems
3. Immigration/document related problems
4. Personal problems

### **Measures to regulate recruitment and have exit controls:**

#### *Measure to control recruitment*

The regulation of recruitment and exit of Overseas Filipino Workers follows a system of employer verification/accreditation, licensing of recruitment agencies, worker orientation and documentation.

Foreign employers wishing to hire Filipino workers generally have to provide proof of their legal personality and of the qualification standards for their job vacancies. Our labour attachés abroad verify the employment contract regarding the terms and conditions offered as well as the existence of the employer and its project or company. After such verification, the foreign employer is required to deal or be accredited with a Philippine recruitment agency licensed by the Department of Labour and Employment.

Under government rules and regulations, a foreign employer can recruit Filipino workers only through licensed agencies or the POEA. Workers who found their jobs themselves, e.g., via the internet or some other means of direct contact with the employer, are required to pass through the POEA for documentation.

To operate legally, recruitment agencies are required to obtain a licence from the DOLE and to comply with the following requirements: capitalization, posting of bonds, completion of a pre-application seminar, inspection of their offices and presentation of a new job market prospectus.

#### *Worker documentation*

All workers selected by their employers have to undergo a medical examination in accordance with the standards established by the host government or the employer or by the Philippine Department of Health. They are also required to present their employment contract, passport, visa and ticket for registration at the POEA and issuance of the Overseas Employment Certificate or OEC. The OEC is a document proving that the worker and the employer/agent have fulfilled the necessary requirements. It is inspected by the Immigration officers at the airport upon the worker's departure.

#### **Pre-departure orientation and services available to migrant workers:**

The pre-departure orientation seminar (PDOS) is a mandatory one-day briefing given to workers by entities duly accredited by the Overseas Workers Welfare Administration (OWWA). The PDOS also issues standard pre-departure reminders regarding the documents workers must have on departure, their rights and obligations under the employment contract, what to expect upon arrival and where to go in times of need, travel tips, how to remit their savings, health care and occupational safety, the risks and rewards of working abroad and reminders about their obligations to themselves, their families, communities and the country.

The PDOS is administered by accredited institutions and trainers. At present, a number of recruitment agencies have an in-house PDOS facility while NGOs run PDOS for domestic workers. A few associations of recruitment agencies are also accredited to conduct PDOS. The PDOS utilizes various teaching aids.

A Labour Assistance Centre acts as an extension of the POEA at the airport. It assists workers during the final checking of their documents before they proceed to Emigration.

## **Services from the state of origin available to migrants facing problems in the destination countries:**

### *Philippine Overseas Labour Offices (POLO)*

The Philippines maintains some 45 labour attachés in about 32 countries/sites of destination. The Philippine Embassy, through its Assistance to Nationals Unit and the POLO, provides counselling, legal assistance, conciliation and liaison services to workers in distress. They assist by verifying working conditions, as well as the actual existence of employers and their projects. They reactivate contingency repatriation/evacuation plans in case of war or conflicts. They also cooperate closely with the Department of Foreign Affairs and the Department of Labour and Employment to enforce the obligations of recruitment agencies and employers in respect of OFW welfare.

When workers return home or when they designate their families to file their complaints, they can be assisted at the POEA, the National Labour Relations Commission, or in the regular courts. Workers may also file for their membership benefits and entitlements from the OWWA.

### *Welfare fund for migrant workers:*

All Filipino workers going abroad must be covered by a welfare fund administered by the Overseas Workers Welfare Administration (OWWA), an agency attached to the Department of Labour and Employment. A membership fee of US\$ 25 per worker per year, or pre-employment contract period, whichever is the longer, is charged against employers of land-based workers. In the case of seafarers, the premium is shared by the employer and the seafarers at US\$ 15 and US\$ 10, respectively.

In cases involving undocumented workers, it is usually the worker who pays the premium under a voluntary membership and promotional programme, intended to encourage such workers to regularize their status.

The OWWA is headed by a Board of Trustees and chaired by the Minister of Labour and Employment and has a tripartite membership. The fund is managed as a growth fund and its earnings are spent on programmes benefiting migrant workers. Among these programmes are on-site facilities and staff who, under the leadership of Labour Attachés, work to ensure the welfare needs of workers. The range of benefits also includes pre-departure and business loans, scholarships, life and medical insurance coverage, death benefits, training and worker education and reintegration assistance, among others.

## **5. Foreign Market Development, Remittances, Return and Reintegration**

### **Measures taken by the state to expand labour migration of its nationals:**

Under Section 23 of the Migrant Workers and Overseas Filipinos Act of 1995 and its Implementing Rules and Regulations, the Philippines Overseas Employment Administration (POEA),

an agency attached to the Department of Labour and Employment, is responsible, among other things, for setting up a system for promoting and maintaining the overseas employment of Filipino workers, taking into consideration the welfare and domestic labour requirements of the country. The POEA also regulates the participation of the private sector in the recruitment and placement of overseas workers by setting up a licensing and registration system.

To pursue its promotional programmes for the employment of Filipino workers abroad, the POEA maintains a Marketing Branch to conduct research and development programmes for overseas employment. On the basis of a regional specialized system, the Marketing Branch collects, verifies and makes accessible market-related information to its clients, particularly the recruitment industry and workers. It coordinates with POEA's processing offices and the Philippine Overseas Labour Offices (POLO) on matters affecting marketing policies and programmes, as well as opportunities and problems.

The following strategies were adopted to promote the employment of Filipino workers:

#### *Dispatch of overseas missions*

This capital-intensive marketing strategy aims to promote the employment of Filipino workers and enhance goodwill and friendly relations with host countries of Filipino labour migrants. It involves the dispatch of high level and technical missions to facilitate the entry of Filipino workers in different countries through visits to government authorities, existing and prospective employers, while issues and concerns affecting the employment of Filipino labour are also discussed.

#### *Development and production of promotional materials*

Successful marketing programmes are aided by effective promotional materials such as brochures and audio-visual material, to promote awareness in host countries of the services the Philippines can offer.

#### *Direct mailing campaign*

A direct mailing campaign to potential employers abroad is conducted to tap employment opportunities and expand existing markets.

#### *Market research*

In order to develop and expand markets, it is important to know prevailing labour market conditions and characteristics, and to assess the competition. This is done by collecting market data from various sources. Research results are communicated to the recruitment industry and workers to guide them in their search for employment.

#### *Liaising with the diplomatic corps*

This strategy involves the meeting with foreign embassies to obtain information on employment prospects and discuss issues and concerns affecting Filipino workers employed in the host country. This is a support strategy to foster good relations with host countries.

### *Participation in international conferences and meetings on migration*

This is another avenue to promote the employment of Filipinos, particularly in sharing our experience as a labour sending country, and best practices. Various countries come together to discuss and cooperate on issues and concerns affecting the employment of foreign workers.

### *Other marketing strategies*

Such as a client referral assistance programmes, liaising with industry, negotiating bilateral and multilateral agreements or arrangements, are also pursued in support of the other strategies.

## **Specific programmes and services to assist in the reintegration of returning migrants:**

### *Organizing and networking*

The DOLE and OWWA Regional Offices were mandated to build a national network of OFW families to serve as the voice of the sector. Through the network, the OFWs can be consulted and their particular needs addressed. It also serves as a mutual support system where matters of concern can be discussed, problems solved and common goals pursued, while their parents, spouses or children are overseas. Once organized, it will be easier for OFW families to access various services.

Several non-governmental organizations (NGOs) form part of the National Reintegration Network for OFWs and their families. Many NGOs offer a variety of services for OFW family groups and are co-advocates in the campaign for the effective reintegration of migrant workers.

To strengthen the OFW organizations/family circles and make them into self-reliant and sustainable self-help groups, OWWA conducts leadership training, organizational planning and other related training/seminars.

### *Information desk*

To make their return and reintegration into the country and community more convenient for OFWs, OWWA reintegration desks have been established at the airport and local government units to provide essential information on reintegration programmes with a particular focus on informing OFWs and their families on socio-economic options and opportunities.

OWWA runs onsite reintegration programmes in more than 20 countries and 27 major cities. Training seminars and individual counselling are conducted to equip OFWs with the knowledge and skills that can be put to good use on return to the Philippines. They are trained to identify and plan economic alternatives when they return to the country.

### *Savings and investment options*

The saving and remittances of OFWs must be maximized. Philippine banks and financial institutions are offering some interesting investment and savings instruments able to yield excellent benefits for the OFW families.

The Pag-Ibig Overseas Programme, or POP, is a voluntary savings programme that aims at providing Filipino overseas workers/immigrants/permanent residents with the opportunity to save for their future and to avail themselves of a housing loan.

The Development Bank of the Philippines (DBP) – Kinabukasan Investment Certificates (KIC) – is a saving mechanism where redemption values can be used to finance tuition fees of OFW beneficiaries and to cover hospitalization costs if the need should arise. Purchase of KICs entitles every certificate holder to a life insurance coverage equivalent to the amount of certificates purchased. KICs are issued in units of Php 5,000 for a seven-year term and can be redeemed after a holding period of at least two years.

### *Training*

Livelihood skills and business development training are now being offered by the Technology and Livelihood Resource Center (TLRC) and the Technical Education and Skills Development Authority (TESDA).

### *Livelihood and business development assistance*

The Department of Trade and Industry (DTI) offers business development services for would-be entrepreneurs, including for OFW families/dependants, and small and medium enterprises (SMEs) through its Bureau of Small and Medium Enterprise Development (BSMED). It offers consultancy services, business training and guidance on global competitiveness, improvement of skills, training in economic planning, product development, food packaging, labelling and good manufacturing practices, the planning and organization of mini trade fairs, market linkages, a financing package through the Small Business Guarantee and Finance Corporation, and information on trade lines and business matching.

OWWA has a livelihood programme that offers project planning, training in small business development, small business planning and management, skills training, an industry-specific consultancy services to solve pressing business operations problems.

DOLE has created partnerships with different NGOs, many of which offer business development services. For example, Unlad Kabayan is establishing Business Development Assistance Desks for OFWs. Their project areas include Davao City, Bohol, Iligan and Cagayan De Oro.

### *Credit and microfinance*

OWWA offers livelihood loans to OFW families up to Php100,000, re-entry loans with a ceiling of Php 20,000 and a maximum of Php 50,000 for group assistance loans.

Beginning from the first quarter of 2003, OWWA will make available self-employment non-collateral loans ranging from Php 5,000 to Php 50,000 for the micro-business ventures of OFW families.

The DOLE has a Kalinga microfinance programme that OFW families can also access. It has created partnerships with various NGOs with credit facilities, such as OFW Net International

Holdings and TSPI Development Corporation, which have credit windows for OFW families and dependants.

### *Housing*

Pag-Ibig Housing Loans for OFW are being offered to active POP members who have remitted at least 12 monthly membership contributions, provided they are insurable and not over 65 years old when the loan matures, have the legal capacity to acquire and possess real property, have an outstanding Pag-Ibig housing loan either as a principal borrower or as co-borrower and are up-to-date with their Pag-Ibig multipurpose loan payments, if applicable.

### *Psychological counselling*

DOLE, together with several NGOs and other church-based organizations, such as the Episcopal Commission for the Pastoral Care of Migrants and Itinerant Peoples (ECMI), Institute on Church and Social Issues (ICSI), and Mother Ignacia National Social Apostolate Centre (MINSAC), is also trying to expand the reach of spiritual and psychosocial care for OFWs, their families and dependants.

### *Family Welfare Officers (FWO)*

In December 2002, President Gloria Macapagal-Arroyo instructed OWWA-DOLE to install 25 FWOs to link OFW families with governmental and non-governmental organizations that provide assistance and services to OFWs and their families in support of efforts to organize them into an audible and visible representative section of society.

The FWOs will be deployed to key cities and provinces characterized by a dense OFW population. They will be responsible for the development of new programmes and the improvement of existing projects for OFW family groups, to conduct surveys on the needs of OFW families, to gather and compile data necessary for programme conceptualization, to devise appropriate policies and report on situations and progress made, monitor and evaluate OWWA programmes for OFW family groups, develop work/action plans, administer programmes to OFW family groups, maintain an information base on the Philippine Reintegration Programme to respond to queries and to assist OFW families, and any other necessary related tasks.

Other tasks include the monitoring and evaluation of the implementation of reintegration and services at the local level; facilitating and ensuring access to services, and the enhancement and development of services and assistance, especially of reintegration programmes offered to OFW families; identification of the requirements of OFW families; compilation and gathering of data essential to the conceptualization, design and implementation of the Philippine Reintegration Programme (PRP) in their respective areas; development of work plans and recommendation of appropriate strategies for the effective design and implementation of the PRP; reporting to the Regional Director on the PRP; and networking and collaboration with the OWWA, other line agencies of government, NGOs and stakeholders in OFW reintegration.

## **6. Inter-state Cooperation and Data Collection**

### **Bilateral labour agreements:**

The Philippines concluded labour agreements with 12 host countries of Filipino labour: the Commonwealth of Northern Mariana Islands, Indonesia, Iraq, Jordan, Kuwait, Libya, Norway, Papua New Guinea, Qatar, Switzerland, Taiwan (ROC) and the United Kingdom.

Most agreements with Middle Eastern countries, such as Jordan, Qatar, Iraq, Libya and Kuwait and the CNMI in the Trust Territories, aim at promoting and strengthening areas of cooperation in the field of labour, employment and manpower development and to enhance the welfare and well-being of workers and to protect workers' rights.

Agreements with European countries are more focused. For instance, the agreement with Switzerland involves the exchange of professionals and technical trainees for short-term employment; the agreement with the United Kingdom aims to facilitate the recruitment of Filipino health professionals, and the RP-Norway agreement aims to develop cooperation to reduce the shortage of professionals in the health sector in Norway and to promote employment opportunities for Filipino health personnel.

The Special Hiring Programme for Taiwan was implemented to enable employers to hire Filipino workers without the intervention of labour recruitment agencies from the Philippines or Taiwan.

The Philippines has recently entered into a manpower cooperation agreement with Indonesia, which is itself also a labour sending country. The agreement seeks to enhance the effective management of migration in order to promote and protect the welfare and rights of Filipino and Indonesian migrant workers.

Although bilateral labour agreements have proven to be effective in addressing issues and concerns affecting the employment of workers, it takes time to develop and implement these agreements. In recent years, the Philippines has veered away from adopting general agreements and worked towards the adoption of more focused/specific agreements, which are easier to negotiate and put into operation with host countries.

### **List of institutions gathering data on labour migrants, type and frequency of data being gathered:**

- Commission of Filipinos Overseas, Department of Foreign Affairs (DFA)
- Philippine Overseas Employment Administration (POEA)
- Department of Labour and Employment (DOLE)
- Overseas Workers Welfare Administration (OWWA)
- Philippine Overseas Labour Offices (POLO)
- Bangkok Sentral ng Philipinas (Central Bank of the Philippines)

## PHILIPPINES – ANNEX

TABLE 18  
STATISTICAL DATA ON OVERSEAS FILIPINO WORKERS (OFWs)

Regions	January to October			OFW Remittance* as of September		
	2002	2001	% change	2002	2001	% change
Asia	250,110	248,448	0.7	847,672	795,314	6.6
Middle East	271,293	261,151	3.9	532,536	532,776	0.0
Europe	41,979	38,071	10.3	507,746	312,133	62.7
Americas	10,469	9,267	13.0	2,786,856	2,411,895	15.5
Trust Territories	5,574	6,008	-7.2	-	-	0.0
Africa	5,985	4,286	39.6	1,967	2,331	-15.6
Oceania	1,840	1,817	1.3	26,219	16,958	54.6
Others	9,009	9,380	-4.0	662,168	355,096	86.5
Total Land-Based	596,259	578,428	3.1	4,458,050	3,626,935	22.9
Total Sea-Based	175,739	170,554	3.0	907,114	799,568	13.5
<b>Total</b>	<b>771,998</b>	<b>748,982</b>	<b>3.1</b>	<b>5,365,164</b>	<b>4,426,503</b>	<b>21.2</b>

Date last updated: 09 January 2003.

\*Source: Bangko Sentral ng Pilipinas.

OFW remittance in US\$ '000s.

TABLE 19  
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION  
Deployed Land-based Overseas Filipino Workers by Destination (Middle East & Asia)

	1998	1999	2000	2001
<b>Middle East</b>	<b>279,767</b>	<b>287,076</b>	<b>283,291</b>	<b>297,533</b>
Bahrain	5,180	5,592	5,498	6,861
Egypt	358	334	487	539
Iran	18	24	132	641
Iraq	10	23	42	86
Israel	2,022	3,488	4,429	5,562
Jordan	561	456	541	580
Kuwait	17,372	17,628	21,490	21,958
Lebanon	1,342	1,674	2,783	3,350
Libya	7,084	5,937	5,952	6,489
Oman	5,199	5,089	4,739	4,512
Qatar	10,734	7,950	8,679	10,769
Saudi Arabia	193,698	198,566	194,724	190,732
Syria	99	109	151	1,705
United Arab Emirates	35,485	39,633	43,045	44,631
Yemen	591	582	589	1,140
Middle East (unspecific)	24	1	-	-
<b>Asia</b>	<b>307,261</b>	<b>299,021</b>	<b>292,067</b>	<b>285,051</b>
Afghanistan	-	16	1	-
Bangladesh	501	220	190	230
Bhutan	-	5	1	-
Brunei	16,264	12,978	13,649	13,068
Cambodia	179	224	365	524
China	1,280	1,658	2,345	1,979
East Timor	-	-	-	24
Hong Kong	122,337	114,779	121,762	113,683
India	191	165	185	454
Indonesia	2,471	1,706	1,507	1,411
Japan	38,930	46,651	53,041	74,093
Kazakhstan	3	4	32	311
Kyrgyzstan	-	2	1	2
Korea	2,337	4,302	4,743	2,555
Laos	63	82	118	174
Macau	2,021	1,983	2,208	1,860
Malaysia	7,132	5,978	5,450	6,228
Maldives	82	147	117	123
Mongolia	72	31	47	28
Myanmar	153	96	153	215
Nepal	3	7	7	13
Pakistan	166	136	107	180
Singapore	23,175	21,612	22,673	26,305
Sri Lanka	230	290	396	629
Tajikistan	3	3	-	3
Taiwan	67,360	64,186	61,145	38,311
Thailand	1,364	1,014	1,015	2,056
Turkmenistan	96	35	94	126
Uzbekistan	4	80	26	17
Viet Nam	802	531	494	549

TABLE 20  
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION  
Deployed Land-based Overseas Filipino Workers by Destination (Europe)

Europe	1998	1999	2000	2001	January - October		% change
	2002	2001					
	<b>26,422</b>	<b>30,707</b>	<b>38,296</b>	<b>43,019</b>	<b>41,979</b>	<b>38,071</b>	<b>10.3</b>
Albania	-	1	-	-	-	-	0.0
Andorra	48	64	49	92	65	81	-19.8
Austria	468	363	334	206	156	189	-17.5
Azerbaijan	53	88	76	87	103	73	41.1
Belgium	183	168	160	159	144	135	6.7
Belarus	1	2	-	-	-	-	0.0
Bosnia and Herzegovina	2	2	-	-	-	-	0.0
Bulgaria	1	1	1	1	2	-	0.0
Channel Islands	-	-	1	-	-	-	0.0
Croatia	2	1	2	-	-	-	0.0
Cyprus	841	1,168	1,500	1,548	1,561	1,299	21.7
Czech Republic	3	10	9	3	7	2	250.0
Denmark	78	55	28	27	23	21	9.5
Faroe Islands	-	-	-	-	-	-	0.0
Finland	16	16	12	13	8	12	-33.3
France	122	130	297	149	125	140	-10.7
Georgia	-	-	-	-	-	-	0.0
Germany	156	131	120	134	86	122	-29.5
Gibraltar	1	-	2	42	1	42	-97.6
Greece	593	2,145	1,618	1,402	1,622	1,249	29.9
Hungary	6	5	2	4	11	2	450.0
Iceland	1	3	4	17	25	15	66.7
Ireland	18	126	793	3,734	3,971	3,044	30.5
Isle of Man	-	-	10	13	-	12	-100.0
Italy	20,233	21,673	26,386	21,541	19,226	20,103	-4.4
Luxembourg	7	6	2	-	1	-	0.0
Macedonia	-	1	1	-	-	-	0.0
Malta	11	9	15	30	12	25	-52.0
Moldova	1	-	-	-	-	-	0.0
Monaco	6	14	7	-	-	-	0.0
Netherlands	473	326	292	432	192	395	-51.4
Norway	108	252	180	139	120	110	9.1
Poland	7	10	7	23	11	22	-50.0
Portugal	12	26	40	44	49	41	19.5
Romania	8	2	-	-	3	-	0.0
Russia	31	56	112	77	55	75	-26.7
Slovenia	-	1	-	-	-	-	0.0
Spain	1,940	1,557	1,913	1,783	1,601	1,549	3.4
Sweden	35	26	29	59	28	57	-50.9
Switzerland	312	312	298	239	314	216	45.4
Turkey	41	39	129	201	137	147	-6.8
United Kingdom	502	1,918	4,867	10,720	12,300	8,893	38.3
- England	491	1,896	4,834	10,695	12,278	8,872	38.4
- Northern Ireland	7	22	21	-	-	-	0.0
- Scotland	4	-	12	25	22	21	4.8
Yugoslavia	2	-	-	-	-	-	0.0

TABLE 21  
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION  
Deployed Land-based Overseas Filipino Workers by Destination (Americas)

Americas	1998	1999	2000	2001	January - October		% change
	2002	2001					
	9,152	9,045	7,624	10,679	10,469	9,267	13.0
Antigua	9	-	-	2	17	2	750.0
Argentina	23	41	40	34	6	24	-75.0
Armenia	-	1	-	-	-	-	0.0
Aruba	792	1,428	168	119	118	103	14.6
Bahamas	22	32	41	128	197	113	74.3
Barbados	-	-	50	36	-	36	-100.0
Belize	-	56	-	-	-	-	0.0
Bermuda	177	128	239	196	260	178	46.1
Brazil	19	35	61	41	29	37	-21.6
Canada	1,957	2,020	1,915	3,132	3,110	2,723	14.2
Caribbean (unsp.)	-	-	2	19	-	19	-100.0
Cayman Is.	200	278	352	645	750	459	63.4
Chile	34	5	1	1	37	1	3600.0
Colombia	3	1	7	1	83	1	8200.0
Costa Rica	2	11	1	26	4	28	-84.6
Cuba	314	299	319	216	581	191	204.2
Diego Garcia	1,444	673	306	726	1,227	627	95.7
Dominica	1	-	-	-	3	-	0.0
Dominican Republic	7	4	1	7	12	6	100.0
Ecuador	-	4	1	-	1	-	0.0
El Salvador	1	-	4	4	4	4	0.0
Granada	8	9	-	-	2	-	0.0
Guam	812	370	209	196	91	177	-48.6
Guatemala	1	11	1	28	11	28	60.7
Guyana	4	5	-	-	1	-	0.0
Haiti	11	20	24	37	44	37	18.9
Hawaii	-	-	1	41	1	14	-92.9
Honduras	11	12	4	7	6	5	20.0
Jamaica	27	26	13	8	33	6	450.0
Mexico	33	90	241	242	75	234	-67.8
Midway Is.	23	21	25	27	7	23	-69.6
Netherlands Antilles	-	1	15	20	30	19	57.9
Nicaragua	-	2	4	-	4	-	0.0
Panama	2	3	3	13	26	9	188.9
Peru	2	3	2	1	-	1	-100.0
St. Nevis – Anguilla	-	1	-	-	-	-	0.0
St. Kitts and Nevis	1	-	-	1	3	1	200.0
St. Vincent	1	2	-	-	-	-	0.0
South America (unspec.)	3	1	-	-	-	-	0.0
Surinam	2	8	2	-	-	-	0.0
Trinidad and Tobago	-	11	7	1	8	1	800.0
USA	3,173	3,405	3,629	4,689	3,674	4,135	-11.1
Uruguay	17	5	3	-	-	-	0.0
Venezuela	14	15	13	21	8	15	-46.7
Virgin Islands	2	3	14	13	3	11	-72.7
West Indies (unspec.)	-	5	6	2	2	1	100.0

TABLE 22  
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION  
Deployed Land-based Overseas Filipino Workers by Destination (Africa)

Africa	1998	1999	2000	2001	January - October		% change
	2002	2001					
	<b>5,538</b>	<b>4,936</b>	<b>4,298</b>	<b>4,943</b>	<b>5,985</b>	<b>4,286</b>	<b>39.6</b>
Afars and Issas	-	-	-	12	-	12	-100.0
Algeria	1,258	705	280	383	638	300	112.7
Angola	681	772	788	1,119	881	950	-7.3
Botswana	26	24	27	50	70	50	40.0
Burundi	-	1	-	-	-	-	0.0
Cameroon	12	19	4	30	69	2	3350.0
Cape Verde	-	15	7	-	2	-	0.0
Central African Republic	1	1	2	6	11	6	83.3
Chad	1	-	-	77	1,606	45	3246.7
Congo	66	35	43	69	109	66	65.2
Côte d'Ivoire	7	4	22	25	35	25	40.0
Djibouti	11	-	2	2	1	2	-50.0
East Africa (unspec.)	4	-	-	-	-	-	0.0
Equatorial Guinea	40	732	865	773	505	669	-24.5
Eritrea	44	8	2	9	19	9	111.1
Ethiopia	15	9	19	10	12	8	50.0
Gabon	53	66	63	81	71	67	6.0
Ghana	18	42	70	37	43	36	19.4
Guinea	125	121	-	-	-	-	0.0
Kenya	37	57	47	48	47	42	11.9
Lesotho	-	3	6	29	29	25	16.0
Liberia	-	5	1	1	1	1	0.0
Madagascar	1	1	6	9	5	9	-44.4
Malawi	4	22	17	19	16	19	-15.8
Mali	61	50	52	27	10	27	-63.0
Mauritania	-	3	18	2	5	2	150.0
Mauritius	2	1	-	1	2	1	100.0
Morocco	42	37	38	37	46	29	58.6
Mozambique	9	3	7	7	9	7	28.6
Nambia	14	5	4	14	39	14	178.6
Nigeria	1,496	1,110	833	1,039	993	926	7.2
Rwanda	2	2	-	-	-	-	0.0
Sao Tome & Principe	14	7	1	-	1	-	0.0
Senegal	-	5	-	3	-	3	-100.0
Seychelles	547	191	125	242	221	206	7.3
South Africa	123	182	106	112	70	106	-34.0
Sudan	317	420	236	329	302	315	-4.1
Swaziland	3	1	8	4	4	3	33.3
Tanzania	30	30	37	59	54	50	8.0
Togo	-	1	2	1	-	1	-100.0
Transkei	1	-	-	-	-	-	0.0
Tunisia	14	21	13	8	4	7	-42.9
Upper Volta	-	1	-	1	-	1	-100.0
Uganda	34	27	26	24	15	24	-33.3
West Africa (unspec.)	357	149	366	98	46	92	-50.0
Zambia	16	24	33	20	15	17	-11.8
Zimbabwe	4	5	14	4	5	4	25.0
Africa (unsp.)	48	19	107	112	73	108	-32.4

TABLE 23  
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION  
Deployed Land-based Overseas Filipino Workers by Destination (Trust Territories)

Trust Territories	1998	1999	2000	2001	January - October		% change
	7,677	6,622	7,421	6,823	2002	2001	
Commonwealth of Northern Mariana Islands	5,982	4,837	5,215	4,681	3,795	4,145	-8.4
- Rota	162	106	146	127	59	116	-49.1
- Saipan	5,139	2,270	3,760	2,288	1,780	2,014	-12.5
- Tinjan	94	89	95	160	90	150	-40.0
- Marianas	587	2,372	1,214	2,105	1,886	1,865	1.1
Federated States of Micronesia	429	554	494	431	416	391	6.4
- Chuuk (Truk)	9	34	2	6	8	5	60.0
- Pohnpel (Ponape)	60	61	69	138	53	131	-59.5
- Yap	9	22	11	4	2	4	-50.0
- Micronesia (unspec.)	351	437	412	283	353	251	40.6
Marshall Islands	65	71	109	107	79	97	-18.6
- Majuro	9	11	3	1	3	1	200.0
- Marshall Islands (unspec.)	56	60	106	106	76	96	-20.8
Republic of Belau	1,084	1,010	1,480	1,420	1,148	1,208	-5.0
Melanesia	111	127	111	162	113	147	-23.1
- Cook Islands	-	2	-	-	3	2	50.0
- Fiji	31	68	36	101	49	90	-45.6
- Solomon Is.	72	58	69	57	58	52	11.5
- Vanuatu	8	9	6	4	3	3	0.0
- Melanesia	-	-	-	-	-	-	0.0
Polynesia	6	23	11	7	23	5	360.0
- Samoa	6	23	11	7	18	5	260.0
- Tonga	-	-	-	-	5	-	0.0
- Trust Territories (unspec.)	-	-	1	15	-	15	-100.0

TABLE 24  
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION  
Deployed Overseas Filipino Workers by Destination (Oceania)

Oceania	1998	1999	2000	2001	January - October		% change
	2,524	2,424	2,386	2,061	2002	2001	
Australia	182	184	234	148	128	136	-5.9
Nauru	38	37	47	20	41	20	105.0
New Caledonia	3	4	8	-	9	-	0.0
New Zealand	75	102	110	150	178	133	33.8
Papua New Guinea	2,226	2,097	1,987	1,743	1,484	1,528	-2.9
Unspecified	2	-	6,921	11,530	9,009	9,380	-4.0
Deployed Land-based Total	638,343	640,331	643,304	661,639	596,259	478,430	3.1
LAC NAIA	629,845	632,861	634,976	651,613	587,203	569,625	3.1
LAC MACTAN	7,608	6,767	7,672	9,308	8,085	8,215	-1.6
LAC DAVAO	848	694	656	718	971	590	64.6
LAC LAOAG*	42	19	-	-	-	-	0.0
Deployed Sea-based Total	193,300	196,689	198,324	204,951	175,739	170,554	3.0
LAC NAIA	192,798	196,367	196,916	204,088	175,311	169,716	3.3
POEA Reg'l Ctrs./ Ext. Units	501	322	1,408	863	428	838	-48.9
<b>Grand Total</b>	<b>831,843</b>	<b>837,020</b>	<b>841,828</b>	<b>866,590</b>	<b>771,998</b>	<b>748,984</b>	<b>3.1</b>

Processed by: Policies and Programs Division, Planning Branch.

Based on the report of POEA's Labour Assistance Centre on the actual departures of OFWs at international airports.

\*Ceased operation since October 1999.

TABLE 25  
 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION  
 Deployment of Newly Hired OFWs (by skills category)  
 January to October 2002

Skill Category	Female Nos./%	Male Nos./%	F/M	Total
Professional and technical workers	70,112 85%	12,500 15%	6	82,612
Administrative and managerial workers	101 33%	203 67%	0	304
Clerical workers	2,130 63%	1,270 37%	2	3,400
Sales workers	1,220 47%	1,389 53%	1	2,609
Service workers	73,919 90%	7,942 10%	9	81,861
Agricultural workers	12 2%	535 98%	0	547
Production workers	17,508 30%	41,742 70%	0	59,250
For reclassification	513 5%	9,053 95%	0	9,566
<b>Total</b>	<b>165,515</b> <b>69%</b>	<b>74,634</b> <b>31%</b>	<b>2</b>	<b>240,149</b>

F/M – Proportion of female to male OFWs.

TABLE 26  
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION  
Deployment of Newly Hired OFWs (by skills category)

Skill category	1999				2000				2001			
	Female Nos./%	Male Nos./%	F/ M	Total	Female Nos./%	Male Nos./%	F/ M	Total	Female Nos./%	Male Nos./%	F/ M	Total
Prof. and technical workers	50,677 81%	11,823 19%	4	62,500	67,454 86%	11,231 14%	6	78,685	83,056 85%	14,392 15%	6	97,448
<b>Managerial workers</b>	59 18%	274 82%	0	383	76 27%	208 73%	0	284	105 27%	280 73%	0	395
<b>Clerical workers</b>	1,262 49%	1,290 51%	1	2,552	1,000 42%	1,367 58%	1	2,367	1,995 59%	1,381 41%	1	3,356
<b>Sales workers</b>	785 35%	1,459 65%	1	2,244	949 46%	1,134 54%	1	2,083	1,814 57%	1,374 43%	1	3,188
<b>Service workers</b>	76,792 91%	7,346 9%	10	84,138	83,794 92%	7,412 8%	11	91,206	83,951 91%	8,400 9%	10	92,351
<b>Agricultural workers</b>	8 2%	444 98%	0	452	6 1%	520 99%	0	526	36 7%	514 93%	0	550
<b>Production workers</b>	20,793 26%	58,869 74%	0	79,662	15,428 28%	41,379 72%	0	57,807	13,755 24%	42,985 76%	0	56,740
<b>For reclassification</b>	1,464 27%	3,915 73%		5,379	8,616 43%	11,456 57%		20,072	1,306 31%	2,880 69%	0	4,186
<b>Total</b>	<b>151,840 54%</b>	<b>85,420 36%</b>	<b>2</b>	<b>237,260</b>	<b>158,323 70%</b>	<b>74,707 30%</b>	<b>2</b>	<b>253,030</b>	<b>186,018 72%</b>	<b>72,186 28%</b>	<b>3</b>	<b>256,204</b>

F/M – Female/Male OFWs.

% – Percentage of annual total.

Skill for reclassification – Based on EDP Report.

TABLE 27  
ESTIMATES OF STOCKS OF OVERSEAS FILIPINO WORKERS  
As of December 2001

Country/Region	Permanent	Temporary	Irregular	Total
<b>WORLD TOTAL</b>	<b>2,736,528</b>	<b>3,099,940</b>	<b>1,568,426</b>	<b>7,402,894</b>
<b>AFRICA</b>	<b>271</b>	<b>31,530</b>	<b>10,103</b>	<b>41,904</b>
Egypt	53	1,018	1,400	2,471
Libya	75	4,350	485	4,910
Nigeria	18	10,500	1,500	12,018
Others	125	15,662	6,718	22,505
<b>ASIA (East and South)</b>	<b>70,349</b>	<b>826,782</b>	<b>360,527</b>	<b>1,257,658</b>
Brunei	28	20,240	1,500	21,766
Hong Kong	404	171,485	2,000	173,889
Japan	65,647	138,522	36,379	240,548
Korea	1,510	12,018	13,000	26,528
Malaysia	310	58,233	167,936	226,479
Singapore	152	56,377	71,917	128,446
Taiwan	1,801	116,480	4,300	122,681
Others	389	253,427	63,495	317,321
<b>ASIA (West)</b>	<b>1,546</b>	<b>1,233,325</b>	<b>123,332</b>	<b>1,358,203</b>
Bahrain	61	26,356	5,000	31,417
Israel	41	9,058	21,136	30,235
Kuwait	92	63,067	10,000	63,159
Lebanon	19	19,825	5,500	25,344
Oman	18	18,551	1,500	20,069
Qatar	13	37,626	1,000	38,639
Saudi Arabia	239	897,000	18,000	915,239
UAE	373	128,604	38,000	166,977
Others	690	43,238	23,196	67,124
<b>EUROPE</b>	<b>152,851</b>	<b>420,232</b>	<b>203,249</b>	<b>776,332</b>
Austria	3,205	1,191	2,000	6,396
France	925	4,804	26,121	31,850
Germany	41,321	7,005	4,392	52,718
Greece	84	7,514	17,500	25,098
Italy	2,431	69,998	78,000	150,429
Netherlands	7,632	2,351	700	10,663
Spain	33,643	5,687	4,000	43,330
Switzerland	605	5,963	9,300	15,858
United Kingdom	45,889	15,767	8,344	70,000
Others	17,116	299,962	52,892	369,970
<b>AMERICAS/TRUST TERRITORIES</b>	<b>2,291,311</b>	<b>286,793</b>	<b>848,879</b>	<b>3,426,983</b>
Canada	338,561	21,146	4,000	363,707
United States	1,910,844	60,373	532,200	2,503,417
Onmi	80	16,205	3,705	19,990
Guam	41,541	434	2,025	44,000
Others	265	188,635	306,949	495,869
<b>OCEANIA</b>	<b>220,200</b>	<b>46,009</b>	<b>20,336</b>	<b>286,846</b>
Australia	204,075	687	2,041	206,803
New Zealand	16,045	236	100	16,381
Papua New Guinea	63	1,661	7,339	9,063
Others	17	43,425	10,856	54,298
<b>SEA-BASED TOTAL</b>		<b>255,269</b>		<b>255,269</b>

Prepared by: Commission of Filipinos Overseas, Department of Foreign Affairs.

## SRI LANKA

### 1. Government Labour Migration Structure

Please see the Annex.

### 2. Labour Migration Statistics

Number of contract migrant workers who have departed in the year by sex, age group, education, expected occupation and country of employment:

Please see Table 29 in the Annex for breakdown of Migrant Workers by sex, age group and occupation.

TABLE 28  
TOP FIVE COUNTRIES OF DESTINATION FOR CONTRACT MIGRANT WORKERS:

Country	Number of Migrants
Saudi Arabia	300,000
Kuwait	161,700
UAE	130,500
Lebanon	80,000
Qatar	40,000

Please see also Table 30 in the Annex.

### 3. Legislation

#### **Stated labour migration or overseas employment policy, objectives and priorities:**

The current Foreign Employment Policy as expressed in the National Employment Draft Policy in Sri Lanka is: “to adopt a pro-active approach to identifying global employment opportunities and uplift the image and skills of migrant human capital by providing them with appropriate training to enhance their competitiveness”.

The three strategies are:

1. Reorganize the Sri Lanka Bureau of Foreign Employment to make it more market oriented and effective in promotional activities, skills training for migrants, etc.

2. Address the needs of the domestic female workers through the creation of awareness and enhancement of their skills.
3. Diversification of concentration in terms of job category and region.

#### **Labour migration law in place:**

The law relating to labour migration is the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985.

#### **4. Protection of Workers**

##### **Problems faced abroad by Sri Lankan migrant workers in terms of employment and living conditions and exploitation by domestic recruitment agencies:**

Please refer to Table 31 in the Annex.

##### **Measures to regulate recruitment and have exit controls:**

- Registration and control of foreign employment agencies.
- Registration of migrant workers and monitoring at the airport.

##### **Pre-departure orientation and services available to migrant workers:**

- Training for housemaids: Separate training for those who travel to Middle Eastern countries and non-Middle Eastern countries.
- Training for workers who travel to Korea.

##### **Services from the state of origin available to migrants facing problems in the destination countries:**

Labour Attachés are posted in six Middle Eastern Countries and Labour Welfare Officers have been appointed in 12 countries. In some countries, safe houses have been set up to provide shelter to migrant workers who have fled. The said officers look after the welfare of migrant workers while working in the host countries. When problems arise these officers take action directly against the employers or the respective government agencies in order to settle them.

##### **Welfare fund for migrant workers:**

The welfare fund is financed through a fee of US\$ 25 levied on employers abroad when an employment contract is signed. The money of the welfare fund is solely used for welfare activities for the migrant workers.

## **5. Foreign Market Development, Remittances, Return and Reintegration**

### **Measures taken by the state to expand labour migration of its nationals:**

Migrant workers are granted loans to meet departure expenses. Vocational Training Institutes train prospective migrant workers. The Ministry of Employment and Labour coordinates with the Ministry of Vocational Training and other relevant Government institutions to train skilled manpower to meet foreign employment demands.

### **Role of the private sector (recruitment and employment agencies) in expanding labour migration:**

The private sector is involved in the promotion of employment opportunities and in securing employment. The majority of jobs are secured through the private sector.

### **Estimates of the proportion of migrants using official channels to remit funds incentives provided to encourage migrants to remit funds via official channels and measures taken to harness remittances for development purposes:**

Please see Table 32 in the Annex.

The migrant workers are permitted to operate foreign currency accounts called Non-resident Foreign Currency Account. They are entitled to an enhanced duty-free allowance to enable them to purchase goods duty-free.

### **Specific programmes and services to assist in the reintegration of returning migrants:**

1. A loan scheme is available for migrant workers who wish to invest in self-employment activities.
2. Currently the Sri Lanka Bureau of Foreign Employment is conducting a family development programme in five districts. The objective of this programme is to help families to invest their savings in self-employment activities and to enable them to face difficulties they may encounter as a result of the spouse migrating for employment.

## **6. Inter-state Cooperation and Data Collection**

### **Bilateral labour agreements:**

Currently no bilateral labour agreement has been signed. However, negotiations are in progress with a few countries in order to conclude bilateral labour agreements.

**List of institutions gathering data on labour migrants, type and frequency of data being gathered:**

1. Sri Lanka Bureau of Foreign Employment.
2. Department of Immigration and Emigration.
3. Central Bank of Ceylon.

## SRI LANKA – ANNEX

### **The role of government agencies responsible for migration**

#### **1. Ministry of Employment and Labour**

The government agency responsible for formulating policies and monitoring the overall administration of foreign employment as well as coordinating with all relevant state agencies.

#### **2. Sri Lanka Bureau of Foreign Employment (SLBFE)**

The SLBFE is the implementation arm of the Ministry of Employment and Labour in all matters concerning migration for foreign employment. It implements a wide range of worker welfare programmes both locally and in host countries to ensure the protection of migrant workers during the entire migration process (pre-departure, during their stay in the host country, after returning). Programmes to ensure the welfare of families of migrant workers are being prepared. Moreover, the SLBFE is responsible for monitoring the migration of individuals, the activities of employment agencies and the promotion of foreign employment opportunities.

#### **3. Ministry of Foreign Affairs**

The Ministry of Foreign Affairs is the focal point for all bilateral and multilateral relations with foreign countries/international agencies, and provides consular and other welfare services through the Sri Lanka missions in host countries.

#### **4. Ministry of the Interior**

The Ministry of the Interior intervenes through the Department of Police and the Department of Immigration and Emigration – the implementation agencies of the Ministry. While the former is responsible for the protection of migrant workers from unlawful activities, the latter is responsible for the issuing of travel documents and the implementation of immigration and emigration laws.

#### **5. Ministry of Women Affairs**

This Ministry is responsible for the social uplifting of women. To achieve this aim it organizes awareness and empowerment programmes for women, including female migrants.

#### **6. Ministry of Vocational Training**

This Ministry is responsible for providing training in vocational skills to both men and women, including prospective migrant workers.

TABLE 29  
TOTAL DEPARTURES FOR EMPLOYMENT ABROAD (ALL SOURCES)  
BY AGE GROUP AND SEX

Age Group	1999			2000			2001		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
19 and below	60	172	232	37	73	110	151	891	1,042
20 – 24	5,250	13,223	18,473	8,509	18,405	26,914	8,409	19,020	27,429
25 – 29	13,076	21,336	34,412	13,451	21,673	35,124	12,489	23,391	35,880
30 – 34	13,181	23,163	36,344	11,480	23,057	34,537	11,022	23,370	34,392
35 – 39	10,815	24,476	35,291	8,689	24,377	33,066	8,738	24,026	32,764
40 – 44	8,620	19,115	27,735	6,712	18,659	25,371	6,755	18,546	25,301
45 – 49	5,395	8,422	13,817	3,877	7,772	11,649	4,095	7,608	11,703
50 and above	4,615	2,654	7,269	3,131	3,093	6,224	3,232	2,411	5,643
Not indicated	2,492	3,049	5,541	3,839	4,536	8,375	4,860	4,874	9,734
<b>Total</b>	<b>63,504</b>	<b>115,610</b>	<b>179,114</b>	<b>59,725</b>	<b>121,645</b>	<b>181,370</b>	<b>59,751</b>	<b>124,137</b>	<b>183,888</b>

BREAKDOWN BY OCCUPATION – 2001

Occupation	Number
Professional level	1,139
Middle level	3,770
Clerical and related	6,011
Skilled	36,708
Unskilled	33,449
Housemaid	102,811
<b>Total</b>	<b>183,888</b>

TABLE 30  
DEPARTURES FOR EMPLOYMENT ABROAD  
(By country/region, 1997 - 2001)

Country/Region	1997		1998		1999		2000		2001	
	No.	%								
Saudi Arabia	48,171	32.06	59,397	37.20	63,368	35.38	61,141	33.71	66,644	36.24
UAE	23,944	16.00	21,883	13.70	30,047	16.80	37,712	18.04	28,284	15.40
Bahrain	3,329	2.21	7,116	4.43	5,634	3.14	6,467	3.57	3,740	2.03
Oman	4,278	2.85	4,294	2.70	10,452	5.84	4,945	2.73	3,669	2.00
Kuwait	37,969	25.26	28,834	18.03	33,505	18.70	33,419	18.43	35,093	19.08
Qatar	9,364	6.23	12,576	7.90	11,523	6.43	12,088	6.66	14,046	7.64
Jordan	3,674	2.44	3,832	2.40	6,982	3.90	7,289	4.02	8,028	4.36
Singapore	2,200	1.46	1,837	1.13	2,027	1.13	1,603	0.88	1,507	0.82
Lebanon	11,793	7.85	13,646	8.52	6,841	3.82	13,132	7.24	15,430	8.40
Greece	61	0.04	150	0.10	169	0.10	139	0.08	151	0.10
United States	11	-	46	0.01	26	0.01	39	0.02	28	0.01
Cyprus	915	0.60	1,607	1.00	1,965	1.10	2,333	1.29	3,090	1.68
Maldives	2,344	1.56	2,798	1.80	3,432	1.92	3,047	1.68	2,392	1.30
Mauritius	197	0.13	180	0.10	77	0.04	71	0.04	104	0.06
Libya	9	-	40	0.02	31	0.01	16	-	101	0.05
Italy	225	0.15	279	0.17	1,732	0.97	183	0.10	28	0.01
Malaysia	30	0.02	45	0.03	45	0.02	1,168	0.64	336	0.20
S. Korea	1,069	0.72	441	0.30	510	0.30	855	0.50	353	0.20
Hong Kong	169	0.11	242	0.14	344	0.20	372	0.21	382	0.21
Seychelles	34	0.02	96	0.06	44	0.02	37	0.02	24	0.01
Pakistan	28	0.02	48	0.03	22	0.01	30	0.02	26	0.01
Syria	22	0.01	38	0.02	29	0.02	28	0.01	26	0.01
China	11	-	10	-	-	-	2	-	25	0.01
Kenya	2	-	1	-	17	-	5	-	26	0.01
Madagascar	9	-	-	-	4	-	-	-	21	0.01
Israel	4	-	4	-	16	-	9	-	24	0.01
Ireland	-	-	-	-	-	-	-	-	20	0.01
Saipan	41	0.03	2	-	-	-	3	-	15	-
Yemen	32	0.02	21	0.01	32	0.02	28	0.01	23	0.01
UK	17	0.01	19	-	11	-	9	-	20	0.01
France	2	-	6	-	4	-	-	-	2	-
Canada	2	-	1	-	3	-	3	-	3	-
Japan	52	0.03	60	0.04	4	-	8	-	23	0.01
Thailand	9	-	4	-	2	-	1	-	1	-
Africa	-	-	-	-	7	-	5	-	45	0.02
Egypt	27	0.02	62	0.04	43	0.02	99	0.05	57	0.03
Others	239	0.15	201	0.12	166	0.10	107	0.05	101	0.05
<b>Total</b>	<b>150,283</b>	<b>100</b>	<b>159,816</b>	<b>100</b>	<b>179,114</b>	<b>100</b>	<b>181,393</b>	<b>100</b>	<b>183,888</b>	<b>100</b>

Source: Information Technology Division – SLBFE.

TABLE 31  
BREAKDOWN OF COMPLAINTS RECEIVED  
BY CATEGORY AND SEX

Category	1999			2000			2001		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Non-payment of agreed wages	483	1,785	2,268	342	1,437	1,779	81	1,042	1,123
Lack of communication	166	1,807	1,973	124	1,596	1,720	100	1,608	1,708
Illness	152	559	711	68	385	453	37	336	373
Harassment	144	1,661	1,805	70	1,325	1,395	29	1,164	1,193
Death – Natural	36	75	111	12	10	22	25	17	42
Death – Accidental	01	01	02	37	46	83	72	84	156
Death – Murder	-	03	03	-	01	01	-	02	02
Death – Suicide	-	-	-	-	02	02	01	10	11
Non-repatriation on completion of contract	239	471	710	51	300	351	96	1,265	1,361
Stranded – are not met on arrival	08	57	65	-	29	29	02	51	53
Problems in home country	01	15	16	07	103	110	11	209	220
Breach of terms and conditions of contract, contract substitution	1,063	186	1,249	722	166	888	951	493	1,444
Stranded without employment	01	01	02	04	03	07	01	-	01
Other (domestic sector)	25	618	643	09	356	365	06	180	186
Other (non-domestic sector)	189	92	281	96	52	148	26	28	54
<b>Total</b>	<b>2,508</b>	<b>7,331</b>	<b>9,839</b>	<b>1,542</b>	<b>5,811</b>	<b>7,353</b>	<b>1,438</b>	<b>6,489</b>	<b>7,927</b>

Source: Conciliation Division – SLBFE.  
Information Technology Division – SLBFE.

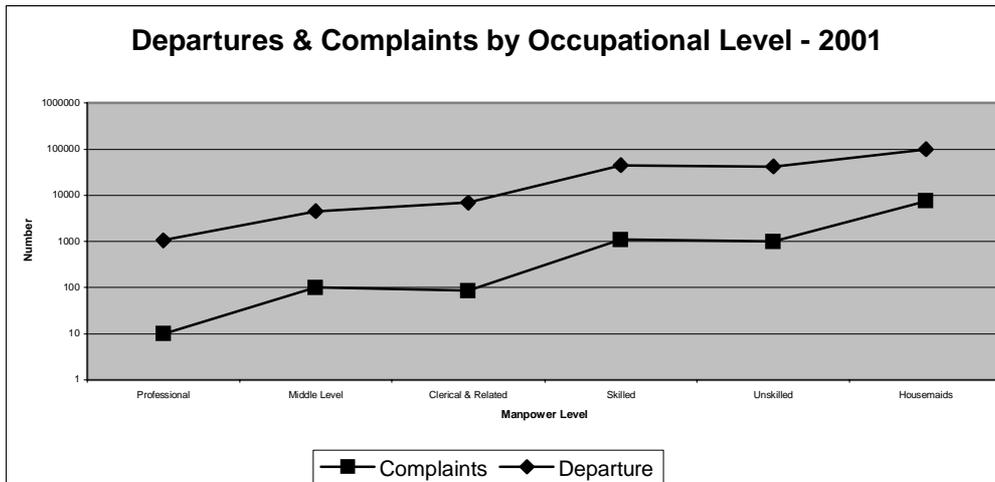


TABLE 32  
PRIVATE REMITTANCES, 1991-2001  
(Rs. million)

Year	Remittances		Middle East (as % of total remittances)
	Middle East	Total	
1991	9,515	18,311	52.0
1992	13,186	24,037	54.8
1993	16,932	30,592	55.3
1994	20,196	34,992	57.7
1995	23,567	40,482	58.2
1996	26,728	46,003	58.1
1997	33,202	54,445	61.0
1998	39,466	64,517	61.2
1999	45,766	74,342	61.7
2000	55,252	87,697	63.0
2001*	62,680	100,427	62.4

\* Provisional

Source: Central Bank Annual Reports, 1991-2001.

# THAILAND

## 1. Government Labour Migration Structure

The Overseas Employment Administration Office is the main agency of the Department of Employment, with responsibility for labour migration management. Its three major roles regarding overseas employment are as follows:

### **Promotion**

OEAO promotes and develops the existing overseas labour market for Thai workers, and identifies new overseas employment opportunities. In addition, OEAO coordinates with other government agencies to promote and expand overseas labour market opportunities.

### **Control**

Certain measures are taken to ensure that all provisions of the *Recruitment and Job Seekers Protection Act B.E. 2528* (1985) are observed, e.g., the prosecution of illegal recruiters and the suspension of the licence in the event that the licence holder is in violation of the laws concerned.

### **Protection**

OEAO protects the rights and benefits of Thai workers while working overseas, prevents labour fraud and secures the best possible terms and conditions of employment for Thai workers abroad.

### *Responsibilities*

- Administering Thai workers to work overseas.
- Centralizing overseas employment information.
- Protecting the rights and the benefits of overseas Thai workers.
- Promoting and developing overseas labour opportunities for Thai workers.
- Respond to overseas employers' demands by providing suitable Thai workers.

## 2. Labour Migration Statistics

**Number of contract migrant workers who have departed in the year by sex, age group, education, expected occupation and country of employment:**

Please see Tables 34-37 in the Annex.

TABLE 33

TOP FIVE DESTINATIONS FOR CONTRACT MIGRANT WORKERS:

Country/Region	Number of migrants
Taiwan	94,126
Singapore	20,411
Israel	12,163
Brunei	8,607
Hong Kong	6,488

## 3. Legislation

In the Recruitment and Job Seekers Protection Act, B.E. 2528 (A.D. 1985), there is a section concerning the protection of job seekers who are going to work overseas, and the recruitment process. The most important points are as follows:

### Overseas recruitment

Only persons who have been issued a licence by the Central Registrar are permitted to engage in the overseas recruitment business. Only a limited company or limited public company may apply for an overseas recruitment licence. It shall have registered paid-in capital of not less than one million baht and provide guarantee of sufficient financial means in cash, or Thai Government bonds, or provide a bank guarantee over the amount of five million baht deposited with the Central Registrar.

Before a job seeker may be sent to work overseas, the overseas-recruitment licence holder shall submit the recruitment contract and the employment conditions to the Director-General for approval. They shall also arrange for the job seeker to have a medical examination, and for attendance at an orientation session at the Central Recruitment Registration Office, or at the Provincial Recruitment Registration Office or at any other institution designated by the Director-General.

An overseas recruitment licence holder shall arrange for the overseas employer who has already signed an employment contract with the job seekers to participate in paying the required contribution to the fund. If the employer fails to do so, the license holder shall be responsible for paying such contribution.

In case the Employment Service Office, Department of Employment, recruits the job seekers to work overseas, the Director-General shall arrange for the employer to pay the contribution to the fund. If the employer fails to do so, job seekers who wish to work overseas may themselves contribute to the fund.

An overseas recruitment licence holder is not entitled to collect or receive fees from any job seekers in advance during a period exceeding 30 days prior to departure.

If the job seekers have already arrived in the employer's country but where employment as prescribed in the recruitment contracts has not been made available, the overseas recruitment licence holder shall arrange for the job seekers to return to Thailand. The transportation fare, food and accommodation, as well as other necessary expenses shall be paid by the licence holder until the job seekers arrive in Thailand.

If the job seeker has already arrived in the country of employment but has been employed at lower wages or in a different job than previously specified in the recruitment contract, the job seeker may either request the overseas-recruitment licence holder to send him back to Thailand, or continue to work at the conditions as mentioned above. If he makes the first choice, the job seeker shall notify the licence holder or his representative in writing within 90 days. If the job seeker is unable to notify the licence holder or his representative, the notice shall be sent to the Thai Labour Attaché Office or the Royal Thai Embassy or the Royal Thai Consulate-General in the employer's country, or to a person responsible for Thai persons in that country, in order to further notify the licence holder.

In case a licence holder is unable to send the job seekers to work overseas within the prescribed period, or if the job seekers have not got employment as specified in the recruitment contracts or have been employed at lower wages or in a different position and the job seekers do not agree, the licence holder shall reimburse all collected recruitment fees and expenses to the job seekers within 30 days from the due date, or from the date the job seekers arrive Thailand, respectively.

In case the job seekers have been employed at lower wages than specified in the recruitment contracts, but the job seekers nevertheless agree to continue working, the licence holder shall reimburse the recruitment fee collected from the job seekers, in proportion to the actual wages the job seekers request.

#### **4. Protection of Workers**

##### **Problems faced by migrant workers abroad in terms of employment and living conditions and exploitation by domestic recruitment agencies:**

Among the major problems faced by Thai workers while working abroad are the changing of employment contracts and labour law violation to the employer's advantage. The problems can be listed as follows:

- The employment contract is changed by the employers with the result that the workers receive lower wages and welfare benefits.

- Workers are laid off before the end of the employment contract. In addition, the employers do not accept to pay the transportation costs for the Thai workers to return home.
- Workers receive no wages although they have already been working for a certain period.
- Workers are being exploited by the employers who are in violation of labour law provisions concerning overtime payment and welfare.
- Thai workers are employed illegally and, when this becomes known to the local authorities, they are repatriated.
- The employer with whom the contract was signed, transfers the Thai workers to work with a different employer. As this is in violation of the local labour law, these workers are repatriated.
- The employer does not provide appropriate welfare nor appropriate care when the workers suffer an accident or fall ill.

The problems in connection with the exploitation by domestic recruitment agencies mainly concern workers being burdened with high expenses for going to work overseas, in excess of the conditions indicated in the regulations. In addition, in many cases, job seekers are being deceived by recruitment agencies, which promise a job overseas and charge the workers for services and arrangement for working overseas although, in fact, there is no job available.

#### **Measures to regulate recruitment and have exit controls:**

The Recruitment and Job Seekers Protection Act B.E. 2528 (A.D. 1985), concerning recruitment for overseas employment, covers such matters as the qualification and activities of recruitment agents, the protection of job seekers against exploitation by recruitment agents and the regulations applicable for overseas employment.

#### **Pre-departure orientation and services available to migrant workers:**

The Department of Employment has arranged pre-departure orientation for workers in order to familiarize them with the local laws, the culture, traditions and working conditions in the receiving country.

#### **Services from the state of origin available to migrants facing problems in the destination countries:**

Thai Labour Offices are located in main destination countries to assist Thai workers who work there, and to coordinate with workers and employers the labour supply and other relevant matters. In addition, an Overseas Workers Welfare Fund was established to support and help Thai workers who work overseas with any problems they may encounter there.

### **Welfare Fund for migrant workers:**

An Overseas Workers Welfare Fund was established to help Thai workers who face problems in the receiving country and to help them to return to Thailand. This fund is also used for organizing skill training courses and pre-departure orientation sessions. Employers or recruitment agents contribute to the fund. In addition, a project has been launched to provide credits to help job seekers who wish to go abroad to work.

## **5. Foreign Market Development, Remittances, Return and Reintegration**

### **Measures taken by the state to expand labour migration of its nationals:**

Thailand tries to promote overseas employment by developing the workers' skills to meet the requirements. There are measures to alleviate the problems of workers having to pay high sums of money to be able to go to work overseas, and of workers being deceived by illegal recruitment agencies. The Public Overseas Placement Centre has been set up as the Centre for sending Thai workers to work overseas with the aim of promoting employment possibilities abroad while limiting the costs, and to ensure that workers will not be deceived by recruitment agencies.

## **6. Inter-state Cooperation and Data Collection**

### **List of institutions gathering data on labour migrants, type and frequency of data being gathered:**

The Job seekers Data Centre and Information Section is the major institution in the Department of Employment responsible for collecting data on workers working overseas.

## THAILAND – ANNEX

TABLE 34  
NUMBER OF CONTRACT MIGRANT WORKERS WHO HAVE DEPARTED – 2001  
(By sex)

Country/Region	Number of Migrant Workers		Total
	Male	Female	
Saudi Arabia	1,165	153	1,318
Qatar	836	1	837
Bahrain	191	212	403
United Arab Emirates	1,553	190	1,743
Kuwait	978	84	1,062
Oman	311	14	325
Israel	11,037	1,126	12,163
Other country in Middle East	407	44	451
Libya	1,143	9	1,152
Other country in Africa	489	111	600
Malaysia	1,541	656	2,197
Singapore	19,933	476	20,411
Brunei	6,847	1,760	8,607
Hong Kong	589	4,899	5,488
Japan	3,360	1,886	5,246
Taiwan	82,705	11,421	94,126
Korea	1,037	143	1,180
Viet Nam	319	14	333
Cambodia	58	2	60
Other country in Asia	1,784	301	2,065
USA	1,416	181	1,897
United Kingdom	332	150	482
Germany	264	103	367
Australia	27	24	51
Italy	164	125	289
Spain	28	73	101
Other	1,610	483	2,093
<b>Total</b>	<b>140,104</b>	<b>24,943</b>	<b>165,047</b>

TABLE 35  
NUMBER OF CONTRACT MIGRANT WORKERS WHO HAVE DEPARTED  
(By occupation)

Branch Occupation/Industry	Number of Migrant Workers		Total
	Male	Female	
Professional, technical and related workers	3,173	899	4,072
Clerks and officers	1,592	729	2,321
Service workers	5,155	9,122	14,277
Agricultural, forest workers	674	139	813
Mineral and metal industry	13,540	595	14,135
Chemical industry	12,597	2,365	14,962
Food and beverage industry	1,123	393	1,516
Garments, and accessories manufacturing industry	1,557	2,260	3,817
Wooden furniture industry	1,516	155	1,671
Stone cutting and carving industry	272	9	281
Machinery manufacturing and repair industry	19,730	3,662	23,392
Electrical and electronic machinery equipment manufacturing	3,767	752	4,519
Construction industry	12,623	45	12,668
Printing and publishing industry	10,390	1,070	11,460
Transport industry	2,909	35	2,944
Processing in manufacturing	49,486	2,713	52,199
<b>Total</b>	<b>140,104</b>	<b>24,943</b>	<b>165,047</b>

TABLE 36  
NUMBER OF CONTRACT MIGRANT WORKERS WHO HAVE DEPARTED  
(By education)

	Number of migrant workers		Total
	Male	Female	
Primary school	102,167	16,068	118,235
High school	30,190	6,393	36,583
Vocational school	2,135	420	2,555
Higher vocational school	2,541	555	3,096
Graduated	3,055	1,505	4,561
Other	16	1	17
<b>Total</b>	<b>140,104</b>	<b>24,943</b>	<b>165,047</b>

TABLE 37  
NUMBER OF CONTRACT MIGRANT WORKERS WHO HAVE DEPARTED  
(By age group)

Age group	Number of migrant workers
21-25	23,825
26-30	45,788
31-35	45,832
36-40	33,376
41-45	16,226
<b>Total</b>	<b>165,047</b>

# VIET NAM

## 1. Government Labour Migration Structure

1. The Government of the Socialist Republic of Viet Nam
2. The Ministry of Labour, Invalids and Social Affairs (represented by the Department of Administration for Foreign-employed Labour Forces)
3. The Ministry of Foreign Affairs
4. The Ministry of Public Security
5. The Ministry of Finance
6. The Ministry of Planning and Investment
7. The Ministry of Health
8. The Ministry of Trade
9. The State Bank of Viet Nam

Please refer to the Annex for information on the organization and functions of the bodies in charge of labour migration.

## 2. Labour Migration Statistics

The number of contract migrant workers in 2002:

Please refer to Table 39 in the Annex.

TABLE 38  
TOP FIVE COUNTRIES AND TERRITORIES OF DESTINATION  
FOR CONTRACT MIGRANT WORKERS OF VIET NAM IN 2002

Country/Region	Number of Migrant Workers
Malaysia	19,900
Taiwan	13,200
Laos	9,100
Japan	2,200
South Korea	1,200
Others	600
<b>Total</b>	<b>46,200</b> <b>(including 10,600 female workers)</b>

### 3. Legislation

Migrant workers are known in Viet Nam as workers who work abroad for a definite time.

Viet Nam does not have a consolidated law on labour migration yet.

Labour migration is stipulated in the Labour Code, promulgated in 1994 and amended in 2002, as well as in other legal documents, as follows:

- Government Decree No. 152/1999/ND-CP of September 20, 1999, guiding the implementation of the Labour Code's regulations on the sending of Vietnamese workers abroad to work for a definite time.
- Circular No. 28/1999/TT-LDTBXH of November 15, 1999, providing guidance for the implementation of the Decree No. 152/1999/ND-CP.
- Decree No. 05/2000/ND-CP of March 3, 2000, on exit and entry of Vietnamese citizens.
- Government Decree No. 12/1995/ND-CP of January 26, 1995, on promulgating the Social Security Regulation.

In order to implement the amended Labour Code approved by the National Assembly, the Ministry of Labour, Invalids and Social Affairs (hereinafter referred to as MOLISA) has drafted a new Decree on migrant workers and submitted it to the Government to replace Decree No. 152/1999/ND-CP.

### 4. Protection of workers

**Measures taken to regulate the recruitment of workers to work abroad for a fixed term are as follows:**

- Strict compliance with the regulations of the Labour Code, Decree No. 152/1999/ND-CP and the guiding documents issued by MOLISA and its Department of Administration for Foreign Employed Labour Forces (hereinafter referred to as DAFEL);
- Recruit workers directly and not through intermediaries in order not to increase the cost for workers and to reduce the incidence of being deceived;
- Close coordination with local authorities and workers' families throughout the recruitment process;
- To protect workers from being exploited by domestic recruitment agencies, the Government stipulates that the enterprises engaged in the placement for overseas employment are only permitted to collect a service fee to pay for sending workers abroad, and that the fee must be made public.

### **Pre-departure training and orientation for migrant workers:**

- Migrant workers are trained in the foreign language and the activities they will perform in the country of destination.
- Migrant workers are provided with an orientation session on the host country's laws, and customs related to working and living conditions, residence, and transport.
- A training course is provided for migrant workers to improve their vocational skills with the aim of meeting the requirements in the worker supply contract signed with each host country.
- As to certain markets (host countries), the migrant workers receive assistance in the form of a training fee.

### **Supporting migrants facing problems in the destination countries:**

The representative agency of Viet Nam in the destination country and sending enterprises are responsible for protecting the legal rights of workers. These organs, together with their counterpart and agencies concerned in the destination country, assist the workers in solving their administrative and economic difficulties in a timely manner.

### **Welfare fund for migrant workers:**

At the moment, migrant workers are responsible for paying social insurance in order to enjoy welfare benefits after leaving the destination country. It is expected that the assistance fund for migrant workers will be set up in the near future (as stipulated in the Labour Code, amended in 2002) with the aim of developing overseas labour markets, improving Vietnamese workers' quality, as well as offering support to the enterprises and workers during their work abroad.

## **5. Foreign Market Development, Remittances, Return and Reintegration**

### **Measures taken to expand Viet Nam's labour migration:**

- Amend and supplement the existing policy of labour migration with a view to creating favourable conditions for both enterprises and workers to seek and promote overseas employment, strengthen the administration of government agencies, enhance the financial ability and the workers' capacity of sending enterprises. These measures are aimed at increasing the effectiveness and competitiveness of labour migrants.
- Attach special importance to preparing workers for migration abroad, improve the quality of migrant workers in terms of foreign language abilities and professional and vocational skills.
- Regular inspections of the workplace for overseas employment to settle problems as they occur and to be able to intervene to prevent workers from being deceived and abused in a timely manner.

- Regular dissemination of information about guidelines, placement policies for overseas employment and labour markets, in order to raise the awareness of the society in general, and also of government branches, and enterprises.
- Cooperate with all countries willing to receive Vietnamese workers and promote the conclusion of agreements on labour cooperation with them.

### **Role of the private sector in expanding labour migration:**

Because it is a sensitive and new business, the placement of overseas workers is mainly carried out by State enterprises. The engagement of private enterprises in this business is at an experimental stage and will be expanded gradually.

### **Migrant workers' remittances:**

Most migrant workers come from rural areas and are not used to dealing with banks. Therefore, funds remitted via banks only represent one-third of all funds remitted.

### **Specific programmes and services to assist in the reintegration of returning migrant workers:**

Migrant workers find it easy to reintegrate into the economic market upon their return. Indeed, most of them have made savings, improved their vocational skills and have become accustomed to industrial working methods while overseas. The Government has also adopted a policy to encourage and assist migrant workers to seek a job and settle down once they return home.

The Government encourages those who have savings to set up their own small or medium-sized business. They are offered enterprise management courses and facilitated access to bank loans.

## **6. Inter-state cooperation and data collection**

### **Bilateral labour agreements:**

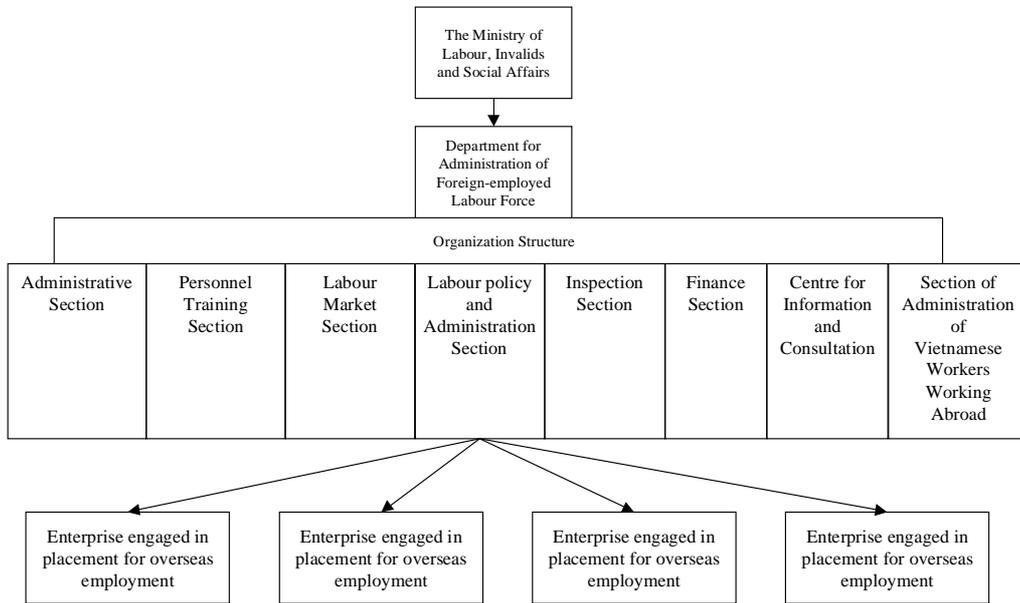
Viet Nam has signed agreements with other countries in order to mutually ensure the favourable treatment for migrant workers in the respective countries. These agreements also serve as the legal basis for the protection of migrant workers.

### **List of governmental bodies gathering data on labour migration:**

- The Department for Administration of Foreign-employed Labour Force (under MOLISA);
- The Department for Administration of Exit and Entry (under the Ministry of Public Security);
- The Department of Statistics;
- The Ministry of Planning and Investment.

# VIET NAM – ANNEX

## ADMINISTRATION OF LABOUR MIGRATION



GOVERNMENT AGENCIES IN CHARGE OF LABOUR MIGRATION

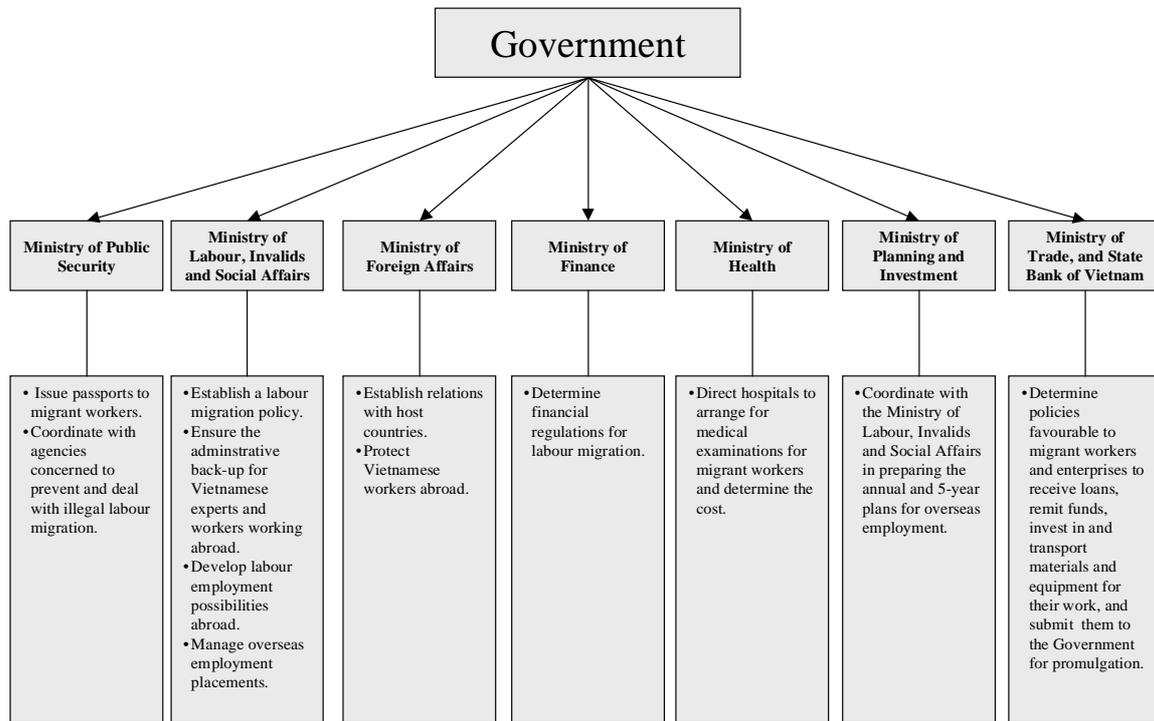
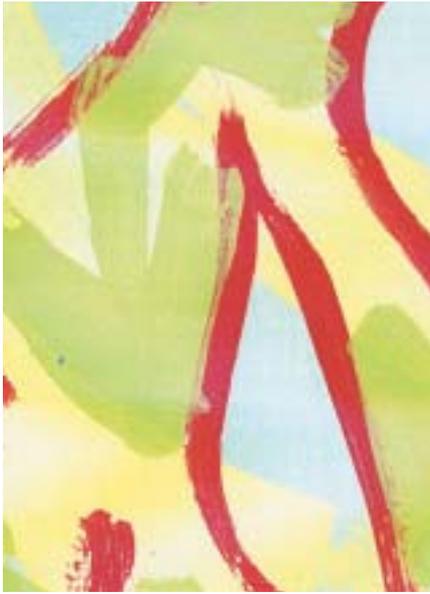


TABLE 39  
NUMBER OF VIETNAMESE MIGRANT WORKERS  
(Up to 16 December 2002)

Country/Region	Number of Migrant Workers	Female Worker
Taiwan	13,200	8,200
Japan	2,200	640
South Korea	1,200	20
Malaysia	19,900	1,460
Laos	9,100	250
Others	600	50
<b>Total</b>	<b>46,200</b>	<b>10,620</b>



## ***Labour Migration in Asia***

**Trends, challenges  
and policy responses  
in countries of origin**

**R**esponding to chronic labour shortages in the oil rich Arab states in the 1970s and 1980s, some Asian states have been among the first to develop an active overseas employment or labour migration policy that seeks to provide protection to its nationals working abroad, relieve domestic unemployment and augment foreign exchange earnings. This volume looks at recent trends in labour migration in Asia, the issues and challenges faced by migrants and countries of origin, and policy responses by the state.

The volume contains articles by labour migration specialists at the ILO, IOM and the APMRN (Asia Pacific Migration Research Network) and includes a compendium of labour migration policies and practices in nine major Asian labour sending states.

