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Issues of Armenia



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LABOUR MIGRATION IN ARMENIA: EXISTING TRENDS AND POLICY OPTIONS

International Organization
for Migration



**Ministry of Labour and Social
Issues of Armenia**

IOM Development Fund

*Developing Capacities in
Migration Management*



**International Organization for
Migration**

LABOUR MIGRATION IN ARMENIA: EXISTING TRENDS AND POLICY OPTIONS

REPORT ON NEEDS ASSESSMENT OF LABOUR MIGRATION MANAGEMENT IN ARMENIA

The Labour Migration Management Needs Assessment was conducted within the framework of the “Technical assistance to the Armenian Government to initiate labour migration arrangements” project funded by the **IOM Development Fund**

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FOREWORD

Mobility is an essential feature of today's world, and migrant workers are now an increasingly vital part of the global workforce.

IOM believes that organized and well-managed labour migration has enormous potential for Governments, communities, migrants, employers and other stakeholders in countries of origin and destination. While job creation at home is the first, best option, an increasing number of countries see international labour migration as an integral part of national development and employment strategies by taking advantage of global employment opportunities and bringing in foreign exchange. In countries of origin, labour migration can relieve pressure on unemployment and can contribute to development through the channelling of remittances, transfer of know-how, and the creation of business and trade networks. In countries of destination which face labour shortages, orderly and well-managed labour migration can lighten labour scarcity, facilitate mobility, and add to human capital.

To protect migrant workers and to optimize the benefits of labour migration for both the country of origin and destination, as well as for migrants themselves, clearly formulated labour migration policies, legislation and effective strategies are required.

International labour migration is a transnational phenomenon and cannot, therefore, be effectively managed or addressed only at the national level. It needs to also be addressed the bilateral, regional and international level.

Besides the global nature of labour migration and the increasing tendency of labour mobility worldwide, there are other factors that shape labour migration trends in Armenia. Armenians generally migrate due to economic reasons. This ongoing labour migration is not properly managed; as a result, the positive impact that migration can have is not being realised.

This report studies the management of labour migration (both immigration and emigration) in Armenia and suggests solutions for regulating various aspects of labour migration, such as protection of migrant worker's rights and interests, labour market trends and strategies, facilitated arrangements for labour migration, the development impact of migration, among others. The Report's recommendations suggest solutions for the implementation of Armenia's newly-adopted national strategy on migration management. This Needs Assessment was initiated at the request of the Armenian Government and conducted by the International Organization for Migration (IOM) in close coordination with Armenian bodies involved in migration management. It is expected to be followed by the development of detailed policies and regulations on the management of labour migration.

The report was funded by the IOM Development Fund, which provides special support to IOM's Developing Member States and Member States with Economy in Transition for the development and implementation of joint government-IOM projects to address particular areas of migration management.



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LIST OF ACRONYMS

AST	Advanced Social Technologies
BMIS	Border Management Information System
CIS	Commonwealth of Independent States
DH	Department of Health, United Kingdom
EU	European Union
ILO	International Labour Organization
IOM	International Organization for Migration
MoU	Memorandum of Understanding
NGO	Non-governmental Organisation
NHS	UK National Health Service
NSS	National Statistical Service of the Republic of Armenia
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
POEA	Philippine Overseas Employment Administration
RA	Republic of Armenia
SAWP	Seasonal Agriculture Worker Program, Canada
UAE	United Arab Emirates
UK	United Kingdom of Great Britain and Northern Ireland
USA	United States of America

INTRODUCTION

Emigration from Armenia – including labour emigration – is covered by a rather abundant literature.¹ On the other hand, few data, reports and doctrinal articles exist on immigration to Armenia – including labour immigration. Certainly, Armenia is predominantly a country of origin. More specifically, Armenian migrant workers are mostly male migrants, employed in the construction sector in Russia. However, Armenia also receives labour immigration flows, mainly from Iran. While labour immigration does not constitute the most salient character of Armenian society, when one considers the national labour migration policy, labour immigration appears to be a central issue. This can be explained – with the risk of oversimplifying a complex situation – by two factors: firstly, labour migration management is primarily labour immigration management; secondly, Armenia currently does not have the means to implement a labour immigration policy, due to the lack of applicable legislation.

Based on immigration data, literature and interviews with relevant stakeholders, this report has been conceived for the Armenian national authorities in response to their wish to receive concrete detailed propositions regarding labour migration management. The present report is to be read in conjunction with the 2008 *Review of Migration Management in the Republic of Armenia. Assessment Mission Report*. The current report builds on the 2008 report on a specific area of migration management, namely labour migration. It is divided into two parts, the first dedicated to labour immigration and the second to labour emigration. The main argument of the first part is that, to date, the issue of labour immigration in Armenia has been underestimated. The principal message of the report regarding labour immigration is the detailed and argued proposition of secondary legislation on labour immigration, based on international and European law. Regarding labour emigration policy, the purpose of the report is to provide detailed propositions for comprehensive policies, including protection activities, labour market strategies and the conclusion of bilateral arrangements.

¹ For example, ILO, *Migration and Development. Armenia Country Study*, ILO, 2009; Manke, M., *Enhancing Migration Data Collection, Processing and Sharing in the Republic of Armenia. Needs Assessment in the Republic of Armenia*, IOM, 2011; Minasyan, A., Poghosyan, A., Gevorgyan, and L., Chobanyan, H., *Return Migration to Armenia in 2002-2008*, AST, OSCE, 2008; Rossi-Longhi, P., Lindström, T., and Galstyan, K., *Review of Migration Management in the Republic of Armenia. Assessment Mission Report*, 2008; UNDP, *Migration and Human Development: Opportunities and Challenges. Armenia*, UNDP, 2009.

I. LABOUR IMMIGRATION IN ARMENIA: EXISTING TRENDS AND POLICY OPTIONS

A. LABOUR MARKET TRENDS AND THE QUESTION OF SHORTAGES IN THE NATIONAL LABOUR MARKET: THE NEED FOR RELIABLE DATA

I. Labour immigration flows and stocks

Data on immigration flows and stocks in Armenia exist but are limited, fragmentary, and not thoroughly analysed. Among the different sources of immigration data, the activities of the National Statistical Service of the Republic of Armenia (NSS) are central. They include population censuses, carried out every ten years, frequent household surveys, and specific studies, such as the *Report on Labour Migration in Armenia*, published in 2007.² Next to these statistical sources, there are a number of administrative sources of migration data, including information on visas and invitations granted to foreigners and information gathered at border crossing points, as well as registers of residence permits.

1.1. National Statistical Service of the Republic of Armenia

Despite the great variety of information gathered through population censuses, very few published data concern foreigners residing in Armenia. Data concerning foreigners are simply disaggregated by age, sex, and place of residence.³ Despite their limitation, population censuses remain reference documents in order to appreciate immigration trends in Armenia. The population census conducted in 2001 showed a very large predominance of Armenian nationals. The residual foreign population was primarily composed of Russian nationals (7,625), Georgian nationals (2,304), Ukrainian nationals (604) and Iranian nationals (595). A significant number of stateless individuals were also reported (see table 1 below).

² Kalantaryan, L., Kyumjyan, K., and Hovhannisyan, R., *Report, Labour Migration in Armenia. The Results of a Pilot Sample Survey*, NSS, ILO, 2007.

³ While the notion of change of place of residence is taken into account, it does not provide direct information regarding the length of stay of foreigners in Armenia. The criterion of change of residence does not distinguish between nationals and foreigners.

Table 1: The Division of De Jure Population by Country of Citizenship

Country of Citizenship, Duration of Residence, Sex Քաղաքացիության երկիրը, մշտ. բնակության տևողությունը, սեռը	Total Ընդամենը	AGE Տարիքը						
		0-9	10-19	20-29	30-39	40-49	50-59	60 and older 60 և ավելի
ՀՀ RA	3 213 011	454 603	639 054	490 148	448 851	487 662	233 909	458 784
Armenia Հայաստան	3 185 455	451 919	634 849	486 105	444 443	483 136	231 712	453 291
Georgia Վրաստան	2 304	138	484	493	306	334	163	236
Iran Իրան	595	43	96	97	137	89	65	68
Russia Ռուսաստան	7 623	1 307	1 151	1 125	1 347	1 330	559	804
Ukraine Ուկրաինա	604	110	57	119	131	79	31	77
USA ԱՄՆ	343	87	25	39	61	55	29	47
Other Այլ	2136	401	268	418	364	308	135	242
Without citizenship Քաղաքացիություն չունեցողներ	3 951	598	2 124	1 752	2 062	2 331	1 215	3 869
Dwelling population chpokhats*	2 355 594	426 313	567 866	391 289	322 391	302 582	122 790	222 363

Source: NSS, *Population Census 2001*.

As these data were collected ten years ago, they are likely to be obsolete. The results of the latest population census, conducted in October 2011, are therefore awaited with great interest. It is doubtful, however, that the 2011 census will provide more detailed information concerning foreigners in Armenia than the previous exercise. A specific study would, then, be welcome, based on the data collected during the 2011 census, and would present information such as the duration of stay of foreigners in Armenia, their family situation, the languages spoken, level of education, type of employment, episodes of unemployment, income, as well as elements related to the life conditions of foreigners in Armenia, including housing.⁴ The study would be an important contribution to the development of realistic and comprehensive migration policy in Armenia.

Household surveys are conducted on a regular basis. Their results are published several times a year. NSS also conducts studies with specific targets, such as the *Report on Labour Migration in Armenia*, published in 2007.⁵ This study, which focuses on the labour migration experiences of Armenian nationals, provides little information regarding labour immigration in Armenia. It simply mentions that the country's population is estimated to be composed of 98.7 per cent Armenians, 0.8 per cent foreigners and 0.5 per cent stateless persons.⁶ Beyond the confirmation of the residual presence of foreigners in Armenia, the 2007 study does not bring any further element that would be of direct use to the development of an immigration policy in Armenia.

⁴ All these elements will be available to NSS following the 2011 population census.

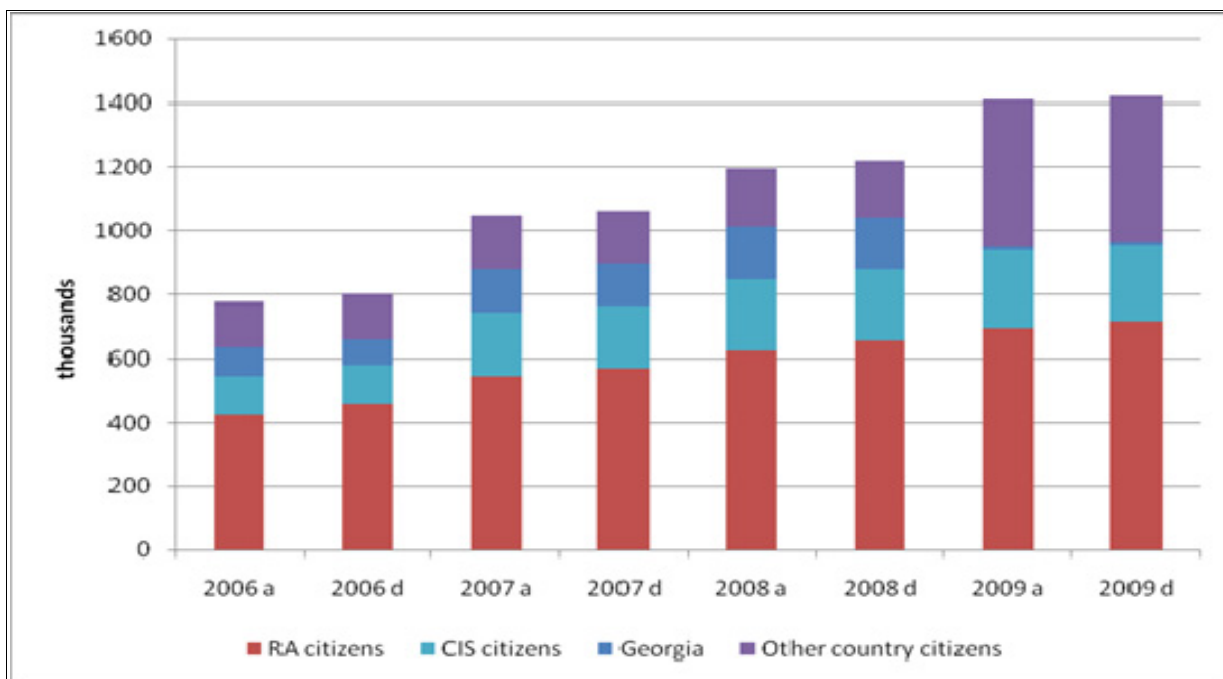
⁵ Kalantaryan, L., Kyumjyan, K., and Hovhannisyan, R., *Report, Labour Migration in Armenia. The Results of a Pilot Sample Survey*, NSS, ILO, 2007.

⁶ *Ibid*, p. 12.

1.2. Visas and invitations

Among the different categories of visas delivered by the Armenian authorities, the visit entry visa constitutes the category in which data concerning labour immigration can be found. According to the Law on aliens, art. 10-1.a, the visit entry visa is notably applicable to the following situations: family reunification, studies, and professional activities. With the exception of electronic visas (e-visas) – issued for 21 days and valid for entry at Yerevan international airport only⁷ – the data collection system does not allow for the disaggregation of information by type of stay.⁸ It must also be kept in mind that a significant proportion of foreigners come from countries that benefit from visa exemptions, mostly CIS countries (see Chart 1 below).

Chart 1: Recorded Arrivals (a) and Departures (d) by Citizenship, 2006-2009



Source: Manke, M., *Enhancing Migration Data Collection, Processing and Sharing in the Republic of Armenia. Needs Assessment in the Republic of Armenia*, IOM, 2011.

In addition, as there is currently no procedural link between the granting of a visa and the delivery of a stay permit authorising the exercise of professional activities in Armenia, no direct information on labour migration can be deduced from visa-related data. In sum, very little relevant information can be currently drawn from visa related data.

1.3. Border Management Information System

The Border Management Information System (BMIS) collects information on entry and exit of the country but does not – not yet – collect information on the purpose and the intended duration of stay in Armenia. In the context of labour migration management, its purpose is, therefore, limited at present.⁹

⁷ Rossi-Longhi, P., Lindström, T., and Galstyan, K., *Review of Migration Management in the Republic of Armenia. Assessment Mission Report*, 2008, p. 39.

⁸ Manke, M., *Enhancing Migration Data Collection, Processing and Sharing in the Republic of Armenia. Needs Assessment in the Republic of Armenia*, 2011, p. 33.

⁹ Manke, M., *Enhancing Migration Data Collection, Processing and Sharing in the Republic of Armenia. Needs Assessment in the Republic of Armenia*, IOM, 2011, p. 35.

1.4. Population registers

Population registers and, more specifically, registers held by the Police on residence permits contain data disaggregated by the type of permits – work, education, relatives, permanent, temporary, special – and the citizenship of the permit holder.

According to the Police registers, from 1 January 2008 to 31 May 2010, 9,452 temporary permits, 494 permanent permits and 3,981 special passports were granted. More specifically, the most recent data (15 February 2012) reveal that from 1 June 2010 to 31 December 2011, 6,314 temporary and permanent permits were delivered (see Table 2 below):

- 1,078 work-related temporary permits;
- 1,040 family-related temporary permits;
- 3,444 education-related temporary permits;
- 92 work-related permanent permits;
- 660 family-related permanent permits.

The Police registers also reveal that the vast majority of permits were granted to Iranian nationals, including for the purpose of employment and self-employment. It can also be noted that most permits are granted for study purposes.

Table 2: Permits delivered from 1 June 2010 to 31 December 2011

Nationality / region of origin	Temporary permits			Permanent permits		Total
	Work	Family	Education	Work	Family	
Bulgaria	21	7	2	1	3	34
China	25	1	13	2	0	41
France	45	23	10	4	6	88
Georgia	16	77	115	2	37	247
Germany	36	18	6	0	12	72
India	54	17	556	3	7	637
Iran	357	199	1700	53	89	2398
Italy	53	3	1	1	2	60
Lebanon	25	12	39	0	13	89
Philippines	25	2	0	0	0	27
Russia	42	349	505	2	237	1135
Syria	44	34	145	3	47	273
Turkmenistan	2	9	85	0	30	126
Ukraine	11	46	17	3	25	102
USA	128	71	42	4	64	309
Africa	15	3	1	0	1	20
Rest of America	38	7	5	5	14	69
Rest of Asia	39	35	84	0	13	171
Rest of Europe	96	91	84	9	51	331
Rest of Middle East	4	33	32	0	8	77
Stateless	2	3	2	0	1	8
Total	1078	1040	3444	92	660	6314
	5562			752		

Source: Police of Armenia, *Registers on permits*, 15 February 2012

While stay and residence permit registers constitute the most useful source of information on labour migration flows into Armenia, data remain brief and even misleading. It is important to underline the fact that the registers do not distinguish the granting of a first permit from the renewal of an existing permit. This means that the permit register does not allow for the measurement of the labour immigration stock. Moreover, data included in the registers do not include the type of profession held by the considered individuals and no information is available on the duration of stay of the individuals.

To a large extent, the lack of detailed information provided by the registers is due to the absence of implementation of the work permit/authorization regime foreseen by the Law on aliens.¹⁰ The adoption and implementation of relevant secondary legislation should therefore lead to a much better understanding of labour immigration trends in Armenia.

A further question concerning residence permit registers relates to the reliability of information: do the registers accurately reflect actual labour migration flows towards Armenia or can we reasonably conceive that a non-negligible number of migrants in an irregular situation are employed in Armenia and are therefore not covered by the registries? It is commonly argued that, in the absence of a functioning work permit/authorization regime, there is no obstacle for foreigners to obtain a stay permit authorising the exercise of a professional activity and, therefore, no interest for migrant workers and their employers in being in an irregular situation. It is, thus, generally considered that irregular migrant workers are rare in Armenia.¹¹ This however is only a presumption; it can also be argued that, in a country where the access of foreigners to the national labour market is not properly regulated, grey areas tend to develop “naturally”. For instance, Rossi-Longhi, Lindström, and Galstyan observe that “CIS citizens, who do not declare themselves after passing three months of stay in the country [...] are happy just to pay a fine at the moment of exit”.¹²

Regardless of their flaws, the Police registers show that, contrary to the common understanding, immigration to Armenia, including labour immigration, is far from being an insignificant issue.

2. Assessing labour shortages

While the presence of foreigners in the Armenian labour market is certainly limited, it is nevertheless existent. Despite the lack of detailed data in this regard, it is likely that migrant workers are employed in a variety of occupations, including high-skilled, as well as medium- and low-skilled jobs. As previously mentioned, it is a priority to gather more precise information on existing labour migration flows and stocks, including the type of occupations filled by migrant workers.

Another priority regarding the development of labour migration policy is the evaluation of potential labour shortages – present and future – within the Armenian economy and the identification of policy options to respond to such shortages. While a number of analyses of the

¹⁰ *Infra*, section I.B.1.1.

¹¹ Rossi-Longhi, P., Lindström, T., and Galstyan, K., *Review of Migration Management in the Republic of Armenia. Assessment Mission Report*, 2008, p. 19.

¹² *Ibid.*

national labour market have been conducted in recent years,¹³ to our knowledge, the potential existence of labour shortages does not appear to have been studied. This situation may be explained by the fact that the country experiences a high unemployment rate, estimated at 27.5 per cent in 2010 (see Table 3 below).¹⁴

Table 3: Distribution of employed and unemployed population by marzes, %

	Employed	Unemployed
Armenia	49.7	27.5
Yerevan	43.3	29.8
Aragatsotn	77.3	10.3
Ararat	62.5	17.4
Armavir	50.2	29.8
Gegharquniq	52.3	22.5
Lori	46.5	36.9
Kotayq	41.2	38.0
Shirak	43.0	37.6
Syuniq	64.3	17.2
Vayots Dzor	57.3	21.1
Tavush	68.4	11.0

Source: NSS, *Actual Unemployment Rate in Armenia. Household Survey Analysis*, 2010

By no means should the existence of a substantial level of unemployment be understood as an absence of labour shortages within the Armenian economy. Mismatches in the labour market are likely to create labour shortages that can coexist with high unemployment rates. Three types of mismatches are commonly identified: qualitative, regional, and preference mismatches. A qualitative mismatch (also known as a skills shortage) occurs when the qualification of workers do not meet the qualification profiles of vacancies. A regional mismatch occurs when unemployed persons and firms offering suitable jobs are located in different regions, and the jobs and/or workers are immobile. Finally, a preference mismatch describes the gap between the types of jobs that unemployed people are willing to take and the existing vacancies that are available.

While at present no reliable data exist on labour shortages, interviews conducted with a number of stakeholders tend to show that the three types of mismatches exist to some extent in Armenia. Qualitative mismatch can notably be identified by the fact that a number of top managerial positions cannot be filled within the national labour market. An example of regional mismatch

¹³ European Training Foundation, *Black Sea Labour Market Reviews. Armenia Country Report*, 2010; NSS, *Actual Unemployment Rate in Armenia. Household Survey Analysis*, 2010; Asian Development Bank and NSS, *The Informal Sector and Informal Employment in Armenia*, 2011.

¹⁴ NSS, *Actual Unemployment Rate in Armenia. Household Survey Analysis*, 2010, p. 28.

concerns the case of medical doctors in a number of marzes. Preference mismatches have also been identified by the Chamber of Commerce and the Ministry of Economy. Beyond these first impressions, there is a need to collect large scale and reliable data on labour shortages in Armenia.

Among the different methods to estimate and project labour shortages, employment surveys constitute a common practice, which nevertheless has its limits as employers often have overambitious expectations that limit the predictive potential of the surveys. Additional research into specific labour sectors can be undertaken by public authorities. It is important in this context to consider shortages in occupations that may be less visible, such as care work, hospitality, catering, and domestic work.

Conducting research on labour shortages within the Armenian economy is important when developing labour migration policy. It must however be stressed that migration is but one policy option for responding to labour shortages. Possible responses that do not imply migration may notably rely on education and vocational training, increasing capital or technology intensity of the production process, development of incentives to reduce regional mismatches, etc.

B. LABOUR MIGRATION POLICY: TOWARDS THE REGULATION OF LABOUR IMMIGRATION IN ARMENIA

1. Entry, stay and residence of migrant workers

1.1. The current situation: a de facto laissez-faire policy

At present, the regime of admission, stay and residence of foreigners for the purpose of salaried employment set by the Law on aliens 2006 is not implemented, due to the lack of relevant secondary legislation.

Entry of migrant workers on the national territory is by principle subject to the obtainment of a visit entry visa (Law on aliens, art. 6-1; 10-1) valid for a maximum period of 120 days (Law on aliens, art. 9-1),¹⁵ or a residence permit (Law on aliens, art. 6-1). By exception, nationals from a number of states – mainly CIS countries – are waived of the entry visa requirement (Law on aliens, art. 7).¹⁶

Visas are either issued by consular and diplomatic posts abroad or at border entry points by the Representation of the Police Passports and Visas Department (Law on aliens, art. 10-3). By exception, nationals from a number of states are requested to apply for a visa abroad and to present an invitation produced by an individual residing in Armenia (national or foreigner), a legal entity registered in Armenia, Armenian public authorities, embassies and consulates accredited in Armenia, or international organizations (Law on aliens, art. 9-4; 11-1).¹⁷

¹⁵ Art. 9-1 foresees the possibility to extend a visa's period of validity by 60 days "unless provided otherwise by this Law or by the international agreements of the Republic of Armenia".

¹⁶ Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, the Russian Federation, Tajikistan, Ukraine, and Uzbekistan.

¹⁷ The list currently includes 24 countries: Afghanistan, Algeria, Bangladesh, Cameroon, Cote d'Ivoire, Egypt, Ghana, Iraq, Libya, Mauritania, Morocco, Nepal, Niger, Nigeria, Pakistan, Palestine, Saudi Arabia, Sierra Leone, Somalia, Sri Lanka, Sudan, Syria, Tunisia, Viet Nam. For more information see <http://www.mfa.am/en/visa> and <http://www.armeniaforeignministry.com/consular/visa.html>.

The stay of foreigners beyond a visa's period of validity is subject to the granting of residence status. The Law on aliens distinguishes between three types of residence status and corresponding permits: temporary residence status (materialized by issue of a temporary residence card); permanent residence status (materialized by issue of a permanent residence card); special status (materialized by issue of a special passport). Residence permits are granted by the Police. Applications for residence permits are generally done in the country (Law on aliens, art. 14; 17; 18).¹⁸ The temporary residence card is delivered for a period not exceeding one year – renewable – for the following purposes: education; employment; marriage with an Armenian national or with a foreigner residing legally in the country; family reunification with close relatives (parent, brother, sister, spouse, grandmother, grandfather, grandchild) of an Armenian national or a foreigner holding a permanent residence status in Armenia; entrepreneurship (Law on aliens, art. 15). The permanent residence card is issued for a (renewable) period of five years to close relatives (parent, brother, sister, spouse, grandmother, grandfather, grandchild) of Armenian nationals residing in the country; upon condition of financial resources; after three years of regular stay in the country; or to foreign entrepreneurs (Law on aliens, art. 16). The special passport is issued for a (renewable) period of 10 years to foreigners of “Armenian extraction” as well as in other instances left to the discretion of the competent authorities (Law on aliens, art. 18-1).¹⁹

By principle, the exercise of a salaried activity in Armenia is subject to the delivery of a work permit. Following the Law on aliens, art. 22-2, the decision on the granting of a work permit “takes into account the needs and the developments in the labour market of the Republic of Armenia”. It is only when no Armenian worker suitable for a job can be identified on the national labour market by the National Employment Services that an employer may engage a migrant worker (Law on aliens, art. 22-3). The work permit is granted for a period not exceeding one year and can only be renewed once, following the same conditions and procedure as for the first issuance (Law on aliens, art. 24-2). A fee is to be charged to employer for the delivery of the permit (Law on aliens, art. 24-3). In case of rejection of a work permit, a court appeal can be made by the considered foreigner within five days following the decision (Law on aliens, art. 26). The Law on aliens, art. 27-2 provides for the possibility of the migrant worker to change employer, provided that “the new employer has received the agreement of the authorized body”.

In a number of cases, foreigners can be employed in Armenia without holding a work permit. This is notably the case of those who have been granted a permanent or a special residence status, as well as the spouse of an Armenian citizen or a foreigner residing legally in Armenia, and the close relatives (parent, brother, sister, spouse, grandmother, grandfather, grandchild) of an Armenian national or a foreigner holding a permanent residence status in Armenia (Law on aliens, art. 23).

At this stage of the evaluation of the employment regime of foreigners, a few observations can be made:

- in principle, the exercise of a salaried activity by a foreigner requires the delivery of two permits: a work permit and a temporary residence card;
- the procedure for the granting of a work permit is initiated by the employer. The work permit is then delivered to the migrant worker, not to the employer;

¹⁸ By exception, the special passport can either be applied for in the country or abroad, before consular and diplomatic posts (Law on aliens, art. 18).

¹⁹ As stated by art. 18-1, “A special residence status can also be granted to other aliens involved in economic activities in the Republic of Armenia”.

- the Law on aliens provides for the implementation of a labour market test;²⁰
- while no specific authority is identified by the Law on aliens for the granting of the work permit, the law requires the involvement of National Employment Services in the procedure (conducting the labour market test).

Due to the lack of secondary legislation detailing the procedure and conditions for the granting of a work permit, the regime described in the Law of aliens, chapter 4, is not implemented. The labour market test foreseen in the law is not applied and, in practice, the Police provides temporary residence cards for the purpose of employment whenever a potential migrant worker is sponsored by an employer. In other words, the access of foreigners to the national labour market is neither controlled nor regulated. The national labour market is totally open to foreigners – with the exception of jobs reserved for Armenian nationals, such as public administration. It is a priority to adopt and implement as soon as possible secondary legislation on the work permit system.²¹

1.2. The Law on aliens in a comparative perspective: experiences from EU Member States

1.2.1 Labour market test and quota system

Regardless of the type of immigration policy developed by the state, the designation of the need for foreign workers generally relies on a choice between two different tools: the labour market test and the quota system. The labour market test serves to ascertain whether there are local workers available, either by requiring employers to advertise the position for a set period of time, or to demonstrate that they have taken active steps towards recruiting local workers, or both. The majority of EU Member States apply the labour market test. While being a more simple system to implement than the quota system, the labour market test is not free of disadvantages. The system is generally criticised for being slow, especially in the context of increased competition for high-skilled workers in the international labour market. An additional tool, known as occupational shortage lists, can complement the labour market test in order to speed up the system. Occupational shortage lists constitute a derogation to the labour market test for a number of professions where a shortage has been identified. In other words, the labour market test is not conducted with regard to those specific occupations included in the occupational shortage list. Occupational shortage lists are in place in countries such as France, Norway, Spain and the UK.

Quotas can be defined as fixed numerical limits for the admission of migrant workers in a country. They can either be set as an actual fixed number of migrant workers to be admitted or as a percentage of the total labour force. Quotas are mainly developed on an annual basis and are established in accordance with an estimate of the labour demand for the oncoming year. Quotas are normally established at the central level of the government, in coordination with different stakeholders: employers, trade unions, regional authorities, etc. Quotas generally distinguish between different regions, industries and employment sectors and can also set maximum ratio of foreign workers in individual firms. Quotas have the advantage of providing a clear reference framework on the admission of foreign labour to politicians, administrations, employers, and the general public. On the other hand, quotas have been criticised for their lack of flexibility and difficulty in responding to fluctuating labour needs. In addition, it must be noted that the establishment of a quota system is a more of a complex task than that of a labour market test system.

²⁰ *Infra*, section I.B.1.2.1.

²¹ Several drafts of secondary legislation on work permits were circulated in 2008 without success.

In the Armenian context, given the limited character of labour immigration flows, it is rational to choose the most simple tool to designate the need for foreign workers, namely, the labour market test system. Such is the approach followed in the Law on aliens.

1.2.2 Admission, stay and residence of migrant workers: the EU *acquis* and the practice of EU Member States

At present, EU law concerning the admission, stay and residence of third-country nationals remains limited.²² However, two major directives have been adopted in this field: Directive of 2003/109/EC concerning the status of third-country nationals who are long-term residents and Directive 2003/86/EC on the right to family reunification.²³ The present section will concentrate on the former while the second will be discussed *infra*.

The long-term residence status recognised by Directive 2003/109/EC is granted to third-country nationals who have resided legally and continuously for five years within the territory of an EU Member State, upon condition of stable and regular resources. According to the Directive, art. 8, the status granted is permanent and is certified by a long-term EC residence permit valid for at least five years and automatically renewable upon expiry. Long-term residents shall enjoy equal treatment with nationals with regards to access to employment and self-employment, education and vocational training, recognition of professional diplomas, certificates and other qualifications, social security, social assistance and social protection, tax benefits, access to goods and services, freedom of association and affiliation and membership, as well as free access to the entire EU territory.

In addition to the Directive on long-term residents, and despite important differences between the legislation of the different EU Member States, common trends are significant enough for a general overview of admission, stay and residence of migrant workers in the EU to be presented:

- EU Member States require either a single permit to reside and work or two separate permits – a residence and a work permit;
- applications for admission are usually made outside the considered country in response to a formal job offer;
- admission is in most cases granted after application of a labour market test;
- work permits (or residence permits including a work authorization) are granted to the worker – not to the employer;
- initial work permits/authorizations are often tied to a specific professional field, sometimes a specific region;
- permits are time-limited (generally for a maximum of one or two years) but renewable. Conditions and procedure of renewal are generally similar to that of first granting.

Globally, the work permit system foreseen in the Armenian Law on aliens is close to the Labour migration policies in place in the EU. In number of cases however, the Law on aliens not only derogates from the EU *acquis* and the common practice of EU Member States, but also from a number of international law norms, notably expressed by ILO Convention No. 143. This will be discussed in detail in the next section.

²² In the context of EU law, the notion of third-country national refers to the citizen of a non-EU Member State.

²³ In addition to the directives on long-term residents and family reunification, three directives concerning legal immigration have been adopted: Directive 2004/114/EC on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service; Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purpose of scientific research; Directive 2009/50 EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

1.3. Proposal for a detailed admission, stay and residence regime for migrant workers in Armenia

This section includes a detailed proposal of the elements that could form part of secondary legislation on admission, stay and residence of migrant workers in Armenia.

For the most part, the proposed conditions and procedures conform to the Law on aliens. However, in a number of situations, amendments to the Law on aliens are suggested. This is due to three factors: firstly, the need to respect international law obligations, including ILO Migrant Workers (Supplementary Provisions) Convention No. 143, (1975);²⁴ secondly, the wish expressed by the Armenian government to develop legislation conforming to EU standards; thirdly, the need for efficiency and realism in the development of labour immigration policy.

The main suggested amendments to the Law on aliens are the following:

- The proposal recommends the adoption of a single temporary residence card that includes a work authorization rather than the two permits system – work permit and residence card – foreseen by the Law on aliens. It must be underlined that most existing provisions concerning the work permit would remain applicable in the context of the present proposal.
- The proposal recommends a number of slight changes to the labour market system currently foreseen in the Law on aliens.
- The proposal recommends that the temporary residence card shall be applied for – and granted – outside the country. In other words, the temporary residence card for the purpose of employment would not only serve as a title for residence and work in Armenia, but also as a title to enter the country, i.e. no visa would then be required.
- The proposal recommends that the work authorization – currently the work permit – should be renewable on more than one occasion.
- The proposal recommends that permanent residence status should really be permanent, while the permanent residence card would be delivered for a period of five years with a right of renewal.
- The proposal recommends slight changes to the regime of appeal of decisions rejecting work authorization applications – currently work permit.

In sum, the proposed procedure globally follows the spirit – if not the letter – of the Law on aliens. It is composed of two distinct phases: firstly, the application and granting of a work authorization upon request of the employer; secondly, the application and granting of a temporary residence card authorising the exercise of a salaried activity upon request of the worker.

1.3.1. Work authorization

This proposal recommends that the admission of migrant workers in Armenia shall essentially be subject to the granting of a work authorization. In turn, the granting of the work authorization shall essentially be subject to the application of a labour market test. The labour market test shall be the main tool to control and regulate the admission of foreign workers, or, in other words, their access to the national labour market. This approach is in line with the system set in the Law on aliens. However, the notion of work authorization is to be distinguished from the notion of work permit. While the purpose of both is similar, the work authorization does not constitute a separate document granted to the migrant worker. In the present proposal, it is suggested that the work authorization is actually materialized by a temporary residence permit including the following title: salaried employment.

²⁴ ILO Convention No. 143 was ratified by Armenia on 27 January 2006. It can be noted that Armenia also ratified ILO Migration for Employment Convention (Revised) No. 97 (1949) on the same date.

In principle, every foreigner seeking employment in Armenia shall obtain a work authorization. Exceptions to this principle are acceptable. Such exceptions are currently set out in the Law on aliens, art. 23.²⁵ While in most cases these exceptions appear to be well-funded, exceptions related to the family reunification regime are sometimes unclear.

In addition, the principle of the work authorization does not prevent the existence of a list of occupations – mainly in the public administration – reserved for Armenian nationals. This is mentioned in the Law on aliens, art. 25-b.²⁶

1.3.1.1. Conditions of delivery of a work authorization

The present proposal recommends that the delivery of a work authorization shall be subject to three main conditions:

- application of the labour market test;
- respect of the Labour Code and the Law on aliens by the employer;
- employment and salary-related conditions.

Application of the labour market test

According to the Law on aliens, art. 22-3, the purpose of the labour market test is to protect the employment of Armenian nationals.²⁷ This conception of the labour market test is much too narrow and misses the point. The labour market test should not only protect Armenian nationals but, more generally, the national labour market, which includes Armenian nationals as well as foreigners legally residing in the country and authorized to work. It must be noted that foreigners are entitled to access employment services on an equal basis with nationals.²⁸ Moreover, the labour market test

²⁵ Law on aliens, art. 23: “The following entities shall be entitled to work in the Republic of Armenia without a work permit: a) those holding a permanent and special residence status of the Republic of Armenia, as well as those holding a temporary residence status of the Republic of Armenia with the grounds stated in Article 15/1/d) of this Law; b) those holding a temporary residence status of the Republic of Armenia with the grounds stated in Article 15/1/c) of this Law for a period not exceeding the residence period; c) family members of officials of diplomatic representations and consulates accredited in the Republic of Armenia and international organisations and their representations, based on the principle of mutuality; d) employees of the border areas and the persons of cultural and sports professions arriving for a short period; e) founders, directors or authorised representatives of commercial organisations with foreign capital; f) employees of commercial organisations of a foreign state, to work in the representations of such organisations based in the Republic of Armenia; g) foreign specialists arriving for a period of no longer than 6 months to train the employees on installation, repair and operation of the machinery, equipment and machine tools shipped by a foreign commercial organisation to their branch office or representation or procured from foreign commercial organisations; h) specialists or other persons arriving based on the international agreements of the Republic of Armenia; i) instructors of foreign educational institutions invited to deliver lectures at the educational institutions of the Republic of Armenia; j) accredited representatives of foreign organisations engaged in mass media activities; k) aliens holding a refugee status and having acquired political asylum in the Republic of Armenia and stateless persons, for a period not exceeding the residence period; and l) students doing work under work exchange programs during the holidays, based on respective international agreements”.

²⁶ Law on the aliens, art. 25: “Granting a work permit shall be rejected where: [...] b) a citizenship of the Republic of Armenia is required by the laws of the Republic of Armenia to perform the work”.

²⁷ Law on aliens, art. 22-3: “To assess the needs of the labour market of the Republic of Armenia, a time period shall be established for the employer by the decision of the Government of the Republic of Armenia, during which he/she shall fill vacancies available to himself/herself by citizens of the Republic of Armenia. Upon lack of recommendation of a candidate by the national employment services meeting his/her requirements within the established period, the employer may find an alien meeting such requirements and apply to the authorised body for the provision of a work permit to a concrete alien employee for a concrete period, submitting the necessary documents established by the decision of the Government of the Republic of Armenia”.

²⁸ See ILO Convention No. 143, art. 10, as specified by corresponding ILO Recommendation No. 151.

currently envisaged by the Law on aliens may lead to absurd situations such as importing migrant workers when foreigners already residing in Armenia can fill the considered positions. The Law on aliens, art. 22-3, should be amended accordingly and secondary legislation should reflect this amendment.

At present, the labour market test foreseen by the Law on aliens, art. 22-3, primarily relies on the capacity of National Employment Services to identify a satisfying candidate within the national labour market. For the purpose of efficiency, it would be beneficial to impose on the employer a more active role. It is recommended that the employer should not only present a vacancy notice to National Employment Services but also to other existing and relevant placement agencies.

The proposal also recommends that, when applying the labour market test, the competent authority takes into account the efforts undertaken by the employer to fill the position within the national labour market. In addition, the competent authority should take into account available data concerning the labour market situation for the considered occupation in the considered region.²⁹ It is only when there is a significant gap between the labour offer and demand that the competent authority may refuse the delivery of the work authorization on this second ground.

In case of a specific identified labour shortage, a derogation to the labour market test should be possible, following the model of occupational shortage lists. At present this would mainly concern top managerial positions.³⁰

Respect of legislation by the employer

Violations of the Labour Code, as well as the Law on aliens, by the employer should be a possible ground to refuse a work authorization. Such a provision is partially covered by the Law on aliens, art. 25-a-d-f.³¹

Work and salary conditions

Migrant workers' work and salary conditions – as stipulated in their work contracts – have to be equal to those granted to nationals. Violations of this principle by the employer should be a possible ground to refuse the delivery of a work authorization or to impose a revision of the employment contract.

The proposal recommends that the competent authority verifies the different aspects of the work and salary conditions including the nature of the work contract, the duration of work (per day and per week) and the salary level. More specifically, a comparison of the proposed work and salary conditions with those enjoyed by the current employees of the employer shall be taken into account in order to avoid any type of discrimination.

²⁹ The legal basis for the implementation of such a condition can be found in the Law on aliens, art. 25-a.

³⁰ In the absence of studies of labour shortages in Armenia, this assessment is based on interviews with different stakeholders, including the Ministry of Labour and Social Issues, the State Migration Service at the Ministry of Territorial Administration and the Chamber of Commerce and Industry of Armenia.

³¹ Law on aliens, art. 25: "Granting a work permit shall be rejected where: a) the situation of the labour market of the Republic of Armenia, based on the serious analysis thereof, does not allow the work; [...] d) the employer who the alien is to work for has previously breached the requirements for recruiting aliens; [...] f) the employer lacks a license for an activity requiring licensing".

1.3.1.2. Procedure of delivery of a work authorization

Work authorization shall either be delivered by the State Employment Service of the Ministry of Labour and Social Issues or the State Migration Service of the Ministry of Territorial Administration. The procedure shall be initiated by the employer, in conformity with the Law on aliens, art. 22-3.

The proposal recommends that, in the first instance, the employer shall look for candidates to fill the vacant position within the national labour market. If the efforts of the employer are unsuccessful, he/she shall present a request for a work authorization to the relevant authority (to be determined). The request shall include the following elements and documents:

- a work contract concluded with the potential migrant worker;
- a commitment to pay an administrative fee (as foreseen by the Law on aliens, art. 24-4);
- the employer's firm's registration documents;
- a cover letter explaining the difficulties to recruit a candidate within the national labour market and justifying the choice of the selected migrant worker;
- elements and documents establishing the researches undertaken to fill the position within the national labour market;
- curriculum vitae and diplomas of the migrant worker.

If the work authorization is approved, a copy of the file shall be sent to the Police Department and to the competent consular or diplomatic post.

1.3.1.3. Content of the work authorization

As foreseen by the Law on aliens, art. 24-2, the work authorization shall be valid for the duration of the work contract, and, in any case, for a period not exceeding one year.

The work authorization may limit the employment of the migrant worker to a specific employment sector and/or a specific region.³²

The work authorization should not limit the employment of the migrant worker by a single employer. The migrant worker should, on the contrary, be authorized to change employer during the period of validity of the work authorization. This possibility is foreseen by the Law on Aliens, art. 27-2.³³ However, this provision is rather unclear. For instance, it may imply that the possibility to change employer is restricted to cases in which the employment contract has been terminated by the employer. If such is the case, the approach of art. 27-2 is too narrow. The possibility to change employer should be offered regardless of the party – employer or worker – that ends the contractual relationship. In addition, art. 27-2 submits the possibility to change employer to the delivery of an “agreement” to the new employer. This provision lacks clarity. The present proposal recommends the following regime to be applied in case of change of employer. In case of an employment/regional limitation set by the work authorization:

- if the new position is in conformity with the limitation, no specific procedure/conditions should be imposed;
- if the new position is outside the framework of the limitation, the new employer shall apply for a new work authorization, following the aforementioned procedure, including the application of the labour market test.

³² Such limitations should not be permissible after the second renewal of the work authorization.

³³ Law on aliens, art. 27-2: “Upon termination of the activities of the employer the alien employee shall be entitled to enter into a new work contract/service contract with another employer for the period of the rest of the effect of the work permit, where at least three months are left to the expiry of the said period, and the new employer has received the agreement of the authorised body”.

- the new work authorization shall be valid for the duration of the work contract, and, in any case, for a period not exceeding one year.
- when the work authorization does not include any type of restriction, no specific procedure/condition should be imposed.

1.3.1.4. Renewal of the work authorization

The procedure and conditions for the renewal of a work authorization shall globally be the same as for the first granting.

It is suggested that the main distinction between the first granting of a work authorization and its renewal should concern the application of the labour market test. The initial work authorization is subject to employment/regional restrictions:

- if the occupation is in conformity with the restrictions, there should be no need to conduct a new labour market test, even in the case of change of employer;
- if the occupation is outside the restrictions, a labour market test should be conducted.

The objective of such a provision is to find a balance between economic concerns and the need to protect the rights of migrant workers and, therefore, to limit the precariousness of their situation. Naturally, following this logic, when the work authorization does not include any type of restriction, no labour market test should be conducted within the renewal procedure.

Until an amendment was adopted in 2010, the Law on aliens only considered a single extension of the work permit. In other words, employment of foreigners in Armenia was limited to a period of two years. The current Law on aliens does not limit the number of renewals of work permits. This is a sound decision, firstly, for economic reasons – as it is not in the interest of employers to be forced to let their foreign employees leave after two years as it would imply the loss of investment in training – secondly, for political reasons as it complies with EU legislation, and thirdly for human rights reasons, as it authorizes the integration of foreigners into Armenian society. However, it must be highlighted that, in application of ILO Convention No. 143, art. 14, any restriction to the full access of migrant workers' to the national labour market shall be erased upon the second renewal of the work authorization – at the latest. This constitutes an important provision that needs to be reflected in the relevant secondary legislation.

1.3.1.5. Rejection of a work authorization and appeal of the decision

A work authorization's application that does not meet the conditions of its delivery is to be rejected. In the present proposal, this would primarily include the following cases:

- a lack of satisfying efforts undertaken by the employer to fill the available position within the national labour market and/or existence of data showing a significant gap between the labour supply and demand in the considered region;
- non-respect by the employer of the Labour Code and/or the Law on aliens;
- non respect by the employer of the migrant worker's work and salary conditions.

At present, the Law on aliens, art. 25, lists six cases in which the work permit shall be rejected.³⁴ It must be underlined that the inclusion of such a mandatory list in the legislation is proving to be a

³⁴ Law on aliens, art. 25: "Granting a work permit shall be rejected where: a) the situation of the labour market of the Republic of Armenia, based on the serious analysis thereof, does not allow the work; b) a citizenship of the Republic of Armenia is required by the laws of the Republic of Armenia to perform the work; c) the required information or

difficult task. It is very likely that a number of conceivable grounds of rejection are going to be left out of the list. It is noticeable, for instance, that art. 25 does not mention the rejection of the application when the documents supporting it are not complete, or the rejection of an application for renewing a work authorization when the migrant worker does not hold a valid temporary residence card.

Two alternative suggestions can be presented. Firstly, art. 25 could be amended in order to extend the list of grounds for rejection. As previously mentioned, this constitutes a difficult task. Secondly, art. 25 could be suppressed and replaced by an administrative circular mentioning the list – and its non-exhaustive character – in order to guide the activities of the authority in charge of delivering work authorizations.

Concerning the appeal against the decision to reject a work authorization's application – currently a work permit – the Law on aliens, art. 26, provides for the appeal by the considered foreigner within five days following the decision. This provision leads to two remarks and suggestions. As both the employer and the foreigner have an interest in the decision, and given the fact that the employer is the one applying for the work authorization, it would be reasonable to extend the right of appeal to both the foreigner and the employer. Moreover, the period of five days appears to be extremely brief in order to present a case before a court. The proposal recommends to extend this period to a minimum of 15 days.

1.3.2 Residence card

1.3.2.1. Temporary residence card

It is recommended that migrant workers be granted a temporary residence card including the following title: salaried employment.

The temporary residence card shall be delivered by the Police Department, as stated by the Law on aliens, art. 17.

Application for the temporary residence card “salaried employment” should be made abroad by the potential migrant worker, either before the competent consular or diplomatic post, or directly to the Police Department. Currently, the Law on aliens foresees that the temporary residence card for the purpose of employment is to be applied for within the territory of Armenia. Such a procedure does not allow for a proper regulation and control of the admission of foreigners into the national labour market.³⁵ Moreover, it does not comply with standards applied across the EU. The Law on aliens should be amended accordingly and secondary legislation should reflect this amendment.

It is only when the work authorization has been delivered that the potential migrant worker may apply for a temporary residence card “salaried employment”. The file should include the following elements and documents:

- a specific filled-in form;

documents are faked; d) the employer who the alien is to work for has previously breached the requirements for recruiting aliens; e) there are reasons threatening the national security of the Republic of Armenia; and f) the employer lacks a license for an activity requiring licensing”.

³⁵ Rossi-Longhi, P., Lindström, T., and Galstyan, K., *Review of Migration Management in the Republic of Armenia. Assessment Mission Report*, 2008, pp. 45-46.

- photos;
- copy of the passport – valid for at least one year at the date of entry into Armenia;
- a medical certificate.

More specifically, the medical exam should be undertaken and it should include the following:

- a general clinical exam;
- a chest x-ray exam;
- verification of the vaccine status.

The medical exam should determine whether the individual is able to work in the considered position. A medical certificate should be delivered, which indicates whether the individual fulfils or does not fulfil the medical conditions for his/her stay in Armenia in conformity with the Law of aliens, art. 8-1.d, and subsequent regulations.³⁶

The grounds that may justify the rejection of the application for a temporary residence card are listed in the Law on aliens, art. 8 and 19.

In conformity with the Law on aliens, art. 15, the temporary residence card “salaried employment” should be granted for the same period as the work authorization, and, in any case, should not exceed one year. The card should allow entry, stay, and employment in Armenia, according to the conditions mentioned in the work authorization.

It must be underlined that voluntary or involuntary loss of job should not lead to the expiration of the right to stay in Armenia. In this case, the temporary residence card shall remain valid until its expiration date.

Regarding the renewal of the temporary residence card, conditions and procedure should be the same as for the first delivery.

1.3.2.2. Permanent residence card

The Law on aliens, art. 23, sets up a number of situations where the exercise of a salaried activity is not subject to the obligation of holding a work permit – or, in the context of the present proposal, a work authorization. Such is notably the case of those foreigners who have been granted a permanent residence status.

According to the Law on aliens, art. 16-1, permanent residence status is notably granted to foreigners who have resided legally within the territory of Armenia for at least three years. This general clause appears to be in line with the EU Directive on long-term residents. On the contrary, art. 16-2, which states that the permanent residence status is granted for a renewable period of five years does not conform to the EU Directive, which requires the residence status to be permanent. The materialization of the residence status, namely through the issuance of residence card, can be granted for a period of five years. It should, however, be ensured that its renewal is automatic, as

³⁶ Law on aliens, art. 8-1: “1. Granting/extension of an entry visa to an alien shall be rejected, the issued entry visa shall be invalidated or the alien's entry into the Republic of Armenia shall be forbidden, where: [...]d) he/she suffers with an infectious/communicable disease which threatens the health of the population except with the cases where he/she enters the Republic of Armenia for the purpose of treatment of such disease. The list of such infectious/communicable diseases shall be established by the Government of the Republic of Armenia”.

required by the EU Directive, art. 8. It is recommended that the Law on aliens be amended accordingly and that secondary legislation reflects this amendment.

2. Employment and other economic and social rights of migrant workers in Armenia

2.1. Protection in employment

It is a recognised principle of international law that all foreign workers – regardless of their status, regular or irregular – should enjoy just and favourable conditions of work on an equal footing with nationals.³⁷

Such employment rights include notably equal remuneration for work of equal value; prohibition of unlawful deductions from workers' salaries; protection from dismissal (there should be no discrimination between nationals and foreigners with regards to dismissal); equal access to vocational training;³⁸ equal access to employment agencies; equal access to trade union rights.³⁹

The Armenian Labour Code guarantees the equal benefit of its provisions to both nationals and foreigners. Among the objectives of the labour legislation, the Labour Code, art. 2-1, mentions the establishment of “state guaranties for labor rights and freedoms for natural persons, i.e., citizens of RA, citizens of foreign country, persons without citizenship”. Equality of treatment between nationals and foreigners is explicitly mentioned in two articles of the Labour Code:

- Art. 3-3 states: “Legal equality of parties of labor relations irrespective of their gender, race, nation, language, origin, citizenship, social status, religion, marital and family status, age, philosophy, political party, trade union or public organization membership, other factors unrelated to the employee’s professional qualities”.⁴⁰

- Art. 15-1 states: “The capacity (labor legal capacity) to have labor rights and bear responsibilities is equally recognized for all the citizens of the Republic of Armenia. The foreign citizens, persons with no citizenship in the Republic of Armenia shall have the same labor legal capacity, as the citizens of the Republic of Armenia if not otherwise stipulated by the law”. It must be added that the Labour Code does not include any type of restriction and/or distinction of treatment concerning the enjoyment of employment rights by foreign workers.

With this legislation in place, it is crucial to ensure that it is correctly implemented throughout the national territory. In this context, the importance of the role of the State Labour Inspectorate is to be highlighted: the absence of labour inspection in sectors employing migrant workers is commonly associated with higher incidences of exploitation and abuse of workers.

³⁷ See for instance the International Covenant on Economic, Social and Cultural Rights (1966) art. 7: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays”.

³⁸ Access to vocational training is an important right that tends to be neglected in the context of labour migration – especially when temporary.

³⁹ Trade union rights also tend to be neglected in the context of labour migration.

⁴⁰ This principle is reiterated in the Law on aliens, art. 22-1.

At present, the State Labour Inspectorate does not have specific activities related to migrant workers in Armenia. Recommended practical elements and management tools to extend labour inspection to migrant workers notably include:

- referring to national legislation providing for inspection of all workers;
- obtaining labour force and employment information, indicating where migrants are employed, and relevant data regarding compliance issues;
- ensuring the capacity and skills necessary to extend labour inspection to worksites and sectors where migrant workers are commonly employed;
- establishing specialised training for labour inspectors to ensure competency in addressing specific issues concerning migrant workers.

Trade unions, as well as human rights NGOs also have a role to play in order to ensure migrant workers' protection in employment. It is worth noticing that as with the State Labour Inspectorate, trade unions do not currently consider the situation of migrant workers in Armenia as an immediate concern to be addressed. This approach may be explained by the lack of detailed and reliable data concerning migrant workers and the occupation they fulfil. The collection and analysis of such data is thus a priority in the area of migrant workers' protection in employment.

2.2. Family reunification

The recognition of the right to family reunification is of utmost importance to migrant workers and the members of their families. The right to family reunification derives from the right to family life, which is recognised by international law as a fundamental human right. In Europe, the right to family reunification is recognised by the Council of Europe,⁴¹ and, in the EU context, by Directive 2003/86/EC on the Right to Family Reunification.

Directive 2003/86/EC applies to third-country nationals holding a residence permit of one year or more and "with reasonable prospects of permanent residence" (art. 3-1). Only the spouse and minor children have a right to join the sponsor; however, EU member states may include other family members under the right to family reunification. The right to family reunification can be qualified by a number of optional conditions, such as the possession of adequate accommodation, sickness insurance, stable and regular financial resources, and integration conditions. EU Member states may also impose a waiting period up to two years of residence of the sponsor before enabling the family reunification process. The Directive recognises the right of family members to access salaried and self-employment in the same way as the sponsor.

The Armenian Law on aliens only casually mentions the notion of family reunification when referring to entry visas (Law on aliens, art. 10-1.a). It nevertheless contains a number of provisions that organize the regime of family reunification in Armenia. Concerning family reunification with foreigners residing in Armenia, the Law on aliens foresees the granting of a temporary residence card to the spouse of an "alien lawfully residing in the Republic of Armenia" (Law on aliens, art. 15-1.c), as well as to close relatives, including "parent, brother, sister, spouse, grandmother, grandfather, grandchild" of foreigners holding a permanent residence card (Law on aliens 15-1.d). In addition, art. 16-1.a states that a permanent residence status is to be granted to a foreigner who "demonstrates the presence of close relatives (parent, brother, sister, spouse, grandmother,

⁴¹ Within the framework of the Council of Europe, the European Court of Human Rights has developed a rather strict jurisprudence based on article 8 of the European Convention on Human Rights (right to respect for private and family life). While the Court has recognised that article 8 obliges states to admit a family member when the family cannot reasonably be expected to relocate to the country of origin, in practice, this requirement is very difficult to satisfy.

grandfather, grandchild) in the Republic of Armenia”. In these three situations (Law on aliens, art. 15-1.c; art. 15-1.d; art. 16-1a.), family members are authorised to engage in a professional activity without the need to obtain a work permit (a work authorization in the proposal included in this report).

The Law on aliens’ provisions concerning family reunification pose a number of problems. They often lack clarity, contradict themselves, and sometimes they do not conform to recognised EU standards. It must be initially noted that, surprisingly, the Law on aliens does not make reference to family reunification with the children of the considered foreigner or his/her spouse. Beyond the question of family reunification with children and the question of complete or partial family reunification, art. 15-1.c may lead to situations where the spouse is granted the right to work (Law on aliens, art. 23-b) where the sponsor does not have access to the labour market, e.g. in the case of a foreign student. Art. 15-1.d also implies that family reunification with close relatives – parent, brother, sister, spouse, grandmother, grandfather, grandchild – is only open after a waiting period of a minimum of three years, as the permanent residence status is requested from the sponsor.⁴² This provision does not conform to EU standards. Art. 16-1.a appears to be very unclear. It seems to contradict both art. 15-1.c and art. 15-1.d. Even read as a regulation of the situation of family reunification with Armenian nationals rather than with all “close relatives [...] in the Republic of Armenia”, it would still contradict art. 15.

In order to simplify the regime foreseen by the Law on aliens, to solve its contradictions, and to conform to EU standards, the following regime of family reunification of migrant workers is suggested:

- family reunification with spouse and minor children should be authorised after a regular stay of maximum two years, and upon conditions of stable and regular resources that are sufficient to maintain both the sponsor and the family members;
- family reunification of close relatives – adult children, parent, brother, sister, grandmother, grandfather, grandchild – shall be authorised when the sponsor holds a permanent residence card;
- family members shall obtain the same residence status as the sponsor, including, when applicable, the right to work.⁴³

⁴² The Law on aliens, art. 16-1.c does not provide for a right to permanent residence after a period of three years but only foresees this possibility. Therefore, the waiting period for family reunification may, in practice, be longer.

⁴³ In other words, only family members of a foreigner authorized to work should be authorized to work.

II. EMIGRATION OF ARMENIAN WORKERS: EXISTING TRENDS AND POLICY OPTIONS

A. Emigration trends and human rights of Armenian migrant workers

1. Typology of labour emigration flows

1.1. Sources of labour migration data

Existing data on Armenian labour emigration flows and stocks are, for the most part, included in population censuses and household surveys conducted in the country. Armenian administrative sources – such as diplomatic and consular registers – do not provide relevant information on labour migration patterns. Administrative resources of destination countries are likely to be more useful. However, as most labour migration flows from Armenia are, in one way or another, irregular, administrative registers are bound to fail to capture an accurate picture of reality.

Population censuses and household surveys conducted in Armenia give a useful and precise image of labour migration patterns. In some instances, however, the information presented in household surveys is to be treated with caution.⁴⁴ As the results of the 2011 population census have not yet been published at the time of the writing, the present section will mainly draw on the following household surveys and studies: Minasyan, A. and Hancilova, B., *Labor Migration from Armenia in 2002-2005*, AST, OSCE, 2005; Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007; Minasyan, A., Poghosyan, A., Gevorgyan, L., and Chobanyan, H., *Return Migration to Armenia in 2002-2008*, AST, OSCE, 2008; Kalantaryan, L., Kyumjyan, K., and Hovhannisyan, R., *Report, Labour Migration in Armenia. The Results of a Pilot Sample Survey*, NSS, ILO, 2007; NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008; ILO, *Migration and Development. Armenia Country Study*, ILO, 2009.

1.2. Labour migration rates and destinations

According to extrapolated data from the 2007 AST-OSCE household survey, labour migration in 2006 was estimated at 60,000–81,000 and the labour migrant stock at 96,000–122,000 (3.0–3.8%) of the whole Armenian population.⁴⁵ These figures are to be read with caution; while the estimates of recent labour migration flows are credible, it is very likely that the labour migrant stock is largely underestimated.⁴⁶

All surveys and studies conclude that Armenian contemporary labour migration flows are, in most cases, of a temporary nature. It is estimated that 94 per cent of all migrants are temporary migrant workers, while only 3 per cent leave the country with the purpose of permanently settling abroad and 2 per cent leave in order to study abroad.⁴⁷ This constitutes a radical change in

⁴⁴ This is certainly the case of migrant stocks, salaries earned abroad and savings accumulated.

⁴⁵ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, pp. 18-19.

⁴⁶ It is worth referring to the 800,000 to 1,000,000 nationals estimated to have permanently emigrated at the beginning of the 1990s (ILO, *Migration and Development. Armenia Country Study*, ILO, 2009, p. 6) in order to question the reliability of the AST-OSCE estimates. The methodology of household surveys certainly fails to fully capture older migration flows, as well as permanent migration flows.

⁴⁷ Minasyan, A., Poghosyan, A., Gevorgyan, L., and Chobanyan, H., *Return Migration to Armenia in 2002-2008*, AST, OSCE, 2008, p. 9.

migration patterns when compared to the 1990s, when permanent emigration appeared to be a preeminent feature.⁴⁸

Russia is, by far, the main country of destination for Armenian migrant workers. According to the 2007 AST-OSCE household survey, the percentage of Armenians migrating for the purpose of employment in Russia increased from 88 per cent in 2002-2004 to 93 per cent in 2005-2006.⁴⁹ More specifically, Moscow is the most favoured destination, with other popular locations being St. Petersburg, Tumen, Chelyabinsk and Rostov.⁵⁰ While the studies point out other destination countries, the household survey methodology does not allow precise estimation or ranking. Frequently named countries include Ukraine, the USA, other CIS countries and EU Member States.⁵¹

1.3. Socio-demographic profile of migrant workers

Household surveys show that an overwhelming proportion of migrant workers are married men aged between 21 and 50.⁵² According to the 2007 AST-OSCE household survey, the proportion of female migrant workers has decreased in recent years, dropping from 14 per cent in 2002-2004 to 6.5 per cent in 2005-2006.⁵³ This evolution could be explained by the recent increase in the female employment rate in Armenia.⁵⁴ According to other figures, which measure migrant stocks rather than flows, the gender composition of migrant workers would be approximately 80 per cent men and 20 per cent women.⁵⁵ Labour migration in Armenia is strongly dominated by men, which runs contrary to the global feminisation trend of labour migration flows.

Labour migration flows of urban and rural populations are very similar, which reveal a recent increase of the involvement of rural populations in labour migration, as well as a decrease of migration activity in Yerevan.⁵⁶

Regarding the education and professional background of migrant workers, household surveys converge to estimate that more than 70 per cent of migrant workers either have secondary general education or secondary professional (vocational) education, while around 20 per cent have tertiary education.⁵⁷ Among skilled workers, the highest migration rates appear to concern individuals with

⁴⁸ ILO, *Migration and Development. Armenia Country Study*, ILO, 2009, p. 6, p. 79; Yeganyan, R., "Migration Trends, Globalization, and Human Development" in UNDP, *Migration and Human Development: Opportunities and Challenges. Armenia*, UNDP, 2009, pp. 36-37.

⁴⁹ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p. 25.

⁵⁰ ILO, *Migration and Development. Armenia Country Study*, ILO, 2009, p. 8.

⁵¹ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, pp. 25-26; Kalantaryan, L., Kyumjyan, K., and Hovhannisyan, R., *Report, Labour Migration in Armenia. The Results of a Pilot Sample Survey*, NSS, ILO, 2007, p. 23, p. 35; NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008, p. 46, p. 58.

⁵² Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, pp. 21-22; Kalantaryan, L., Kyumjyan, K., and Hovhannisyan, R., *Report, Labour Migration in Armenia. The Results of a Pilot Sample Survey*, NSS, ILO, 2007, p. 18, p. 27; NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008, p. 6.

⁵³ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p.21.

⁵⁴ *Ibid.*

⁵⁵ Kalantaryan, L., Kyumjyan, K., and Hovhannisyan, R., *Report, Labour Migration in Armenia. The Results of a Pilot Sample Survey*, NSS, ILO, 2007, p. 27.

⁵⁶ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p.19.

⁵⁷ *Ibid.*, p. 23; Kalantaryan, L., Kyumjyan, K., and Hovhannisyan, R., *Report, Labour Migration in Armenia. The Results of a Pilot Sample Survey*, NSS, ILO, 2007, p. 28.

the following education and/or training: transport, architecture and construction, art and culture, mechanical, electric and electronic engineering and agronomy.⁵⁸ It can be underlined that migration rates of health and education professionals are among the lowest within the category of skilled workers.

It is also noticeable that the migration rate of workers with higher education (7%) appears to be lower than that of workers with vocational and secondary education (11%).⁵⁹ This may be explained by “the higher demand for [persons with tertiary education] in the domestic labour market”.⁶⁰ Given the high rate of unemployment within numerous skilled professional groups,⁶¹ this may only be a partial explanation. It could also be argued that the fact that a significant number of skilled workers appear to be employed abroad, under their level of qualification, may have a deterring effect on pull factors.

1.4. Organisation of departure and stay in countries of destination

In the majority of cases, migrant workers find a job abroad before actually leaving the country, and the migration process is organised with the help of friends or relatives staying in the country of destination.⁶² According to the 2007 AST-OSCE household survey, one migrant worker out of five either uses the service of a private intermediary abroad or in Armenia.⁶³

In most cases, migrant workers are hired for seasonal or otherwise specified-duration assignments in the field of construction. According to different surveys, employment in construction represents between 57 and 77 per cent of occupations abroad, i.e. Russia.⁶⁴ The vast majority of migrant workers stay abroad for less than a year; repetition of the migration experience – circular migration – is a frequent pattern of Armenian labour migration flows.⁶⁵

An ILO study shows that a significant number of skilled workers are not employed in their area of expertise and are, therefore, under-employed in the country of destination.⁶⁶ In other words, most migrant workers are employed in the construction sector of the Russian labour market, regardless of the type of education and/or training they have received. This is likely to constitute a “brain waste” situation, detrimental to the migrant workers and members of their family, as well as the Armenian economy.

In the vast majority of cases (i.e. migration to Russia), migrant workers do not hold a work contract when being employed abroad. They also generally work and/or reside illegally in the country of destination. According to the 2007 AST-OSCE household survey, “the overwhelming majority of the labor migrants registered as tourists [in Russia] and did not have work permits”.⁶⁷

⁵⁸ ILO, *Migration and Development. Armenia Country Study*, ILO, 2009, pp. 23-42.

⁵⁹ *Ibid.*, p. 8.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*, pp. 23-42.

⁶² Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p.27; NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008, p. 44.

⁶³ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p.27.

⁶⁴ *Ibid.*, p. 29; NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008, p. 41.

⁶⁵ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p. 19, p. 28.

⁶⁶ ILO, *Migration and Development. Armenia Country Study*, ILO, 2009, pp. 23-42.

⁶⁷ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p. 54.

This situation raises major concerns regarding the respect of migrant workers' rights in destination countries, particularly in Russia.

The interpretation of household survey results concerning salaries earned and savings accumulated by migrant workers is a rather difficult exercise. While the 2005 AST-OSCE household survey reveals that the average income abroad is far superior to its domestic equivalent (four times higher during the period 2002-2005⁶⁸), it also notes that, considering the short duration of migration episodes, the average income "would only be able to pay off [migrants'] debts (if any) and cover the direct migration related expenses, such as travel costs and living costs in the host country (which even in Russia are higher than in Armenia)".⁶⁹ Similarly, the 2008 NSS household survey on migration suggests that approximately 60 per cent of migrants returning from foreign countries did not have savings.⁷⁰ Without fully questioning these results, one can wonder whether incomes and savings were intentionally underreported in the considered surveys.

2. The rights of Armenian workers in countries of destination: the Russian example

As the vast majority of Armenian migrant workers are employed in the Russian Federation, the present section will focus on the situation of migrant workers' rights in this specific country of destination, and, more specifically, on the most favoured sector of employment, construction.

Few studies concentrate on the situation of Armenian migrant workers. The aforementioned household surveys – conducted by NSS and AST-OSCE – are relevant to a certain extent.⁷¹ However, they are not recent enough to capture the potential effects of the legislation amendments adopted in 2007 on the situation of migrant workers in Russia. Moreover, their results are to be taken with caution in the context of migrants' rights as the surveyed individuals appear to tend to portray their migration experience in an excessively positive way, keeping silent – in a more or less conscious way – about a number of abuses. A Human Rights Watch study which assesses the respect of migrant construction workers' in Russia, published in 2009, appears to be more relevant.⁷² While it does not specifically cover the situation of Armenian workers, the validity of its observations in the Armenian context is clear.

2.1. Overview of Russia's labour immigration legislation

Before detailing the situation of migrant workers' rights in Russia, it is useful to present an overview of current labour migration legislation. As of 2007, new legislation has been implemented,⁷³ which has considerably simplified stay and employment-related procedures for

⁶⁸ Minasyan, A. and Hancilova, B., *Labor Migration from Armenia in 2002-2005*, AST, OSCE, 2005, p. 43.

⁶⁹ ILO, *Migration and Development. Armenia Country Study*, ILO, 2009, p. 12.

⁷⁰ NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008, p. 42.

⁷¹ Minasyan, A. and Hancilova, B., *Labor Migration from Armenia in 2002-2005*, AST, OSCE, 2005; Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007; Minasyan, A., Poghosyan, A., Gevorgyan, L., and Chobanyan, H., *Return Migration to Armenia in 2002-2008*, AST, OSCE, 2008; Kalantaryan, L., Kyumjyan, K., and Hovhannisyan, R., *Report, Labour Migration in Armenia. The Results of a Pilot Sample Survey*, NSS, ILO, 2007; NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008.

⁷² Human Rights Watch, *"Are you Happy to Cheat us?" Exploitation of Migrant Construction Workers in Russia*, 2009.

⁷³ Law on the Legal Status of Foreign Citizens, No. 62, 2002, as amended in July 2006; Law on the Migration Registry of Foreign Citizens and Persons without Citizenship in the Russian Federation, No. 109, 2006. Both entered into force on 15 January 2007.

nationals of those CIS countries that benefit from a visa-free regime with Russia, which includes Armenia.

Firstly, migrant workers have to register with the authorities of their place of stay within seven days of arrival in the country.⁷⁴ Migrant workers can register through their hosts, employers, or other entities, including employment agencies. Once in possession of a residency registration, migrants have to apply for a work permit, either on their own accord or through an employer or intermediary. Subject to the application of a quota system, the work permit is granted within ten days. Migrant workers must subsequently present a medical certificate and find “legal employment” within 90 days in order for their stay and employment to remain legal. In addition, the employer must notify the employment of the considered migrant workers with the competent authorities. The new legislation also reinforced sanctions against employers that violate immigration and employment rules.

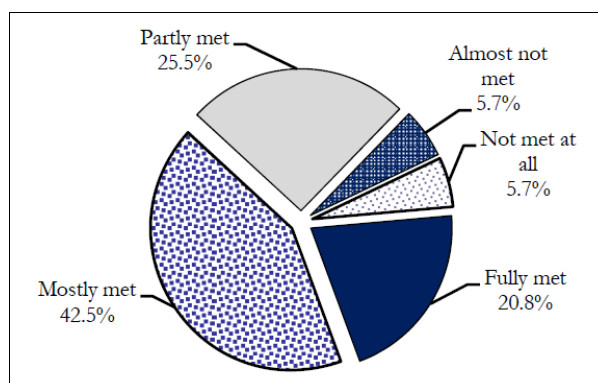
While 2007’s immigration legislation has been welcomed by the different stakeholders involved in migration management,⁷⁵ particularly as it enables migrant workers to change employers (within the territorial limitations included in the work permit), a number of its provisions have been criticised and the respect of migrant workers’ rights in reality questioned.

2.2. Assessment of migrant workers’ rights violations in Russia

2.2.1. Appreciation of the stay abroad in Armenian household surveys

When considering the situation of Armenian migrant workers’ rights, it is useful to refer to their own appreciation of their stay abroad, as presented by the NSS and OSCE household surveys. The 2007 AST-OSCE survey shows that the overwhelming majority of surveyed individuals (88.7%) considered that “their last trip met their expectations, in full or at least in part” (see Chart 2 below).⁷⁶

Chart 2: Migrant Workers’ Expectations from Their Last Trip



Source: Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007

While the 2008 NSS survey presents less enthusiastic results, the majority of returning migrants surveyed (54%) still described their stay abroad as “totally” or “rather successful”.⁷⁷

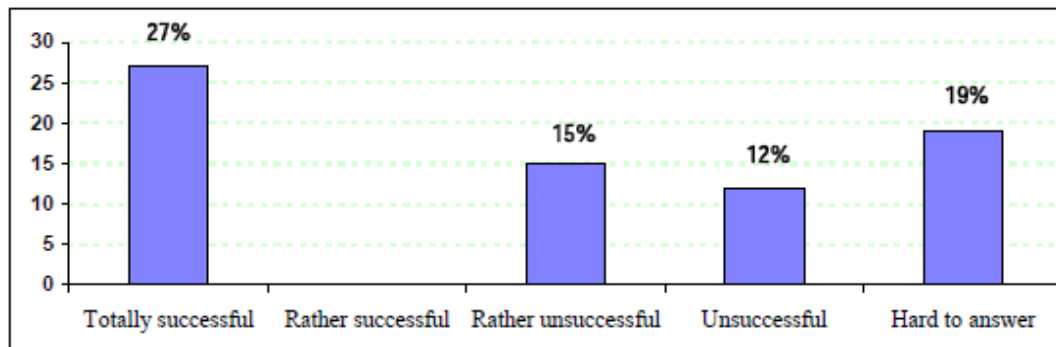
⁷⁴ In 2011, the period of registration was extended from three to seven days.

⁷⁵ IOM, *New Immigration Legislation in the Russian Federation: Enforcement Practices*, 2008, p. 371.

⁷⁶ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p. 34.

⁷⁷ NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008, p. 38. Interestingly, a significant proportion of the surveyed individuals (19%) “found it hard to assess how successful their journey had been”.

Chart 3: Representation of Returning Migrants Aged 18 and Above, in Accordance with the Success of Their Journey Abroad



Source: NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008

The Human Rights Watch study, as well as interviews with Armenian stakeholders, depict a less positive image of employment in Russia, more specifically within the construction sector.

2.2.2. The role of intermediaries

Among the provisions of the new Russian legislation on immigration, one of the most criticised points concerns the imposed period of three days for residence registration. As stated by Human Rights Watch:

Many migrant workers entering Russia under the non-visa regime do not have a job or a place to live when they arrive in Russia, and for most of them three days is a very short period in which to identify one or the other, unless they already have established contacts prior to their arrival. Unable to register themselves and fearing fines or deportation for remaining in Russia in violation of registration laws, many migrants resort to the use of intermediaries, many of whom who provide false residency registrations and work permits and may charge excessive fees. Employers also often charge high fees for arranging residency registration.⁷⁸

As previously mentioned, most Armenian workers find employment in Russia through intermediaries in Armenia or in Russia itself. Intermediaries also play a necessary role in the residency registration procedure. In both cases, the intervention of intermediaries often implies or leads to abuses. For instance, intermediaries may – consciously or unconsciously – arrange employment with abusive employers or provide migrant workers with false or improper documentation, such as fake residence registrations and/or work permits.⁷⁹

Such intermediaries may include brigadiers – construction brigade leaders who recruit workers, often from their own town or village – individual recruiters, employment agencies and even, in some cases, diaspora groups.⁸⁰

⁷⁸ Human Rights Watch, *“Are you Happy to cheat us?” Exploitation of Migrant Construction Workers in Russia*, 2009, p. 19; IOM, *New Immigration Legislation in the Russian Federation: Enforcement Practices*, 2008, p. 372.

⁷⁹ *Ibid*, pp. 19-20; pp. 29-32.

⁸⁰ *Ibid*, pp. 29-32.

2.2.3. Absence of employment contracts

It is widely recognised that, in most cases, construction migrant workers in Russia, including Armenian nationals, are not provided with a work contract:

Both private and state employers, including brigadiers and other intermediaries who act as employers, routinely fail to provide migrant workers with written contracts (*trudovoi dogovor*) as required under Russian law.⁸¹

This situation has such severe consequences that it appears to wipe out the benefits that migrant workers should have gained from the 2007 Russian legislation.

According to IOM and Human Rights Watch, most migrants choose to register with the Russian authorities and have obtained a work permit.⁸² However, in the absence of a work contract, migrant workers are not considered to be “legally employed” and therefore, “his or her legal right to stay in Russia cannot be legally extended and expires 90 days after entry into Russia”.⁸³

Therefore, by residing and working irregularly on the Russian territory, migrant workers are particularly vulnerable to abusive practices from their employers, the Police and other public authorities, entities and individuals. In the absence of contributions from them and their employers, migrant workers benefit from minimal social protection benefits, if any. In turn, the lack of work contracts and the risk of deportation deter migrant workers from seeking redress for abuses or resolving disputes with an employer through the judiciary system.

Even when a written work contract is provided, migrant workers may still be employed illegally. This occurs when the employer does not register migrant workers with the authorities, a mandatory requirement within the recruitment procedure.⁸⁴

Despite the severe consequences of the failure to provide work contracts, the 2007 AST-OSCE household survey, as well as the Human Rights Watch study, reveals that migrant workers tend to consider this situation as normal and generally do not complain about it.⁸⁵ Human Rights Watch observes that “few migrants are aware that the law requires employers to provide contracts and in any case do not expect contracts or believe that they will not serve any purpose”.⁸⁶

2.2.4. Unpaid wages, delayed wages, deductions in wages

In many instances, migrant workers face unpaid or delayed wages – often a coercive measure used by employers – as well as illegal deductions to wages (e.g. for food or accommodation).⁸⁷ This

⁸¹ *Ibid*, p. 51; Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, pp. 29-30; NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008, p. 56.

⁸² IOM, *New Immigration Legislation in the Russian Federation: Enforcement Practices*, 2008, p. 371; Human Rights Watch, “Are you Happy to Cheat us?” *Exploitation of Migrant Construction Workers in Russia*, 2009, p. 52.

⁸³ Human Rights Watch, “Are you Happy to Cheat us?” *Exploitation of Migrant Construction Workers in Russia*, 2009, p. 51. It must be added that as employers are obliged under Russian law to provide a work contract to their employees, a case law could be made in order to obtain the regularisation of migrant workers who find themselves in an irregular situation due to the fault of their employer.

⁸⁴ IOM, *New Immigration Legislation in the Russian Federation: Enforcement Practices*, 2008, p. 377.

⁸⁵ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p. 48; Human Rights Watch, “Are you Happy to Cheat us?” *Exploitation of Migrant Construction Workers in Russia*, 2009,

⁸⁶ Human Rights Watch, “Are you Happy to Cheat us?” *Exploitation of Migrant Construction Workers in Russia*, 2009, p. 52.

⁸⁷ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, pp. 49-50, pp. 54-55; Human Rights Watch, “Are you Happy to Cheat us?” *Exploitation of Migrant Construction Workers in Russia*, 2009, pp. 54-60.

failure to pay migrant workers fully and promptly appears to be highly prevalent; Human Rights Watch refers to it as “by far the most widespread violation of migrant workers’ rights”.⁸⁸ However, according to the 2008 NSS household survey, almost 70 per cent of surveyed migrants affirmed having received their salary in full (see Table 4 below).⁸⁹ These findings are highly improbable and are likely to reveal a common tendency among returning Armenian migrant workers to present their migration experience in an excessively favourable way.

Table 4: Representation of Migrants Returning from Foreign Countries, in Accordance with the Portion of Earnings Received Abroad

	Number of household members	% against the total
Received in full	100	68.9
Received the main portion	22	25.2
Received half of the earnings	10	6.9
Received a minuscule portion	10	6.9
Did not receive anything	3	2.1
Total	145	100

Source: NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008

2.2.5. Work and life conditions

Under Russian labour law, normal working hours should not exceed 40 hours per week – except in some cases, provided that overtime pay is granted – and one day off per week, as well as paid vacation, should be granted. However, long working hours with few or no days off and no paid vacation are the normal working conditions for migrant construction workers. It must be emphasized that, as construction workers are being paid according to the work performed, migrant workers appear to be satisfied to work long hours, including weekends.⁹⁰

With regards to housing conditions, migrant construction workers are generally provided housing on-site, either in transport containers, trailers or in the actual buildings being constructed.⁹¹ While, according to Human Rights Watch, “these accommodations generally lack proper sanitary conditions, and workers in most cases [do] not have access to hot water or bathing facilities”,⁹² the 2007 AST-OSCE survey shows that the overwhelming proportion of Armenian migrant workers considered their housing conditions as sufficient.⁹³ This appreciation can probably be explained by the fact that

⁸⁸ Human Rights Watch, “Are you Happy to Cheat us?” *Exploitation of Migrant Construction Workers in Russia*, 2009, p. 54.

⁸⁹ NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008, p. 40.

⁹⁰ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p. 48; Human Rights Watch, “Are you Happy to Cheat us?” *Exploitation of Migrant Construction Workers in Russia*, 2009, pp. 60-61.

⁹¹ Human Rights Watch, “Are you Happy to Cheat us?” *Exploitation of Migrant Construction Workers in Russia*, 2009, p. 61.

⁹² *Ibid*, p. 62.

⁹³ Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007, p. 32.

Armenian migrant workers, who are mainly seasonal workers spending a limited period of time abroad, primarily focus on the salary they will earn abroad rather than on their life conditions.

Studies show that migrant workers fear the Russian Police, not only due to the risk of deportation, but also ill-treatment and extortion: “the migrants are afraid of encounters with the police not only because they mean additional expenses but because the migrants feel that they may be subjected to bad treatment, including physical violence”.⁹⁴

B. Emigration policy: the need for a comprehensive approach to the emigration of Armenian workers

1. Protection activities

1.1. Management of the recruitment of Armenian workers: the regulation of private employment agencies

1.1.1. The need for regulation

Private employment agencies often play a significant role in the labour migration process. Within the international labour market, employers, on one side, are looking for foreign workers who meet certain criteria in order to fill their vacancies. On the other side, workers are looking for job opportunities abroad. Frequently, both employers and potential migrants lack information, the former about suitable candidates, the latter about job offers. The task undertaken by private employment agencies is to match the existing needs for particular skills with available workers. Beyond this fundamental function, private employment agencies can provide additional services, such as testing and selecting applicants, obtaining visas, arranging travel documentation, providing pre-departure training, etc.

Private employment agencies are a potential asset in the context of labour migration management. Their search for business is valuable in exploring and developing new markets, thus increasing job opportunities for national workers. However, the drive to increase profits, inherent to their practice, is likely to lead to unsound and fraudulent practices, such as offering non-existent jobs in exchange for considerable sums of money, placement in unsafe and risky jobs, and even participation in trafficking in persons and/or labour exploitation. It is therefore mandatory for public authorities to regulate the activities of private employment agencies.

At present, an estimated 40 to 50 private employment agencies operate in Armenia. However, household surveys tend to show that, while most Armenian migrant workers find employment abroad through intermediaries, they rarely use the services of private employment agencies.⁹⁵ This is not to say that private employment agencies do not have a potentially important role to play in Armenia. The present situation may rather be explained by the very bad reputation held by private employment agencies in Armenia, which is supported by reported cases of malpractice, abuse, and even involvement in human trafficking.

⁹⁴ *Ibid*, p. 50.

⁹⁵ NSS, *Report on Sample Survey on External and Internal Migration in RA*, NSS, UNFPA, 2008; Minasyan, A., Poghosyan, A., and Hancilova, B., *Labor Migration from Armenia in 2005-2007*, AST, OSCE, 2007.

Armenian private employment agencies currently operate outside any type of specific regulation. Their activities are not regulated and monitored by public authorities. However, the Armenian government recognizes the need for regulation. This appears in the Concept on Regulating Activities of Intermediary Employment Agencies in Foreign States; the draft Law on Regulation of Overseas Employment, which focuses to a large extent on the question of regulation; as well as, more recently, the Concept for the Policy of the State Regulation of Migration in the Republic of Armenia (2010). As none of these documents contains a detailed regime of regulation of private employment agencies, this section will provide corresponding propositions and legislative examples from selected countries.⁹⁶

1.1.2. Licensing standards

Registration and licensing constitute the most common approaches to regulating private employment agencies. Licensing is often preferred to registration in the context of labour migration as it authorises public authorities to closely regulate and monitor private employment agencies. This approach is also favoured by the Armenian government. Given the labour migration context of the country, this appears to be a sound decision.

1.1.2.1. Defining private employment agencies

A first important component of legislation on private employment agencies is a clear and unambiguous definition of the term. At present the draft Law on Regulation of Overseas Employment contains very few elements of definition.⁹⁷

It is suggested that the legislation on private employment agencies should use the definition provided by ILO Private Employment Convention C 181, at least as a reference point (see Box 1 below).

Box 1: ILO Private Employment Convention C 181, art. 1-1

For the purpose of this Convention the term private employment agency means any natural or legal person, independent of the public authorities, which provides one or more of the following labour market services:

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise therefrom;
- (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred below as a “user enterprise”) which assigns their tasks and supervises the execution of these tasks;

⁹⁶ This report does not touch upon the question of whether to regulate all private employment agencies or only those engaged in recruitment for employment abroad. It will remain in the specific context of labour migration, which, suffice to say, differs from domestic employment in a number of aspects.

⁹⁷ Draft Law on Regulation of Overseas Employment, art. 12: “1. Intermediaries in the area of overseas employment shall be organizations deemed commercial by the law of the Republic of Armenia and individual entrepreneurs if they received a license for being engaged in such activities in a procedure set out by the law of the Republic of Armenia. Commercial organizations registered in foreign states may serve as an intermediary if it received a license for job placement in foreign states in a procedure set out by the law of the Republic of Armenia.

2. Intermediaries shall study labor markets in foreign states, cooperate with foreign employer or employment agencies, provide intermediary services to persons willing to leave for overseas employment in terms of finding an overseas employment for them.

3. Intermediaries shall conclude contracts with persons willing to leave for overseas employment in order to arrange overseas employment.”

(c) other services related to jobseeking, determined by the competent authority after consulting the most representative employers' and workers' organizations, such as the provision of information that do not set out to match specific offers of and applications for employment.

Depending on the choice to enact comprehensive legislation for all employment agencies or a specific text aimed at those agencies operating in the field of labour migration, this definition could be modified accordingly.

1.1.2.2. Conditions for issuing a licence

Conditions for issuing a licence shall take into consideration the provisions of the Law on Licensing, 2001.

Legal personality

This condition is specified in the Law on Licensing, art. 7.⁹⁸

Registration fee

The collection of a registration fee within the licensing procedure is a common practice that aims to cover the administrative cost of the procedure and can also be seen as a proof of the financial capacity of the private employment agency. A registration fee should not be excessive in order not to discourage agencies from starting a business, deter existing agencies from continuing their business, or drive them out of the formal system into illegal practice. It is also suggested that the amount of the registration fee should be dependent on the size of the agency (see example of Arizona, USA, in Box 2 below).

Box 2: Registration Fees	
Canada (British Columbia), <i>Employment Standards Regulation</i> , 1995, 2005	Employment agency \$100 [~USD 84] Farm labour contractor \$150 [~USD 125]
Ireland, <i>Employment Agency Act</i> , 1971	EUR 500 [~USD 625]
Malta, <i>Employment Agencies Regulations</i> , 1995	MTL 150 [~ USD 450]
Philippines, <i>POEA, Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , Part II; Rule II, section 2 and 3, 2002	Filing Fee PHP 10.000 [~USD 178] License Fee PHP 50.000 [~USD 890]
Singapore, <i>Employment Agencies Licence Conditions</i> , 2001	SGD 350 [~USD 210]
US (Arizona), <i>Arizona Revised Statutes</i> , Title 23 Labour, Chapter 3	USD 100 (1-3 employees) USD 200 (3-8 employees) USD 300 (> 8 employees)

Financial capability

Financial capability constitutes an important criterion to assess the capacity of the agency to provide financial resources for international operations as well as the capacity to absorb consequences of possible failure on the market. The condition of financial capability may take the

⁹⁸ Law on Licensing, art. 7: "Legal or natural persons, as well as individual entrepreneurs shall be entitled to perform type of activity subject to licensing. The natural person holding a license shall be entitled to carry business activity in the given field only as an individual entrepreneur".

form of a deposit (see box 3 below), or proof of a minimum start-up capital (box 4 below). A deposit may prove to be more relevant as it can serve as a safeguard to ensure compliance with the law, as well as a means to paying indemnities to workers, if need be.

Box 3: Deposit	
Nigeria, <i>Labour Act Chapter 198, Application for Registration for Employer's Permit/ Recruiter's Licence/ Private Employment Agency, 1990</i>	C) Applicant to submit security, deposit in bond forms as follows: 1-10 recruits – NGN 100,000 (~ USD 750) 11-50 recruits – NGN 500,000 (~ USD 3,750) 51-100 recruits – NGN 1,000,000 (~ USD 7,500) 101-250 recruits – NGN 2,000,000 (~ USD 15,000) 251-500 recruits – NGN 5,000,000 (~ USD 37,500) 501-1000 recruits – NGN 10,000,000 (~ USD 75,000) 1000 and above – NGN 20,000,000 (~USD 150,000)
Singapore, <i>Employment Agencies Licence Conditions, 2001</i>	SGD 20,000 [~USD 12,000]

Box 4: Minimum Start-up Capital	
Malaysia, <i>Private Employment Agencies Act, 1981</i>	MYR 25,000.00 [~USD 6,650]
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002</i>	Part II, Rule 1, Section 1. "Only those who possess the following qualifications may be permitted to engage in the business of recruitment and placement of Filipino workers: [...] b) A minimum capitalization of Two Million Pesos (PHP 2,000,000.00) [~USD 35,750] in case of a single proprietorship or partnership [...]"

Personal criterion

Personal criterion mainly refers to the expectation that the applicant will conduct his/her business lawfully. The applicant should present certification stating that he/she is does not have a criminal record and/or previous trade interdictions (see example from the Philippines in Box 5 below).

Box 5: Personal Criterion	
Philippines, <i>POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers, 2002</i>	Part II, Rule I, Section 2: "The following are not qualified to engage in the business of recruitment and placement of Filipino workers overseas: [...] (d) Persons, partnerships or corporations which have derogatory records, such as but not limited to the following: 1) Those certified to have derogatory record or information by the National Bureau of Investigation or by the Anti-Illegal Recruitment Branch of the POEA; 2) Those against whom probable cause or prima facie finding of guilt for illegal recruitment or other related cases exists; 3) Those convicted for illegal recruitment or other related cases and/or crimes involving moral turpitude; and 4) Those agencies whose licenses have been previously revoked or cancelled by the Administration for violation of RA 8042, PD 442 as amended and their implementing rules and regulations as well as these rules and regulations."

Management capability

This condition refers to the capacity of the applicant to organise and manage the considered business. Educational background (diploma, vocational training) in a field related to personal management, job placement, consultation, etc., and/or relevant professional experience can be requested (see example from the Czech Republic in Box 6 below). Such a possibility is opened by the Law on Licensing, art. 13.⁹⁹

Box 6: Management Capability

Czech Republic, *Employment Act*, 1991

Part 2, Section 5a (4): “When the granting of a licence for employment intermediary services is under consideration, an individual shall be deemed to have vocational qualifications if he has completed university-level studies and has at least two years’ experience in the field of employment intermediary services or in the sector to which the employment intermediary services are to be provided, or if he has completed secondary level studies and has at least five years’ experience in the field of employment intermediary services or in the sector to which the employment intermediary services are to be provided. [...]”

Marketing capability

This condition, particularly important in the context of labour migration, refers to the competence of the applicant in identifying employment opportunities abroad and negotiating contracts that benefit not only the agency but also the worker. Marketing capability can be demonstrated through professional qualification and experience, as well as through the existence of specific labour request from business partners, recruitment agreements with foreign nationals, etc. (see example from the Philippines in Box 7 below).

Box 7: Marketing Capability

Philippines, *POEA Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers*, 2002

Part II, *Rule II*, Section 1 d: “Proof of marketing capability: 1. A duly executed Special Power of Attorney and/or a duly concluded Recruitment/Service Agreement; 2. Manpower request(s) or visa certification from new employer(s)/ principal(s) for not less than one hundred (100) workers; and 3. Certification from Pre-Employment Services Office of POEA on the existence of a new market.”

⁹⁹ Law on Licensing, Article 13: “Requirements to professional qualification:

1. The legislation of the Republic of Armenia and licensing procedures may stipulate professional qualification requirements to perform such types of activities subject to licensing that require professional knowledge.
2. The professional qualifications of a person may be certified by respective certificates, diplomas, qualification trainings and other documents stipulated by the legislation and issued according to the procedures defined by legislation. At least 3 years of continuous professional service of a person in certain positions or activities also serve as a document certifying the professional qualification of a person, unless otherwise stipulated by law.
3. The professional qualification documents issued by foreign countries shall have legal force in the Republic of Armenia, if so is provided by law and international treaties of the Republic of Armenia.
4. The testing of professional qualifications for issuing a license may be carried only in cases stipulated by law, according to the procedures and conditions provided by law and licensing procedures.
5. The right of a natural person or individual entrepreneur to get a professional qualification, participate in testing of professional qualifications, occupy certain positions or carry certain activities may be restricted only by law”.

In the Armenian context, the criteria of management capability and marketing capability can certainly be reduced to an educational background criterion. However, when the private employment agencies sector will grow, the full aforementioned requirements should be foreseen.

1.1.2.3. Content of licence

Validity of licence

Many countries deliver licences for a very limited period of time, usually one year, in order to exercise a strict control over the activities of private employment agencies. However, it could be argued that one year is too short a period, as this time frame may discourage agencies from developing proper business strategies and is likely to have a negative effect on recruitment fees – employment agencies will be tempted to maximize their profits within the shortest time possible. It is suggested that licenses be granted for a period of three years.

Box 8: Validity of Licence	
Czech Republic, <i>Employment Act</i> , 1991	Part 2, Section 5a (1): “A licence (authorization) to act as an employment intermediary is granted (or not) on the basis of an application of an individual or a legal entity; this licence is valid for three years. Such licence may be issued recurrently.”
Japan, <i>Employment Security Law</i> , 2000	Article 32–6: “The effective term of the permit provided for in Article 30, paragraph 1 shall be three years calculated from the day of issuing thereof. 2. A person who wishes to continue to carry on a fee-charging employment placement service connected with a permit after the expiration of the term of validity of a permit provided for in the preceding paragraph [...] shall obtain renewal of the term of validity of the permit. [...] 5. The term of validity of the permit [...] in a case where renewal thereof is obtained pursuant to the provisions of paragraph 2 shall be five years [...]”
Philippines, <i>POEA, Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers</i> , Part II; Rule II, section 2 and 3, 2002	Part II, Rule II, Section 6: “Except in case of a provisional license, every license shall be valid for four (4) years from the date of issuance unless sooner cancelled, revoked or suspended for violation of applicable Philippine law, these rules and other pertinent issuances. [...]”

Scope of licence

Many countries prescribe restrictions with regards to geographical and personal validity of the licence. For instance, a licence may be valid only in one province of a state, or licensees may be prohibited from opening more than one office. Such tight control is detrimental to the development of private employment agencies. Moreover, it must be noted that large firms are less likely than smaller ones to be involved in fraud. It is suggested that private employment agencies should not have geographical restrictions imposed and should not be prohibited from opening more than one office. However, in order to properly monitor the functioning of private employment agencies, it should be mandatory for them to announce to the licensing authority all changes within the owner structure of the firm (shareholders, partners, etc.), changes of business address, or opening of new branches (see examples in Box 9 below).

Box 9: Minimum Start-up Capital

Hong Kong, <i>Employment Agency Regulations</i> , 1998	Section 9(1): "If a licensee wishes to change the place of business of his employment agency he shall, not less than fourteen days before the change – (a) notify the Commissioner in writing full particulars of the change; [...]"
UK, <i>Draft Gangmasters (Licensing Conditions) Rules</i> , 2005	Schedule: Section 1. (1) The licence holder must at all times act in a fit and proper manner. (2) The licence holder must notify the Authority of any change in his name or business address within 30 working days of the change. (3) The licence holder must notify the Authority of any changes in the control and running of his business within 10 working days of the change. (4) The licence holder must notify the Authority in writing within 10 working days if there are changes to any other details submitted with his application form. (5) The licence holder must notify the Authority as soon as reasonably practicable if he suspects his licence has been misused. (6) The licence holder must provide details of his licence at the request of any constable, enforcement officer or compliance officer. (7) A licence holder must provide details of his licence upon request to any worker supplied by him or labour user.

1.1.2.4. Services of private employment agencies and collection of fees

Employment contracts and information of migrant workers

It is crucial that migrant workers receive clear information about the conditions in the country of destination when signing their employment contract. Therefore, the work contract provided by private employment agencies shall include as a minimum the following elements:

- description of the job, site of employment and duration of contract;
- basic monthly salary and rates of overtime pay;
- regular working hours, rest days and holidays;
- transportation to country/place of employment and return;
- employment injury and sickness compensation, and emergency medical and dental care;
- valid grounds for termination of contract;
- means of settling disputes;
- non-cash compensation and work-related benefits.¹⁰⁰

Such an obligation is foreseen by the draft Law on Regulation of Overseas Employment, art. 16-2.¹⁰¹ In addition, it is suggested that a model employment contract be developed (see the Philippines sample employment contract in Box 10 below for example). The use of the model

¹⁰⁰ Abella, M. I., *Sending workers abroad: A manual on policies and procedures of special interest to middle and low income countries*, ILO, 1997, p. 68.

¹⁰¹ Draft Law on Regulation of Overseas Employment, art. 16-2: "The overseas employment contract shall determine:

a) A person wishing to leave for overseas employment directly and a foreign employer;
b) A person wishing to leave for overseas employment and the authorized representative of foreign employer.

3. The following terms should be disclosed in the overseas employment agreement:

1) Name of foreign employer;
2) Location (legal address);
3) Type, nature and conditions of proposed work (working hours, etc.);
4) Amount of salary and conditions;
5) Duration of contract;
6) Conditions of settlement and residence of an overseas worker in a foreign state employer's office;
7) Terms of social security (insurance) of an overseas employee;
8) Conditions envisaged by the parties or international treaties of the Republic of Armenia".

employment contract should not be mandatory but should serve as a guide for private employment agencies, employers and workers.

Box 10: Sample Employment Contract from the Philippine Overseas Employment Administration (POEA)

This employment contract is executed and entered into by and between:

A. Employer:

Address and Telephone no:

B. Represented by:

Name of agent/company:

C. Employee

Civil Status:

Passport no:

Address:

Place and Date of Issue:

Voluntarily bind themselves to the following terms and conditions:

1. **Site of employment**
2. **Contract duration** _____ commencing from employee's departure from the point of origin to the site of employment.
3. **Employee's position**
4. **Basic monthly salary**
5. **Regular working hours:** maximum of 8 hours per day, six days a week
6. **Overtime pay**
 - (a) Work over regular working hours
 - (b) Work on designated rest days and holidays
7. **Leave with full pay**
 - (a) Vacation leave
 - (b) Sick leave
8. **Free transportation** to the site of employment and, in the following cases, free return transportation to the point of origin:
 - (a) Expiration of the contract
 - (b) Termination of the contract by the employer without just cause
 - (c) If the employee is unable to continue to work due to connected or work-aggravated injury or illness
9. **Free food or compensatory allowance** of USD _____, free suitable housing.
10. **Free emergency medical and dental services** and facilities including medicine.
11. **Personal life and accident insurance** in accordance with the host government and/or _____ government laws without cost to the worker. In addition, for areas declared by the _____ government as war risk areas, a war risk insurance of not less than _____ shall be provided by the employer at no cost to the worker.
12. In the **event of death** of the employee during the terms of this agreement, his remains and the personal belongings shall be repatriated to the _____ at the expense of the employer. In case the repatriation of the remains is not possible, the same may be disposed of upon prior approval of the employee's next of kin and/or by the _____ Embassy/Consulate nearest the job site.
13. The employer shall assist the employee in remitting a percentage of his/her salary through the proper banking channel or other means authorized by law.

In addition to the work contract, private employment agencies should provide migrant workers with information on life conditions in the country of employment, information on assistance provided by consular/diplomatic posts, diaspora associations, as well as information on existing procedures to settle disputes with employers. Such an obligation is foreseen by the draft Law on Regulation of Overseas Employment, art. 14-1.¹⁰² This provision nevertheless lacks clarity regarding the moment of information sharing. Information should be shared when proposing a placement, before signature of the contract.

It is also suggested that private employment agencies should exhibit existing regulations of their activities in their premises (see the example from Zimbabwe in Box 11 below).

Box 11: Employment Contracts and Information of Migrant Workers

Philippines, *POEA, Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers*, Part II; Rule II, section 2 and 3, 2002

Part V, Rule I, Section 4: "The agency and the worker shall fully disclose all relevant information in relation to the recruitment and employment of the worker in accordance with the guidelines set by the Administration."

Zimbabwe, *Labour Relations (Employment Agencies) Regulations*, 1985

Section 9: "Every person keeping or conducting an employment agency shall exhibit a copy of these regulations in that agency in a place where the regulations will be clearly visible to, and can be studied by, any person seeking the services of an agency."

Other obligations of private employment agencies

The draft Law on Regulation of Overseas Employment, art. 14-3 and 4 imposes on private employment agencies the obligation to arrange travel and accommodation of workers in a number of instances.¹⁰³ These provisions brings two comments. Firstly, it is not clear under art. 14-3 when private employment agencies should arrange transportation of migrant workers. Secondly, these two provisions appear to be excessive. Their lack of flexibility is likely to be detrimental to both private employment agencies and migrant workers. It is suggested to replace these two provisions by the obligation to propose to the worker to arrange travel and accommodation when these services are not provided by the employer. While the organisation of travel and accommodation should be a necessary component of private employment agencies' services, they should not constitute a service imposed.

The draft Law on Regulation of Overseas Employment, art. 14-5 imposes on private employment agencies the duty to communicate to competent diplomatic and consular posts "information

¹⁰² Draft Law on Regulation of Overseas Employment, art. 14-1: "The intermediary shall be obliged to: 1) Provide free preliminary orientation information on overseas employment and foreign employers to persons wishing to leave for overseas employment and legal assistance on issues related to the conclusion of employment contract with a foreign employer for overseas employment or preparation of other related documents necessary for the conclusion as well as provide information on Diplomatic Mission or consulate of Armenia in the foreign state".

¹⁰³ Draft Law on Regulation of Overseas Employment, art. 14: "The intermediary shall be obliged to:...

3) Arrange the transportation of persons leaving for overseas employment to the foreign states only on the basis of contracts concluded with overseas employees and foreign employers or persons authorized by the foreign employer.

4) Personally or through an authorized representative ensure the overseas employees with accommodation, hiring by foreign employer in accordance with terms stipulated by intermediary service contract set out under Article 15 of the law if the foreign employer or overseas employees have not assumed these duties by relevant contracts".

concerning” migrant workers within three days of their arrival in the country of employment. This provision appears to be well funded. However, legislation should mention the specific type of information to be communicated.

More generally, it is important that collection, storage and communication of personal data or workers are carried out in conformity with relevant legislation.

Collection of fees and service costs

In many countries, including the 27 EU Member States, fee charging by private employment agencies is generally prohibited. While the principle of free placement services is conceivable within the domestic market, especially when most private employment agencies are temporary work agencies, it is generally not realistic in the context of labour migration.

The fees paid by migrant workers are generally high and their regulation an arduous task. Part of the solution is to impose a ceiling on recruitment fees, for example, 15 per cent of initial monthly wage (see Malaysian example in Box 12 below), and make it widely known. In addition, all services charged for should be disclosed to the worker. This may include documentation, visa arrangements, medical examination, air travel, etc.

Box 12: Collection of Fees

Malaysia, *Private Employment Agencies Act No. 246*, 1981

Section 14 (1): “No private employment agency shall charge for any service rendered a fee other than or in excess of that prescribed in the Schedule and for every fee received a receipt shall be issued.” Schedule (iv) Placement Fees (i): “Fee charged for local placement – not more than 10 % of initial month’s pay. (ii) Fee charged for overseas placement – not more than 15% of initial month’s pay.”

The draft Law on Regulation of Overseas Employment, art. 15, which organises contractual relations between private employment agencies and migrant workers brings two comments.¹⁰⁴ Firstly, its para. 4, which conditions payment by signature of the work contract, should not only

¹⁰⁴ Draft Law on Regulation of Overseas Employment, art. 15: “1. The intermediary shall conclude intermediary services contract with persons willing to leave for overseas employment, according to the procedure set forth by the legislation of the Republic of Armenia.

2. In the referred contract the parties shall stipulate the scope of services that the intermediary shall be obliged to provide to the person willing to leave for overseas employment, as well as the fees and order of payment for intermediary service.

3. The contract shall contain information on the preferences of the person leaving for overseas employment in terms of destination countries, occupation or nature of work, amount of salary, duration of work and other important employment details.

4. Payments by persons willing to leave for overseas employment for services provided by the intermediary shall be conditioned with the signing of an employment contract with a certain foreign employer.

The person willing to leave for overseas employment shall pay the full amount for the intermediary services if he/she refuses to sign an employment contract after agreeing to the terms offered by a foreign employer indicated by the intermediary.

5. The result of performance of intermediary duties assumed by the contract on intermediary service shall be to find a certain foreign employer and have an employment contract signed with the foreign employer and the person wishing to leave for overseas employment according to the stated preferences of the latter.

refer to the cost of services provided but also to the actual private employment fee. Secondly, its para. 5, which provides that workers shall pay the private employment agency when refusing to sign a work contract after having agreed to the terms proposed by the employer, should be abandoned. The agreement to the terms proposed by the employer is expressed through signature of the contract. Any kind of “approval” expressed beforehand should not have any consequences for the worker’s situation.

1.1.3. Monitoring activities of private employment agencies and enforcing sanctions

Monitoring activities can include a desk audit of information provided by private employment agencies as well as on-site visits (see examples in Box 13 below). When the monitoring authority suspects a private employment agency of being involved in fraudulent practices it should request additional information from it. On-site visits should be regular and unannounced. Such activities require sufficient financial and human resources from the public authorities. In any case, a mechanism for on-site visits should be in place in order to investigate reported abuses or misconduct of an agency.

Box 13: Monitoring Activities

Philippines, *POEA, Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers*, Part II; Rule II, section 2 and 3, 2002

Part II, Rule III, Section 1: “Before issuance of a license, the Administration shall conduct an inspection of the premises and facilities including the pertinent documents of the applicant. Inspection shall likewise be conducted on the new premises in case of transfer of office.”

Annex A, Part II 2. a.: “Regular inspection – This entails the conduct of ocular inspection on the office premises of agencies and entities with applications for:

- Issuance of license
- Renewal of license
- Accreditation of studios, PDOS venues
- Renewal of authority to operate a training center
- Establishment of branch office (agency and training centers), extension office and/or request for occupancy of additional room with address/building
- Transfer of business address of main and branch office, *studio*, training center and PDOS venue
- One-year of operation after renewal of license

3. Spot inspection – This kind of inspection is undertaken in the following instances:

- Suspension and/or cancellation of license or authority
- Delisting of an agency from the roster of licensed agencies
- Possible conduct off recruitment at the old address
- Documented reports on illegal recruitment activities of a person/agency/entity
- Reported violation/non-compliance of agency/entity with POEA Rules and Regulations and other related issuances
- Giving up of room/additional space
- Monitoring recruitment activities outside acknowledged office address.”

Singapore, *Employment Agencies Act (Chapter 92)*, 1985

Section 20: “The Commissioner or any officer duly authorized in writing in that behalf by the Commissioner may, subject to any rules made under this Act, at any reasonable time, and without previous notice, enter and inspect any employment agency or any premises reasonably suspected of being used for the purposes of an employment agency, and examine all books, or other documents found in the premises, which may appear to him to be the property of or to have been used for the purposes of an employment agency and remove them for further examination.”

Additionally, a public register including all licensed private employment agencies should be installed. The public should be able to have rapid and easy access to it.

When a violation of the legislation on private employment agencies is found, sanctions are to be enforced. Sanctions should range from administrative measures, such as suspension or revocation of licences, forfeit of the deposit posted, to penal sanctions (see Boxes 14 and 15 below).

Box 14: Administrative Sanctions

Philippines, *POEA, Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers*, Part II; Rule II, section 2 and 3, 2002

Part VI, Rule IV Section 1: "Administrative offenses are classified into serious, less serious and light, depending on their gravity. The Administration shall impose the appropriate administrative penalties for every recruitment violation. A. The following are serious offenses with their corresponding penalties: [...] (6) Charging or accepting directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary, or making a worker pay any amount greater than that actually received by him as a loan or advance 1st Offense – Cancellation of License plus refund of the placement fee charged or collected from worker [...] B. The following are less serious offences [...] 6. Withholding or denying travel or other pertinent documents from workers for reasons other than those authorized under existing laws and regulations. 1st Offense – Suspension of License (Two to Six Months) 2nd Offense – Suspension of License (Six Months and One day to One year) 3rd Offense – cancellation of License [...] C. The following are light offenses [...] 7. Failure to submit reports related to overseas recruitment and employment within the specified time as may be required by the Secretary or the Administration 1st Offense – Reprimand 2nd Offense Suspension of License (One Month to Three Months) 3rd Offense – Suspension of License (Three Months and One day to Six Months) 4th offence – Cancellation of License [...]"

Box 15: Penal Sanctions

Malaysia, *Act 246, Private Employment Agencies Act*, 1981

Section 32(1): "Any person who is guilty of an offence under section 7 [necessity to obtain licence] shall, on conviction be liable to a fine not exceeding five thousand ringgit [~US\$1330] or to imprisonment for a period not exceeding three years or to both such fine and imprisonment. (2) Any person who is guilty of an offence under section 15 [placement injurious to public interest] shall, on conviction be liable to a fine not exceeding four thousand ringgit [~US\$1060] or to imprisonment for a period not exceeding two years or to both such a fine and imprisonment. (3) Any person who is guilty of an offence under section 18 [advertisement] shall, on conviction be liable to a fine not exceeding three thousand ringgit [~US\$800] or to imprisonment for a period not exceeding one year or to both such fine and imprisonment. (4) Any person who is guilty of an offence under this Act shall, on conviction, where no other specific penalty is provided under this Act, be liable to a fine not exceeding two thousand ringgit [~US\$530] or to imprisonment for a period not exceeding six months or to both such fine and imprisonment."

Finally, incentives for agencies that meet the criterion of good governance, including offers to fill quotas as part of bilateral labour agreements or invitations to participate to government foreign market development mission, are conceivable.

1.1.4. Cooperation between private employment agencies and public employment services

Activities of private employment agencies and public employment services are complementary. Migrant workers can benefit from cooperation between them. As suggested by ILO Recommendation No. 188, the following measures of cooperation should be explored:

- pooling of information and use of common terminology to improve transparency of labour market functioning;
- exchanging vacancy notices;
- launching joint projects, for example in training;
- concluding agreements between the public employment service and private employment agencies regarding the execution of certain activities, such as projects for the integration of the long-term unemployed;
- training of staff;
- consulting regularly with a view to improving professional practices.¹⁰⁵

Cooperation between private employment agencies and public employment services is facilitated by regular meetings. Naturally such cooperation is most difficult to engage in before the implementation of a licensing system.

1.2. Information dissemination strategies

The Concept for the Policy of State Regulation of Migration in the Republic of Armenia¹⁰⁶ states that, among key directions for state regulation of migration, “elaboration and implementation of activities directed at increasing the possible positive impact of such field work on the human development of the RA population” and that it “campaigns on the procedure and terms of employment in foreign countries among citizens, with this purpose delivery of hot-line consulting services, publication of leaflets, activation of contacts with mass media, deepening of co-operation with NGOs.”

The 2012–2016 National Plan of Action for Implementing the Strategy of State Regulation of Migration in Armenia has several actions focusing on information dissemination:¹⁰⁷

“5.2.6. Developing mechanisms of information exchange between state bodies competent in the sphere of work migration and mediator companies.

5.2.7. Regular provision of information to mediator companies on socio-cultural life, state labour markets, legislation governing the field and its changes, of target countries on regular basis. [...]

5.6. Advocating for the order and the conditions of labour abroad among RA citizens, with this purpose implementation of hot-line consulting services, publication of leaflets, activation of communication with mass media, expansion of cooperation with non-governmental organizations.

5.6.1. Studying the level of awareness and sources of information among the RA citizens on procedures and conditions of labour abroad.

5.6.2. Organization of discussions/roundtables among representatives of NGOs, media, mediator organizations, local and territorial employment centres on issues relating to raising effectively the level of awareness among population, on the procedures conditions of labour abroad.

¹⁰⁵ ILO, Private Employment Agencies Recommendation, R 188, 1997, para. 17.

¹⁰⁶ Approved by minutes No. 51 of Armenian Government Session of 30 December 2010.

¹⁰⁷ Adopted by Decision No. 1593-N of RA Government of 10 November 2011.

5.6.3. Conduct awareness raising activities on foreign labour markets, as well as protection of rights and interests of RA citizens in foreign countries (through TV, print media, hot-line telephone services, internet websites, information booklets, etc.).

5.6.4. Organization of seminars for NGOs on changes in the order and the conditions of labour abroad, protection of migrants' rights and interests, on regular basis.

5.6.5. Announcing a competition among NGOs to carry out consultation programs on the order and the conditions of labour abroad for RA citizens.

5.6.6. Organization of competition for media outlets to conduct information campaigns for RA citizens on the order and the conditions of labour abroad".

Migrant information and consultation, as well as information about employment opportunities (including abroad, if available), study and training opportunities, are being provided by the Migration Resource Center (MRC). MRC in Armenia was established in 2006 and operated as a division within IOM. In 2006–2008 MRC provided free consultations to 3500 persons (in person) and fielded 650 phone consultations. MRC was working in Yerevan and 3 regions of Armenia (Lori, Shirak in the North and Syunik in the South). In 2010 MRC was transferred to the State Employment Service agency (SESA) under the Armenian Ministry of Labour and Social Issues (MLSI), and was piloted in the Erebuni and Nubarashen District Employment Center in Yerevan. MLSI has adopted an approach for all MRCs to be established in the country based on the IOM MRC model. In 2010–2011 ILO replicated the IOM MRC model in two more locations within SESA: Ijevan, Tavush Region, and Ashtarak, Aragatsotn Region.

IOM published 23 destination country guides for SESA (Australia, Austria, Belgium, Czech Republic, Finland, France, Georgia, Hungary, Iran, Italy, Kazakhstan, New Zealand, Poland, Portugal, Qatar, Russian Federation, Spain, Sweden, the Netherlands, Ukraine, United Kingdom, United Arab Emirates, and United States of America). ILO has developed destination country guides for additional countries (Greece, Germany, and Turkey).

In addition to migrant consultation, MRC is also working on the reintegration of returning migrants. MRCs cooperate with the State Migration Service (SMS), private employment agencies, consular bodies, NGOs protecting migrants' rights, as well as Diaspora and foreign organizations.

1.3. Protection activities in countries of destination: consular assistance and related activities

Protection of migrant workers in countries of destination is mainly organised through consular assistance. Consular assistance refers to the action of consular posts (or diplomatic posts) towards the authorities of the country of destination in order to protect the rights and interests of the nationals of the country of origin. It must be distinguished from another institution of international law, diplomatic protection, which consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.¹⁰⁸ Given its solemn character and the strict conditions of its implementation, diplomatic protection is rather unusual in practice. Consular assistance is a lighter (in terms of procedures and political implications) form of protection, which offers a significant variety of possible protection activities, and on which this section will focus. It

¹⁰⁸ International Law Commission, Draft Articles on Diplomatic Protection, art. 1.

will also mention protection activities engaged by private entities, such as diaspora groups, and the need to connect such activities to the work of consular and diplomatic posts.

1.3.1. Current activities

Currently, Armenia has 73 diplomatic and consular posts throughout the world. In some instances, the territorial competence of a single post covers several countries. In Russia, three consular offices are functioning. In a context of limited financial resources, the Ministry of Foreign Affairs faces a difficult choice between reinforcing Armenian consular presence either in EU Member States or in Russia.

Regarding actual assistance activities implemented by the Armenian authorities, and more specifically, those aimed at the protection of migrant workers and members of their family, the role of consular and diplomatic posts appears to be rather limited. In Russia, Armenian consular posts frequently receive complaints from migrant workers concerning confiscated passports and other abuses from employers, such as failure to pay salaries. Cases of confiscated passports are referred to law-enforcement agencies on behalf of migrant workers. Regarding employment-related matters, diplomatic and consular posts also submit appeals to government agencies but generally encourage Armenian nationals to pursue court cases on their own.

The draft Law on the Regulation of Overseas Employment contains a specific provision concerning protection-related activities of diplomatic and consular posts in the context of labour migration:

“Diplomatic Missions and Consular Offices of the Republic of Armenia in foreign states shall provide the overseas employees with relevant information and consultancy, help with their adaptation in foreign states and maintenance of their links with native culture, intervene and help during disagreements with the foreign employer”.

Private entities, including diaspora groups and the Confederation of trade unions, also undertake protection activities in countries of destination. For instance, the Confederation of trade unions has concluded an agreement with its Russian counterpart with a view to cooperate on the issue of migrant workers’ protection in the region of Volgograd in the Russian Federation in February 2011 within the framework of an ILO Regional Migration Project. The extension of such cooperation to other regions is foreseen.

There is considerable space to improve consular assistance of migrant workers in countries of destination, and, more specifically, in Russia, the main country of destination of Armenian labour migration flows.

1.3.2. Towards improved protection activities abroad

1.3.2.1. Traditional consular assistance activities

Consular law is codified by the Vienna Convention on Consular Relations of 24 April 1963.¹⁰⁹ The main consular functions relevant to protection of migrant workers are detailed in article 5 and article 36 of the Convention. The main provisions of art. 5 concerning migrants’ protection are:

¹⁰⁹ Armenia ratified the Vienna Convention on Consular Relations on 23 June 1993.

- (a) **protecting in the receiving State the interests** of the sending State and of its **nationals**, both individuals and bodies corporate, within the limits permitted by international law;
[...]
- (e) **helping and assisting nationals**, both individuals and bodies corporate, of the sending State;
[...]
- (f) acting as notary and civil registrar and in capacities of a similar kind, and performing certain functions of an administrative nature, provided that there is nothing contrary thereto in the laws and regulations of the receiving State;
- (g) safeguarding the interests of nationals, both individuals and bodies corporate, of the sending State in cases of succession mortis causa in the territory of the receiving State, in accordance with the laws and regulations of the receiving State;
- (h) **safeguarding**, within the limits imposed by the laws and regulations of the receiving State, **the interests of minors and other persons lacking full capacity** who are nationals of the sending State, particularly where any guardianship or trusteeship is required with respect to such persons;
- (i) subject to the practices and procedures obtaining in the receiving State, **representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State**, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, **where**, because of absence or any other reason, **such nationals are unable at the proper time to assume the defence of their rights and interests**;¹¹⁰
[...]
- m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

More specifically, traditional consular assistance includes activities such as assistance to sick persons, payment of alimony, return of destitute migrants and assistance in case of deportation.

The Vienna Convention on Consular Relations, art. 36, contains specific rights and obligations for migrants, the country of origin and the country of destination in the context of arrest, detention and penal proceedings.¹¹¹ While being very specific, these rights and obligations are nonetheless of the utmost importance.

Traditional consular assistance is not specifically aimed at the protection of migrant workers, it concerns more generally all nationals abroad. However, actions undertaken within this framework equally benefit migrant workers. It must also be underlined that consular law offers significant

¹¹⁰ Emphasis added by the author.

¹¹¹ Firstly, art. 36 recognises the right of notification of the right to consular protection and assistance to arrested and detained migrant workers. Migrant workers, faced with a foreign legal environment and a language that they often do not master, are in a situation of particular vulnerability. The right to consular notification takes on particular importance in this context. Secondly, the right of consular assistance recognizes the right of a state to assist its national abroad and the corresponding right of the national abroad to contact the consular authorities to obtain assistance. Thirdly, consular authorities have corresponding rights and obligations: to be promptly informed of the detention, at the request of the national; to communicate with and have access to the detained national if he or she desires; to visit and correspond with the detainee; to arrange for the detainee's legal representation; to provide any other type of assistance with the agreement of the detainee.

means to offer assistance and protection. It is on this solid basis of international law that a more modern conception of the protection of national workers abroad, including the appointment of labour attachés, can be developed.

1.3.2.2. A more modern conception of consular assistance

Appointment of labour attachés

Labour attachés are officials of the Ministry of Labour – or the Ministry in charge of migration – seconded to the Ministry of Foreign Affairs, who serve in embassies or consulates to deal with labour issues. The role of the labour attaché includes protection and assistance to migrant workers, but also goes further. It includes protection of workers in his/her diplomatic/consular post's jurisdiction; marketing activities and identification of job opportunities; assistance in the development of policy regarding labour; promotion of good relations with the host country on labour matters.

More specifically, the following assistance and protection activities can be undertaken by labour attachés:

- Ensuring that migrant workers are not exploited or subject to discrimination;
- Assisting migrant workers in the recovery of dues or other benefits;
- Assisting migrant workers on occasions of violations of their contracts;
- Helping migrant workers in cases when they are subjected to inhumane conditions, sub-standard working environments, or unhealthy or unsafe working conditions;
- Representing migrant workers in negotiations with major employers;
- Providing legal assistance or representation in courts, in coordination with the consulate, when workers' rights as persons or as workers are violated; when they face allegations in court, or when they are detained because of allegations;
- Lobbying for or against certain administrative measures or proposed legislation that would affect migrant workers' conditions of stay or their status;
- Ensuring that undocumented migrants, smuggled or trafficked, are protected and their repatriation facilitated;
- Ensuring that injured or sick migrant workers receive medical attention and, if they choose, assistance in returning home.

In practice, the activities undertaken by labour attachés very much depend on the labour protection in the country of employment, as well as on the type of labour migration flows. Where a country has well-established labour legislation in place and efficient implementation mechanisms, the labour attaché is likely to dedicate most of his/her work to non-protection activities, such as promotion and marketing. However, in countries where labour protection is weak, assistance and protection will be a priority. In such cases, labour attachés may perform tasks that are normally carried out by national authorities, such as inspecting work conditions and mediating employer-worker disputes.

Similarly, in situations where most nationals are engaged in skilled jobs, the assistance role of labour attachés will be less essential than where the majority of migrant workers take up unskilled occupations, especially when such jobs are in the informal sector. Labour attachés' activities may also depend on whether labour migration is organized (project-tied) or done on an individual basis. For the latter, the work of labour attachés will be more difficult and will generally take the form of remedial – when complaints arise – rather than preventive actions.

The work of labour attachés is highly demanding. Selected individuals have to be very dynamic and must possess specific knowledge and skills (see Box 16 below).

Box 16: Knowledge and Skills of Labour Attachés

<ul style="list-style-type: none"> - Knowledge of international legal instruments, treaties or agreements - Knowledge of the host country affecting labour demand and employment and knowledge about his/her home country in regard to employment supply - Knowledge of policies and laws affecting labour in both countries - Knowledge of gender-specific difficulties faced by migrant workers in the country of destination 	<ul style="list-style-type: none"> - Diplomatic skills - Counselling, negotiation, conciliation and arbitration skills - Analytical, organizational and coordination skills - Language skills (of the host country) - Research skills, including data-handling skills and basic statistics skills - Networking skills - Psychological assessment skills
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Beyond being properly trained, the labour attaché must be given the means to pursue his/her tasks. He/she must benefit from the support of the diplomatic mission and the home office and must be given sufficient funds. For instance, without travel funds, a labour attaché will not be able to check the actual conditions of workers on their worksites.

Given the current configuration of Armenian labour migration flows, it is suggested that at least one labour attaché be appointed in Russia. The selected labour attaché should be assisted by a team of around 10 agents who could be attached to the three different consular posts in the country.

Other measures

Additional means to improve the protection of migrant workers in countries of destination may include the following:

- increase consular staff and conduct training of consular officers, so they have sound knowledge of migrant workers' rights;
- establish a network of lawyers to provide *pro bono* legal assistance to migrant workers and develop cooperation with local NGOs active in the field of migrants' human rights;
- develop cooperation and links with diaspora communities and request consular officers or labour attachés to regularly visit such communities. Given the extent of the Armenian Diaspora, its involvement in the protection of migrant workers appears to a promising field.

2. Labour market strategies: diversifying countries of destination and promoting employment abroad

2.1. Why promoting foreign employment

Currently, Armenia does not have labour market strategies in the area of migration. When a potential country of destination approaches Armenia in order to conclude a bilateral labour agreement, national authorities are in most cases interested and undertake negotiations with the considered country. Such has been the case recently with Qatar. However, Armenia does not take active steps in order to conclude bilateral labour agreements, or more generally, to open new legal channels for the labour migration of its nationals.

It may be argued that the development of strategies with a view to promote foreign employment constitute an encouragement for Armenian workers to emigrate. This is not the purpose of promotion strategies. Naturally, the creation of employment opportunities in Armenia is the primary and best solution. However, a reality has to be faced: Armenian nationals are emigrating for labour-related reasons. It is therefore in the interest of the national authorities to develop strategies and policies in order to organise and manage existing labour migration flows.

The general objective of a labour market policy in the context of migration is to open legal channels for labour migration in order to:

- relieve unemployment;
- promote the protection of migrant workers' rights and interests, ensuring that there is orderly migration to countries where their rights will be protected and where they can expect to earn a decent income;
- promote the acquisition and transfer of new skills;
- generate foreign exchange remittances and savings.

Opening new legal channels for labour migration means reaching a match between labour demand and labour supply. From the viewpoint of the potential employer (labour demand), a match signifies that the educational qualifications and experience demanded by the foreign employer correspond with those of workers from the country of origin. From the viewpoint of the country of origin, the match also implies that the demand for foreign labour meets the objectives of the labour strategy in terms of public interest and of protection of migrant workers' rights and interests. Therefore, in order to create the conditions for such a match between labour demand and supply, it is mandatory to have a good understanding of both demand and supply. This corresponds to the first phase of the market development process. Successive phases can be summarized as follows (see Box 17 below).

Box 17: The Market Development Process

- Assessment of the national labour market (supply capacity) and identification of the target market (demand)
- Entry into the labour market of the destination country (promotion activities)
- Programme implementation (attainment of bilateral agreements, job contracts and recruitment agreements)
- Expansion of the country of origin's market share
- Market share maintenance

2.2. *Assessment of the national labour market*

In order to select the occupations that will be promoted in countries of destination, it is necessary to identify the sectors of activity where labour supply is abundant and sectors where labour is in short supply. Labour market studies in Armenia appear to be comprehensive enough to undertake this identification task.

Naturally, the purpose of labour market strategies must not be to promote foreign employment of national workers who are in short supply and are employed in sectors that are vital for the State. In many countries, the health and education sectors are the most important in this respect. In Armenia, however, there is no large-scale emigration of health and education professionals. On the

contrary, these two sectors are among those where emigration rates are the lowest (3.4% and 4.1% respectively¹¹²). In addition, unemployment for these two categories is high, standing at 32 per cent for health professionals and 25 per cent for education professionals,¹¹³ with recent graduates having more difficulties finding employment than those who graduated before 2002.¹¹⁴

Nevertheless, despite the high unemployment rate in most sectors of the national economy, labour shortages still exist, notably within the construction and IT sectors, as well as in a number of occupations within the banking and services sectors, including accountants, customer service specialists, and marketing specialists.¹¹⁵ Promotion of foreign employment should be excluded in these sectors.

2.3. Target market identification

One of the aims of labour market strategies is to diversify countries of destination, i.e. to organise the geographical segmentation of labour migration flows. This is a crucial element for at least two reasons: firstly, geographical segmentation can reduce consequences of possible changes in immigration policies or changes in economic situation in countries of destination; secondly, seeking new destinations can be linked to a perception of a lack of respect for migrants' rights in the traditional countries of destination. In the Armenian context, such is the case of the most favoured country of destination, Russia. In addition, labour migration to Russia appears to be characterized by a significant brain waste phenomenon (workers employed below their level of qualification). This constitutes an additional factor, pleading for a diversification of countries of destination. It must nevertheless be kept in mind that, as migration is the product of historical linkages and previous political or economic ties, diversification of countries of employment is not an easy objective to achieve.

The types of data on potential demand for migrant workers that need to be collected include the following:

- Assessment of the general political and economic trends, including Gross Domestic Product (GDP), growth rate, population and its breakdown by demographic profile, literacy rate and graduates in schools, employment/unemployment rate, per capita income, export figures.
- After this, the assessment of the demand for skills can be broken down for each economic sector, such as agriculture, manufacturing, construction, healthcare, service (domestic help), education, professionals (office workers, managers, accountants), etc.
- Each of these sectors generates specific valuable data that determine trends such as volume of production (when necessary), number of companies (or households being served), and number of nationals/migrant workers employed in the sector.

More specifically, it is crucial to collect the following elements of information:

- existence of avenues for legal labour migration;
- degree of protection of labour rights, level of salaries, wages, social benefits.

A preliminary and very succinct overview of labour migration policies in Asia, Gulf countries and EU Member States (with a particular focus on France) is included in Boxes 20 and 21 below.

¹¹² ILO, *Migration and Development. Armenia Country Study*, ILO, 2009, pp. 26-27.

¹¹³ *Ibid*, p. 19.

¹¹⁴ *Ibid*, pp. 26-27.

¹¹⁵ *Ibid*, p. 19.

Box 18: Labour Migration Policies in Asia

The main Asian countries of destination include Japan, the Republic of Korea, Malaysia, Singapore, Thailand, Hong Kong SAR and Taiwan (China).

Migration flows in the region are dominated by low and semi-skilled workers. Labour migration schemes are generally strictly temporary, based on two- to three-year contracts. They do not authorize settlement in the country. As a general rule, migrant workers do not have free access to the labour market of the country of destination. Stay permits are tied to the work contract, which means that migrant workers cannot change employers and that the loss of a job leads to the termination of the stay permit. Moreover, family reunification is generally not authorized.

Skilled workers generally benefit from more favourable regimes. In Singapore, Japan and Korea for instance, they can obtain permanent residence status as well as full access to the national labour market.

It is therefore suggested that organised labour migration of Armenian nationals towards Asian States is limited to skilled workers.

Box 19: Labour Migration Policies in the Middle East

The Gulf Cooperation Council (GCC) states – Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates – are major countries of destination, with many of them consisting of more migrant workers than nationals.

Labour migration schemes are strictly temporary. The standard duration of work contracts and stay permits is two to three years with the possibility of renewal. Migrant workers do not have the possibility to obtain permanent resident status or naturalization. They are strongly tied to their employer through the application of the *Kafala* (sponsorship) system. Migrant workers cannot change employers without their permission, and termination of the work contract ends residency rights. Abusive practices by employers, such as confiscation of passports, unpaid wages and sexual harassment of domestic workers, are common and protection mechanisms are weak.

In 2009, however, two GCC countries, Kuwait and Bahrain, have amended the *Kafala* system. In Kuwait, migrant workers now have the possibility to change employers without their consent at the end of the work contract, providing that they have completed three continuous years of work with the same employer. Bahrain has adopted a stronger reform of the *Kafala* system, which gives migrant workers the general right to change employment after meeting certain notice requirements. The new legislation, however, does not apply to domestic workers, and its effective implementation remains to be evaluated.

As with Asian countries, it is suggested that organised labour migration of Armenian nationals towards the Middle East is limited to skilled workers.

Box 20: Labour Migration Policies in EU Member States

Despite important differences between the legislation of different European states, common trends and characteristics are significant enough for a general overview of labour migration policies of EU Member States to be presented.

Admission is usually granted for a temporary period with the possibility to renew stay/work permits and, ultimately, to settle in the considered country of destination. The longer migrants stay in the country of destination, the more rights are granted to them. More specifically,

admission is usually granted after application of a labour market test, a quota system, or both. After a maximum of five years of legal and continuous residence, and under the condition of stable and regular income, migrant workers are entitled to permanent residence and to equal treatment with nationals with regards to access to employment. Under certain conditions, migrant workers also benefit from the right to family reunification after a maximum residence period of two years.

Next to this common immigration regime, EU Member States have adopted more specific schemes. Some target high-skilled workers and are more favourable than the common regime. Others target lower-skilled migrant workers. They are generally strictly temporary and thus less protective. Such is mainly the case of seasonal work schemes. EU Member States have also concluded bilateral labour agreements with a number of countries of origin that either set specific programmes – for instance in the case of seasonal employment – or foresee more general favourable immigration regimes for the nationals of the considered states.

Box 21: Labour Migration Policy in France

Labour migration policies in EU Member states can be further understood through the presentation of specific national legislation; that of France. The procedure of admission of migrant workers in France is initiated by the employer. It is primarily conditioned by the obtaining of a work authorization, which is itself granted against the following criteria: the employment situation in the considered profession and geographical area (application of the labour market test); equal treatment with nationals regarding conditions of employment and remuneration; the existence of decent housing for the migrant worker.

The main criterion and, in practice, the main obstacle to the admission of migrant workers is the employment situation. In this context, it is important to underline that French legislation provides an exception to the labour market test system with regard to professional activities or geographical areas experiencing difficulties in recruitment. These professions have been compiled in a list published by the Minister of Economy in its Regulation of 18 January 2008. The Regulation designates for the 22 French metropolitan regions of France a number of professions for which the labour market test is not required. This shortage list only includes higher-level technical and a few university-level occupations.

Excerpts of the list of 29 professions for the capital Region – Île-de-France:

Distance-selling operator;
Commercial attaché in semi-processed goods and commodities;
Auditor;
Computer specialist;
Merchandiser;
Building equipment mechanic;
Planner/designer in electricity and electronic;
Planner/designer in mechanical construction and metal work;
Building technician in mechanical construction and metal work;
Draughtsman in public buildings and works sector;
Maintenance worker in electronic;
Geometer;
Lift fitter and maintenance worker;
Technician in the wood and furniture industries.

Once the work authorization has been granted, the migrant worker applies for a long-term visa. In most cases the long-term visa will constitute the first stay/work permit. A long-term visa mentioning “salaried employment”, valid for 12 months, will be delivered when the work contract is for a period

of 12 months or more. It may include territorial or professional restrictions but it does not tie the worker to the employer. The renewal of the permit is globally subject to the same conditions and procedure applicable to the first delivery. When involuntarily deprived of his/her work at the moment of renewal, the applicant is granted a one-year temporary stay permit mentioning “salaried employment”. If the migrant worker is still unemployed at the end of the first extended period, subsequent extensions may be denied. When the work contract is for a period shorter than 12 months, the long-term visa is delivered for the duration of the work contract. In this case, the worker can only work for a specific employer and the permit’s renewal is subject to the existence of a work contract or a promise of employment.

After 18 months’ stay in France, migrant workers can apply for family reunification with their spouse and minor children, under the conditions set in Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification. Permanent immigration status is granted after five years of regular stay in France, under the conditions set in Council Directive 2003/109/EC on the status of third country nationals who are long-term residents. It takes the form of a long-term residence permit, valid for ten years – with the automatic right to renew – which gives full access to the national labour market.

When selecting potential countries of employment, the importance of cultural, ethnic and language affinity cannot be underestimated. Generally destination countries have nationality preferences arising from cultural affinity or long historical ties. In absence of such relations, aggressive promotion campaigning might be required.

Regarding the means of collecting data and basic information, such as general information on the political and economic situation, Immigration laws and regulations, occupational definitions and nomenclature and unemployment data by occupation, is easy to collect. Fact-finding missions in selected countries, as well as activities of the sending country’s diplomatic missions, including reports from labour attachés, can provide more specific data and analysis.

2.4 Activities to be undertaken after market research

Information sharing

After assessing the national labour market and targeting foreign labour markets, the next phase of a market development strategy is generally to undertake promotion activities with a view to secure recruitment agencies, bilateral labour agreements and job contracts.

However, it must be noted that, already at this stage, actions can be undertaken in order for Armenian migrant workers to benefit from wider employment opportunities abroad. The information collected throughout the target market identification phase can be usefully shared with National Employment Services, migrant resource centres and other migration information services, as well as with private employment agencies, when cooperation with public authorities is in place. For instance, knowing that, in France, labour migration is facilitated (derogation to the principle of the labour market test) in a number of listed technical professions can be valuable information for migrant workers and placement agencies.

Promotion activities

Promotion activities are costly and need to rely on solid organization and close cooperation between different government agencies, as well as with consular and diplomatic posts and the

private sector. Private employment agencies, when functioning efficiently and in cooperation with public authorities, have a significant role to play within promotion activities. As noted by Achacoso:

[...] the dynamic nature of international labor migration puts the private sector in a more advantageous position over government as far as the marketing and placement of workers abroad is concerned. This is because the private sector can mobilize their resources more efficiently and expeditiously than government agencies which normally operate under more constrictive conditions imposed by bureaucratic red tape and drawn-out budgetary process.¹¹⁶

Promotion activities may include the following, as exemplified by the Philippine Overseas Employment Administration (POEA):¹¹⁷

- “Personal Selling” including marketing missions, field visits and client calls (see Box 22 below);
- Print promotions (see Box 23 below);
- Corporate Promotions and Industry Servicing Projects (see Box No. 24 below).

While replication of the Philippines’ strategy in Armenia is not conceivable – nor desirable – the long lasting experience of POEA in terms of promotion of foreign employment is undoubtedly a valuable source of concrete information and highlights the competitive nature of the contemporary international labour market.

Box 22: POEA Promotion Activities: “Personal Selling”

Marketing Missions

The POEA undertake two types of marketing missions: Technical Study or Fact-finding Missions and Top Level Goodwill and Promotions Missions

Technical Study or Fact-finding Missions

This type of mission is composed of government officials, including middle managers and senior technical staff of POEA, with occasional representatives from other government agencies. It is a fact-finding or fact-substantiating strategy to assess opportunities or explore new prospects for Filipino manpower by undertaking research and complementing the information base on prevailing wage rates, development plans, comparative data on competition from other countries, labour and business laws, employment practices and other relevant information on the considered country.

Top Level Goodwill and Promotions Missions

This type of mission is either purely composed of ranking government officials (i.e. Minister of Labour, POEA Administrator, or undersecretaries) or is joined in by representatives from the private sector. The composition of the team is in itself a key selling strategy in as much as it “opens doors” in target markets and establishes goodwill and fosters bilateral understanding and cooperation with the target country. Opportunities to meet with top officials of foreign corporations are more readily arranged and greater attention is given to the promotion of Filipino workers’ qualities and competitiveness.

The inclusion of representatives from the private sector enhances the business development aspect of the mission and facilitates the establishment of links with prospective employers/contractors. Representation from the private sector is usually undertaken through nominations by industry associations with the sponsoring government institution having the final approval. All expenses incurred by the private sector are self-funded, although government assists in securing preferential air fares and hotel rates.

¹¹⁶ Achacoso, T., *Labour Administrators’ and Attachés’ Training Course*, IOM.

¹¹⁷ Examples in Boxes 22-24 draw on Achacoso, T., *Labour Administrators’ and Attachés’ Training Course*, IOM.

Field Visits/Client Calls

Aside from these overseas missions, POEA carries out periodic marketing activities in coordination with Labour Attachés. These Labour Attachés act as on-site “information centres” and “distribution outlets” for promotional and communication materials developed by the home office. They also conduct “door-to-door” visits to prospective clients and provide the home office with leads and recommendations. They play a very important role in information generation and as feedback resources.

Box 23: POEA Promotion Activities: Print Promotions

Printed promotional materials are a very important marketing tool within POEA practices. The development of these printed materials emanate from POEA marketing personnel since these require the perceptive analysis of the hiring tendencies and characteristics of employers, and are blended with a concise and comprehensive presentation of what the country or POEA can offer by way of its services.

Print campaigns are conducted through the use of advertisements in media, support communication materials and direct mailers.

Advertisements

The use of advertisements is particularly strong at the entry and growth stages of the market development process. At the entry stage, these advertisements serve as launching pads or image-builders of the Filipino worker as a better alternative or as a preferred choice. During the growth stage, these advertisements highlight the comparative advantages and competitive edge of the Filipino migrant worker.

The POEA conceptualizes and utilizes advertisement copies depending on their target audience and the purpose of the advertisement campaign. These take the form of institutional or tagline advertisements, greeting advertisements, advertisement write-ups, press releases and promotional articles strategically released and placed in various media outlets either locally or internationally. Factors like readership profiles, circulation records, language medium, cost and other factors determine the frequency and placement of such advertisements.

Support Communication Materials

These generally refer to hiring primers, skills brochures, corporate profiles, marketing portfolios, annual reports, information kits and flyers. They are prepared by POEA personnel and used as support materials in marketing activities. They provide handy and comprehensive information on the Philippine overseas employment programme and its facilities and are updated whenever necessary. The distribution network for these materials ranges from the Philippine Embassies, the marketing missions, Labour Attachés, business centres of leading hotels, and the direct mailer campaign.

The Direct Mailer Campaign strategy was employed to reach out to a predetermined group through sales letters and flyers all year round in order to support government and private sector efforts. Mailing lists of different sectors were developed with the assistance of Philippine Embassies and Labour Attachés who would recommend target sectors after much research. This campaign is considered as a more cost-effective promotional instrument, since it only involves the costs of letter production and mailing.

Box 24: POEA Promotion Activities: Corporate Promotions and Industry Servicing Projects

POEA undertakes a number of soft-sell schemes to strengthen its corporate image and the overseas employment programme in general. It also pursues projects which support the market development efforts of the private sector.

Familiarization Campaign

POEA hosts meetings and initiates dialogue with selected officials of foreign embassies based in Manila. This provides POEA with the opportunity to discuss vital issues and problems affecting its migrant workers in particular countries and also provides a means to update them on latest developments, policies and programmes of the government/POEA. Newly posted officials are immediately visited and given a briefing or orientation on POEA.

Greet-a-Client Campaign

This is another soft-sell approach by sending preferred clients, both of foreign governments and private employers, on special occasions such as holidays or national independence day celebrations. This provides a means of sustaining linkages with clients and as a “tickler” for them to continue patronizing Filipino manpower.

Client Referral Advisory System

The success of the market entry stage of the market development process is reflected in the number of interest or actual job orders and contracts sent to POEA shown by prospective clients to hire Filipino workers. If the interested employer is a government entity wishing to have their manpower requirements filled by POEA, this is referred to the POEA Government Placement Department. If the client is from the private sector, their job order is endorsed to the private sector through the Client Referral Advisory System

The Client Referral Advisory system is supervised by POEA and is utilized as a means of rewarding the top performers in the recruitment industry. Top performers are those who maintain a good track record in terms of their high operating standards and professionalism in the conduct of their business affairs. Guidelines and the mechanics for the privilege of inclusion in the Client Referral Advisory are mutually agreed upon by POEA and the private sector.

Market Information Service

A mini data bank is maintained that contains reference materials, foreign and local studies on migration, reports and other vital market data and information to interested foreign and local clients of POEA. For instance, recruitment agencies wishing to participate in a bidding process in a foreign country may need data on the business or tax laws of a country to enhance its chances. POEA assists and, if the data required is not available, the POEA may even seek assistance elsewhere just to assist a client.

3. Concluding bilateral arrangements

To date, Armenia has not concluded many bilateral labour arrangements. However, the following negotiations are currently open:

- Draft Agreement on Regulation of Labour Migration between the Republic of Armenia and the Republic of Bulgaria;
- Draft Agreement on Cooperation in the Areas of Labour and Social Policies between the Ministry of Labour and Social Issues of the Republic of Armenia and the Ministry of Social Security and Labour of the Republic of Lithuania;
- Draft Agreement between the Government of the Republic of Armenia and the Government of the Republic of Bulgaria on Cooperation in the Area of Labour and Social Protection;

- Draft Agreement between the RA Ministry of Labour and Social Issues and the Ministry of Labour and Social Development of the Republic of Kyrgyzstan on Cooperation in the Social and Employment Area;
- Draft Agreement between the RA Government and the Government of the Syrian Arab Republic on Cooperation in the Areas of Social Issues and Labour Force Movement;
- Draft Agreement on Cooperation between the Government of the Republic of Armenia and the Government of the Islamic Republic of Iran in the Area of Labour and Social Issues;
- Draft Agreement between the Government of the Republic of Armenia and the Government of the State of Qatar Concerning the Regulation of Manpower Employment in the State of Qatar;
- Draft Agreement on Cooperation between the Ministry of Labour and Social Issues of the Republic of Armenia and the Ministry of Social Justice and Empowerment of India in the Area of Labour and Social Issues.

Regarding social security, Armenia is currently in the process of moving from a universal coverage system to a social insurance system. This is likely to have significant consequences regarding relations with countries of destination of Armenian migrant workers. It also raises the question of renewed bilateral social security agreements.

3.1. Bilateral labour arrangements

3.1.1. Expectations from countries of origin

Countries of origin frequently place very high expectations on the conclusion of bilateral labour arrangements. Bilateral labour arrangements would be able to guarantee access of nationals of a considered country to the international labour market, thus relieving domestic unemployment; bilateral labour arrangements would prevent criminal activities and exploitation of migrants related to irregular migration; they would guarantee protection of welfare and rights of migrant workers. In addition, bilateral labour arrangements are also seen as a means to reduce brain drain, facilitate remittances and improve transfers of skills and technology, as well as an occasion to build confidence between the two considered countries with a view to develop cooperation beyond migration management.

While these hopes and objectives are globally well funded, it is nevertheless necessary to keep a modest approach when considering the benefits of bilateral labour arrangements for countries of origin. Indeed bilateral labour arrangements are difficult to conclude, their content may be disappointing from the point of view of countries of origin, and their implementation is arduous. For instance, OECD estimates show that at least 25 per cent of bilateral labour arrangements are not implemented.

3.1.2. Typology of bilateral labour arrangements

Binding agreements and memoranda of understanding

Bilateral labour arrangements can either take the form of legally binding agreements (treaties) or non-legal arrangements such as memoranda of understanding (MoUs). MoUs can be concluded between two governments – for instance MoUs between Canada and Mexico or Caribbean states on the Seasonal Agriculture Worker Program (SAWP) – or between national administrations of two states, for example MoUs between Germany's and Slovenia's National Employment Services regarding guest-workers' programmes.

Both binding agreements and MoUs are generally framework agreements. The details of their provisions and implementation can be specified in operational guidelines attached to the agreement as annexes, arranged through informal cooperation, for example through an exchange of letters between administrative agencies, or left to decisions taken at the local level.

In most cases, countries of origin favour binding agreements over MoUs as they appear to offer guarantees concerning their effective implementation. However, it is less the legal form of the arrangement that guarantees its efficiency than its content, the means dedicated to its implementation and, most importantly, the will of the parties.

Issues covered by bilateral labour arrangements

The scope covered by bilateral arrangements may vary very much from one agreement to another. Some arrangements are rather comprehensive, detailing conditions of recruitment, travel, housing, terms and conditions of employment, and return. Others are more succinct and rely mainly on the national legislation of the country of destination. Regardless, the core elements of bilateral labour arrangements concern the recruitment of migrant workers. The most common of arrangements are:

- seasonal worker schemes (in sectors such as agriculture, tourism and construction);
- contract workers and project-tied agreements (workers employed by a foreign-based company or a domestic firm to work abroad);
- guest worker agreements (nowadays more specific and of lesser dimension than those concluded after World War II);
- working holiday agreements (access to employment for young adults during holidays).

Other bilateral labour arrangements are more general in the sense that they do not target specific types of employment.

Next to these typical bilateral labour arrangements, other agreements address specific issues such as border-crossing matters (e.g. visa facilitation agreements), mutual recognition agreements (e.g. recognition of diplomas, right to practice a profession), or social security and double taxation agreements. These agreements are generally not considered as bilateral labour arrangements *per se* but they include elements related to labour migration management. Another example is the frequent coupling of readmission agreements with the opening of channels for legal labour migration.

3.1.3. Difficulties in negotiation, conclusion and implementation

Refusal of countries of destination to open negotiations

It is common for countries of origin wishing to enter into bilateral labour arrangements to face refusal from countries of destination. With the risk of being schematic, one can maintain that countries of destination conclude bilateral labour arrangements for two main reasons: to normalize a pre-existing situation with a country of origin and/or to encourage and facilitate recruitment in sectors of the domestic economy that are in high demand. Countries of origin that are outside the scope of these interests will experience difficulties in entering into bilateral relations.

In addition, some states adopt, by principle, a position not to conclude bilateral labour arrangements, which can be explained by a refusal to limit their sovereignty in immigration matters,

the conception that bilateral labour arrangements discriminate against nationals of certain countries over others, or may be a source of political tensions, as they are likely to create similar expectations from other countries.

Moreover, some countries just do not see the need to conclude bilateral labour arrangements. As stated by Go:

Among the most common arguments raised by receiving countries for their reluctance, if not outright refusal, to enter into any formal agreement is that foreign workers are subject to the same laws and regulations as nationals; consequently, they do not need any special attention. Moreover, since the terms of employment are negotiated by the workers and private employers or agencies, government intervention is not necessary since it is a private sector business.¹¹⁸

Difficulties in negotiation and implementation

A primary difficulty when negotiating a bilateral labour arrangement naturally concerns the extent of opening the labour market of the country of destination to nationals of the country of origin. As stated by Nonnenmacher, “countries of origin often regard the availability of jobs in a country of destination as an entitlement rather than a mere prospect, and quotas (where they exist) more as targets than ceilings”.¹¹⁹ Indeed, it is rare that bilateral labour arrangements institute an established number of workers to be admitted every year in the country of destination. An agreement already appears to be positive to countries of origin when it explicitly provides preferential admission to the nationals of the considered state. In many cases, especially when bilateral labour arrangements are not employment specific, recruitment of nationals of the considered country of origin is left to the “natural game” of the labour market. Other common subjects of contention include social and medical insurance, family reunification, conditions of readmission of irregular migrants, recognition of qualifications, etc.

Negotiation of a bilateral labour arrangement is a lengthy process that demands sufficient institutional capacities. The lack of institutional capacities is often a source of difficulty for countries of origin. Similarly, the effective implementation of a bilateral arrangement requires solid institutional capacity. Among other difficulties in implementing bilateral arrangements, mention can be made of inadequacies in recruitment, mismatches between admission criteria and labour forces profiles in countries of origin, the lack of balance between earning possibilities in the country of destination and the costs of migration (that may include travel, medical examinations, housing, etc.). In addition, the lengthy process of concluding a bilateral arrangement can in itself be a source of non-implementation. As stated by the OECD:

In some cases, the negotiation process between countries can take several years. The national ratification process and the establishment of the implementation framework can further lengthen the procedure. Finally, certain agreements have not been implemented after signature because the receiving country no longer sees the need for foreign workers.¹²⁰

¹¹⁸ Go, S. P., “Asian Labor Migration: the Role of Bilateral Labor and similar Agreements”, Paper presented at the Regional Informal Workshop on Labor Migration in Southeast Asia: What Role for Parliaments, 21-23 September 2007, Manila, Philippines, p. 2.

¹¹⁹ Nonnenmacher, S., “Achieving best Outcomes from Global, Regional and Bilateral Cooperation” in IOM, *World Migration 2008. Managing Labour Mobility in the Evolving Global Economy*, IOM, 2008, p. 382.

¹²⁰ OSCE, *Migration for Employment: Bilateral Agreements at a Crossroads*, 2004, p. 18.

In other words, challenges are numerous when entering into a bilateral labour arrangement process. These challenges have to be anticipated by countries of origin in order to conclude the most comprehensive and effective arrangements possible.

3.1.4. Content of a comprehensive bilateral agreement

Abella identifies 24 core elements to be included in bilateral labour arrangements (see Box 25 below).¹²¹

Box 25: 24 Core Elements of a Bilateral Labour Agreement (ILO)

1. Competent government authority;	14. Employment conditions;
2. Exchange of information;	15. Conflict-resolution mechanism;
3. Migrants in an irregular situation;	16. Role of trade unions and collective bargaining rights;
4. Notification of job opportunities;	17. Social security;
5. Drawing up a list of candidates;	18. Remittances;
6. Pre-selection of candidates;	19. Provision of housing;
7. Final selection of candidates;	20. Family reunification;
8. Nomination of candidates by the employers (possibility for the employer to provide directly the name of a person to be hired);	21. Activities of social and religious organizations;
9. Medical examination;	22. Establishment of a joint commission (to monitor the agreement's implementation);
10. Entry documents;	23. Validity and renewal of the agreement;
11. Residence and work permits;	24. Applicable jurisdiction.
12. Transportation;	
13. Employment contract;	

Based on these 24 core elements, specific developments exemplified by the practice of selected states are made on the following issues:

- Preferential admission;
- Selection and recruitment of migrant workers;
- Terms and conditions of employment;
- Travel expenses;
- Training and information sharing;
- Immigration status;
- Social and cultural rights;
- Administration and implementation.

Preferential admission

Bilateral labour arrangements organising preferential admission are naturally favoured by countries of origin as they provide facilitated access for their nationals to the labour markets of countries of destination. Preferential admission is generally provided for in three different ways: special categories of workers, preferential quotas or derogations to the labour market test, and preferential employment.

¹²¹ Abella, M., I., *Sending workers abroad: A manual on policies and procedures of special interest to middle and low income countries*, ILO, 1997

Special categories: Employment of certain categories of workers (especially the low or semi-skilled) or for certain types of jobs not covered under the general immigration admission system is authorized for nationals of countries having signed bilateral arrangements. In Germany, for example, seasonal employment in agriculture and other sectors can only be accessed through bilateral agreements.

Preferential quota: When countries regulate the number of foreign workers to be admitted under their general migration programmes through quotas, a special quota can be attributed to countries having signed a bilateral labour arrangement. Italy has a preferential quota for the employment of Albanian and Tunisian nationals in tourism and agriculture. Similarly, countries following the principle of the labour market test can introduce derogations for nationals of countries having signed a bilateral labour arrangement (see example from the French-Tunisian Protocol on managed migration in Box 26 below).

Preferential employment: When the categories covered by bilateral agreements are not different from those covered by the general migrant entry provisions, workers covered by these agreements can benefit from preferential admission or employment over other foreigners. In Spain, for instance, nationals from countries having signed bilateral agreements are given preference.

It must be highlighted that, in most cases, bilateral arrangements facilitate but do not guarantee admission. As previously noted, quotas, for example, are ceilings, not entitlements for nationals of countries of origin. Moreover, many – if not most – bilateral labour arrangements do not explicitly provide for preferential admission. In other words, the national legislation of the country of destination concerning admission of migrant workers equally applies to all foreigners, including those nationals of the country having signed a bilateral arrangement. However, as bilateral labour arrangements develop facilitation mechanisms for labour migration, their very existence is likely to involve preferential recruitment of migrant workers from the considered countries of origin.

Bilateral agreements may also include provisions in order to facilitate re-entry for migrant workers who have already successfully participated in the considered labour migration programme (see Agreement for the extension of the MoU between the Philippines and Korea, 2009, in Box 27). Such a promotion of circular migration may not only be favourable to migrant workers themselves but also to the country of destination, as it could serve as an incentive for migrants to depart at the end of their employment contract, with a view to preventing illegal overstaying.

Box 26: Protocol on Managed Migration between the Government of the French Republic and the Government of the Tunisian Republic (2008)

Article 2.3 Migration for professional purpose

[...]

2.3.3. The stay permit “salaried employment”, foreseen by modified Agreement of 17 March 1988, art. 3, is delivered to Tunisian nationals with the purpose of exercising, on the entire French territory, one of the occupations enumerated in the list included in Annex 1 of the present Protocol, upon presentation of a work contract visa by the competent French authorities. The labour market situation shall not be taken into account. The aforementioned list can be modified by exchange of letters between the two Parties.

The two Parties commit themselves to facilitate the delivery of the aforementioned stay permit to 3,500 Tunisian nationals each year.

Box 27: Agreement for the Extension of the Validity of the Memorandum of Understanding on the Sending and Receiving of Workers to the Republic of Korea between the Department of Labor and Employment of the Philippines and the Ministry of Labor of the Republic of Korea signed on 20 October 2009 (2009)

Article 11

[...]

5. The POEA [Philippine Overseas Employment Administration] and the HRD Korea [Human Resources Development Service] will work closely together to facilitate the re-entry of Filipino workers who are being re-employed, pursuant to the Foreign Employment Act.

Selection and recruitment of migrant workers

Organization of selection and recruitment of migrant workers generally constitute the core components of bilateral labour arrangements. In this regard, a first issue to be addressed in a bilateral arrangement concerns the identification of the competent authorities and actors in both countries of origin and destination. In some cases, recruitment will involve private employment agencies in countries of origin (see Additional Protocol to the Agreement between the Philippines and Qatar, 2008, in Box 28). In the majority of bilateral labour arrangements, however, responsibility for selection and recruitment is mainly undertaken and supervised by public authorities (see MoU between the Philippines and the United Arab Emirates, 2007, in Box 29 and Recruitment Agreement between the Philippines and the UK, 2002, in Box 30). The involvement of other actors, such as trade unions, employers' associations and NGOs, is also conceivable.

Bilateral labour arrangements generally identify the successive procedural steps of the selection and recruitment process. This includes vacancy notification (how should individual vacancies, or groups of identical or similar vacancies, be made known to potential migrant workers; inclusion of the skills required from the applicants and the nature of the work to be performed; age limits, etc.), lists of candidates (how should countries of origin list job seekers, should the list contain details of their trades, past employment and the kind of work they are looking for), pre-selection (is the competent authority of the country of origin to be responsible for pre-selecting candidates; should candidates have a clean police record; etc.), and final selection (is the content authority of the country of destination to have the final say). While some bilateral labour arrangements are rather succinct (see MoU between the Philippines and the United Arab Emirates, 2007, in Box 29), others regulate selection and recruitment in great details (see Recruitment Agreement between the Philippines and the UK, 2002, Box 30).

Box 28: Additional Protocol to the Agreement between the Government of the Philippines and the Government of the State of Qatar concerning Filipino Manpower Employment in the State of Qatar signed on 10 March 1997 (2008)

Article 2

The Parties recognize that the recruitment of Filipino manpower for the private sector in Qatar will be made through a Philippines recruitment agency duly licensed by the Department of Labor and Employment of the Republic of the Philippines.

Box 29: Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the United Arab Emirates in the Field of Manpower (2007)

Article 2

The Department of Labor and Employment of the Republic of the Philippines and the Ministry of Labour of the UAE [United Arab Emirates] shall implement the provisions of this Memorandum of Understanding.

Article 3

Recruitment of manpower in the Philippines and its workers' entry into the UAE shall be regulated in accordance with relevant laws, rules and procedures of the parties

Article 4

Manpower placed in the UAE pursuant to this Memorandum of Understanding shall perform work for the employer and shall be recruited through selection according to the needs of the UAE and shall be given protection pursuant to the labour laws and regulations in force in both countries.

Article 5

The applications for workers shall state the required specifications and qualifications for the jobs and types of jobs needed. They shall include the conditions of employment, especially the salary, accommodation, transportation and any other relevant terms that shall be verified by the Ministry of Labour in the UAE.

Box 30: Recruitment Agreement between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland (2002)

Article 3 Pre-advertising Information

1. The Department of Health, England (DH) will ensure that the NHS Employer identifies any posts for which a police check is required where successful applicants will have unsupervised access to children and babies.
2. The DH will ensure that a sample employment contract to be used by each NHS Employer recruiting under the terms of this agreement will be supplied to the POEA prior to undertaking the recruitment campaign.

Article 4 Advertising

1. The POEA [Philippine Overseas Employment Administration] will advertise the positions and state in the advertisement where the positions are in the NHS and specify the linguistic competence, including reading, writing, listening and speaking skills, which are required in order to fulfil the requirements of the post.
2. The POEA will only use the NHS logo with the approval by the DH which will not be unreasonably withheld.
3. DH may advertise itself when the POEA is unable to provide the number of suitable applicants for interview. Such advertisements shall be under the advice and supervision of POEA. The POEA will advise DH of rules regarding advertising.
4. The DH will pay the costs incurred by POEA in advertising within 30 days of receipt of an invoice verified by the POEA. Payment shall be made by cheque made payable to the originator of the invoice.

Article 5 Selection of Workers

It is essential to good employment practice that recruitment and selection is dealt with in an equitable and consistent way.

Article 6 Pre-screening

1. The POEA shall undertake pre-screening of nurses based on the NHS Employer's specification.
2. The POEA will ensure that all applicants for nursing posts:
Hold a Bachelors degree of Nursing in the Philippines
Be in paid employment at the time of application
Hold a current Filipino nursing license
Have less than 6 months of their employment contract remaining
3. Do not require more than 6 months supervised practice in an acute hospital setting before the UKCC will consider them for professional registration.

4. The POEA will ensure that the communication skills of all candidates are assessed during pre-screening to ensure that short-listed applicants possess the requisite skills for the position for which they are applying.
5. The POEA will inform all applicants they select for interview of the interview dates and times and who the panel members are.

Article 7 Before Interviews

1. The DH will provide the POEA with an electronic spreadsheet to log details of all applicants who have not previously applied for professional registration in the UK.
2. The POEA will inform the DH by email of the dates and times of interviews for the short-listed candidates using a predetermined spreadsheet two weeks before the campaign.
3. The POEA will email the spreadsheet, which logs details of all applicants who have not previously applied for professional registration in the UK to the DH at least 2 weeks prior to the interview campaign.
4. The POEA will provide the NHS Employer with applications from all selected applicants and ensure that those applications contain –
 - a completed NHS application form (with the section on the application form informing the employer of any criminal convictions according to the Rehabilitation of Offenders Act 1974 signed), and the Equal Opportunities monitoring form.
 - a completed NHS Occupational Health Form, sealed in an envelope, and addressed in confidence to the Occupational Health Department used by the employing organization.
 - two written references one of which is from the current employer and relates to the prior six months of employment. The references must be from named referees and use the NHS reference pro-forma.
5. The POEA will ensure that all documentation supporting the application is either an original or a certified copy of an original.
6. The DH shall conduct a pre-employment seminar prior to interview for applicants providing information about the post that they are applying for, the environment in which they may work and accommodation. The DH will wish the POEA to contribute to planning this seminar.

Article 8 Interviews

1. The POEA will schedule no more than 10 interviews per interview panel per day.
2. The POEA will provide suitable facilities to undertake interviews in a face-to-face setting. Each interview panel will require a private room where they will be uninterrupted.
2. The DH will ensure that the NHS Employer conducts interviews of short-listed applicants at the premises provided by POEA. The DH will ensure that NHS Employers conduct interviews in a face-to-face setting and that each interview panel will always consist of at least two people. Telephone interviews are not acceptable.

Article 9 Selection of Successful Applicants

The decision to offer employment to an applicant shall be for the NHS employer and the DH will ensure that selection of applicants by the NHS employer is on the basis of their specification and is subject to the result of medical examination conducted by a medical clinic or hospital which is recognized by the DH.

Article 10 Unsuccessful Candidates

The POEA shall retain documents of workers who were not successful at interview.

Article 11 Successful Candidates

1. The DH will ensure that NHS Employers provide an offer of employment following successful interview, receipt of two satisfactory professional references, checking of professional qualifications, other conditions and occupational health clearance.
2. The DH shall inform the POEA of the names of successful candidates within two weeks of the completion of the interviews. Unsuccessful applicants may be referred by the POEA for possible employment with other employers.
3. The POEA will work with the Philippine Regulation Commission to obtain evidence of registration required for the UKCC application and will collate all documentation required for applications with the United Kingdom Central Council (UKCC) and forward this to the DH.
4. The DH will ensure that the NHS Employer will pay the cost of initial application to the UKCC (£70 STG) on behalf of the applicant.
5. The POEA will ensure that in the three (3) months prior to departure for the UK, successful applicants

undergo a basic medical examination at a laboratory which is recognized by the DH, including blood tests for hepatitis B (Surface antigen and surface antibodies), rubella and chicken pox, chest x-ray and skin test for TB. The POEA will ensure that successful applicants bring their chest x-ray with them to the UK.

6. The POEA will ensure that successful applicants provide evidence of a police check carried out within the three (3) months immediately prior to departure for the UK, if the post they have been offered will involve unsupervised access to children and babies.

7. The POEA will ensure that successful applicants have a UKCC Registrar's decision letter, a valid Philippine passport and a UK work permit and entry visa prior to departing for the UK.

8. Both parties to this agreement will ensure that nurses will only be employed to a supervised practice placement leading to professional registration should this be required by the United Kingdom Central Council (UKCC) at the point of initial application.

9. The DH will ensure that NHS Employers utilize their own individual employment contract, which takes account of local terms and conditions. Successful applicants will be employed subject to the terms and conditions of the individual NHS employment contract including disciplinary procedures. The employment contract will include standard clauses which are detailed in appendix 2.

10. The DH will ensure that the NHS employer sends the employment contract signed by them, and the original Work Permit to successful applicants after their Work Permit has been received by the NHS Employer.

11. The POEA will ensure that applicants sign an Employees Undertaking form (appendix 3) entitling the NHS employer to:

- Recover from the applicant the cost of UKCC application, should the applicant not arrive to take up post.
- Recover from the applicant the full cost of the initial airfare to the United Kingdom to take up employment, if the employee resigns from their post to take up another post in the UK within 12 months of commencement.

12. The POEA shall provide a Pre-Departure Orientation Seminar to selected applicants for which a certificate shall be issued. The DH will wish to contribute to planning the content, and timing of this seminar to include information to equip applicants with a basic understanding of the employment contract, information about England, the NHS and living and working in London.

Terms and conditions of employment

When considering drafting provisions on terms and conditions of employment, authorities of countries of origin have to look into the details of the immigration and labour legislation of the country of destination. Is the legislation protective of workers? Is it properly implemented? Do foreign workers benefit from the same rights as nationals? Are there sectors not covered by the labour legislation (for instance, domestic work or agriculture)?

When labour protection is guaranteed, there may be no need to include specific provisions on terms and conditions of employment in the bilateral labour arrangement. Such is the case of many bilateral arrangements concluded with EU Member States. When a specific clause is inserted, it may simply be a reminder that foreign workers are subject to the same laws and regulations applicable to nationals (see Agreement between the Philippines and Switzerland, 2002, in Box 31). Indeed, it is a principle of international law (notably recognized by the International Covenant on Economic, Social and Cultural Rights, art. 7) that all foreign workers should be treated on equal terms with nationals. This notably includes the following rights: equal remuneration for work of equal value, prohibition of unlawful deductions from salaries, protection from dismissal, access to vocational training, and equal treatment with nationals with regard to rights arising from past employment (in particular, remuneration and social security).

When labour protection in the country of destination does not appear to be satisfactory, bilateral labour arrangements should address gaps in legislation and, in some instances, derogate from

domestic legislation. Naturally, the labour legislation of the country of origin can be a point of reference in this regard. Specific provisions can include minimum wage, hours of work, overtime, weekly rest, holidays with pay, termination of contract, social security, etc. Social security is often regulated by additional agreements between the countries concerned. If no such agreement is in place, specific provisions should be included in bilateral labour arrangements. Provisions on terms and conditions of employment can take the form of a model employment contract (see Agreement between Canada and Mexico on seasonal employment, 2011, in Box 32). The model employment contract should also include provisions concerning travel and accommodation. Countries of origin and/or countries of destination may supervise the use of such an employment contract by employers and employees. Some bilateral agreements specify that employment contracts are to be validated by authorities of countries of origin and destination (see MoU between Jordan and the Philippines, 2010, in Box 33).

Box 31: Agreement between the Government of the Republic of the Philippines and the Swiss Federal Council on Exchange of Professional and Technical Trainees (2002)

Article 7

1. The rights and responsibilities of the trainee and employer, which include salary, living, health and accident insurance, taxes, working allowances, among other things, shall be in accordance with the domestic law in force in the host country.

Box 32: Agreement for the Employment in Canada of Seasonal Agricultural Workers from Mexico (2011)

Article 1 Scope and Period of Employment

The employer agrees to:

Employ the worker(s) assigned to him by the Government of the United Mexican States under the Mexican Seasonal Agricultural Workers Program and to accept the terms and conditions hereunder as forming part of the employment Agreement between himself and such referred worker(s). The number of workers to be employed shall be as set out in the attached clearance order.

The Parties agree as follows:

1. (a) subject to compliance with the terms and the conditions found in this agreement, the employer agrees to hire the worker(s) as a _____ for a term of employment of not less than 240 hours in a term of 6 weeks or less, nor longer than 8 months with the expected completion of the period of employment to be the _____ day of _____, 2011. (b) In the case of a transferred worker, the term of employment shall consist of a cumulative term of not less than 240 hours. (c) The employer needs to respect the duration of the employment agreement signed with the worker(s) and their return to the country of origin by no later than December 15th with the exception of extraordinary circumstances (e.g. medical emergencies).
2. The normal working day is 8 hours, but the employer may request of the worker and the worker may agree to extend his\her hours when the urgency of the situation requires it, and where the conditions of employment involves a unit of pay, and such requests shall be in accordance with the customs of the district and the spirit of this program, giving the same rights to Mexican workers as given to Canadian workers. The urgent working day should not be more than 12 hours daily.
3. For each six consecutive days of work, the worker will be entitled to one day of rest, but where the urgency to finish farm work cannot be delayed, the employer may request the worker's consent to postpone that day until a mutually agreeable date.
4. To give the worker a trial period of fourteen actual working days from the date of his arrival at the place of employment. The employer shall not discharge the worker except for sufficient cause or refusal to work during that trial period.
5. The receiving employer shall be provided by the sending employer at the time of transfer an accurate record of earnings and deductions to the date of transfer, noting that the record needs to clearly state what,

if any, deductions can still be recovered from the worker.

6. An employer shall, upon requesting the transfer of a worker, give a trial period of seven actual working days from the date of his arrival at the place of employment. Effective the eighth working day, such a worker shall be deemed to be a "named worker" and clause X - 1.(i) will apply.

7. The employer shall provide the worker, and where requested, the government agent with a copy of rules of conduct, safety discipline and care and maintenance of property as the worker may be required to observe.

Article 2 Lodging, Meals and Rest Periods

The employer agrees to:

1. Provide suitable accommodation to the worker, without cost. Such accommodation must meet with the annual approval of the appropriate government authority responsible for health and living conditions in the province where the worker is employed. In the absence of such authority, accommodation must meet with the approval of the government agent.

2. Provide reasonable and proper meals for the worker and, where the worker prepares his own meals, to furnish cooking utensils, fuel, and facilities without cost to the worker and to provide a minimum of thirty minutes for meal breaks.

3. Provide the worker with at least two rest periods of 10 minutes duration, one such period to be held mid-morning and the other mid-afternoon, paid or not paid, in accordance with provincial labour legislation.

Article 3 Payment of Wages

The employer agrees to:

1. To allow Human Resources and Skills Development Canada (HRSDC) or its designate access to all information and records necessary to ensure contract compliance.

2. That a recognition payment of CAD 4.00 per week to a maximum of CAD 128.00 will be paid to workers with 5 or more consecutive years of employment with the same employer, and only where no provincial vacation pay is applicable. Said recognition payment is payable to eligible workers at the completion of the contract.

3. To pay the worker at his place of employment weekly wages in lawful money of Canada at a rate equal to the following, whichever is the greatest: i) the minimum wage for workers provided by law in the province in which the worker is employed; ii) the rate determined annually by HRSDC to be the prevailing wage rate for the type of agricultural work being carried out by the worker in the province in which the work will be done; or iii) the rate being paid by the employer to his Canadian workers performing the same type of agricultural work;

4. That the average minimum work week shall be 40 hours; and i) that, if circumstances prevent fulfilment of Clause 4 above, the average weekly income paid to the worker over the period of employment is as set out in Clause 4 above at the hourly minimum rate; and ii) that where, for any reason whatsoever, no actual work is possible, the worker, shall receive an advance with a receipt signed by the worker to cover personal expenses, the employer shall be entitled to deduct said advance from the worker's pay prior to the departure of the worker.

The government agent and both parties agree:

That in the event the employer is unable to locate the worker because of the absence or death of the worker, the employer shall pay any monies owing to the worker to the government agent. This money shall be held in trust by the government agent for the benefit of the worker. The government agent shall take any or all steps necessary to locate and pay the money to the worker or, in the case of death of the worker, the worker's lawful heirs.

Article 4 Deductions of Wages

The worker agrees that the employer:

1. Shall recover the cost of non-occupational medical coverage by way of regular payroll deduction at a premium rate of CAD 0.60 per day per worker in Ontario, Quebec, and Saskatchewan and CAD 1.28 per day per worker in all other provinces.

2. May deduct from the worker's wages a sum not to exceed CAD 6.50 per day for the cost of meals provided to the worker.

3. Will make deductions from the wages payable to the worker only for the following: i) those employer deductions required to be made under law; ii) all other deductions as required pursuant to this agreement.

Article 5 Insurance for Occupational & Non-Occupational Injury and Disease

The employer agrees to:

1. Comply with all laws, regulations and by-laws respecting conditions set by competent authority and, in addition, in the absence of any laws providing for payment of compensation to workers for personal injuries received or disease contracted as a result of the employment, shall obtain insurance acceptable to the government agent providing such compensation to the worker;
2. Report to the government agent within 48 hours all injuries sustained by the worker which require medical attention.

The worker agrees that:

3. The employer shall remit in advance directly to the insurance company engaged by the Government of Mexico the total amount of insurance premium calculated for the stay period in Canada. Such amount will be recovered by the employer with the deduction made to the worker's wages according to clause IV - 1. In the case where the worker leaves Canada before the employment agreement has expired, the employer will be entitled to recover any unused portion of the insurance premium from the insurance company;
4. He will report to the employer and the government agent, within 48 hours, all injuries sustained which require medical attention.
5. The coverage for insurance shall include: i) the expenses for non-occupational medical insurance which include accident, sickness, hospitalization and death benefits; ii) any other expenses that might be looked upon under the agreement between the Government of Mexico and the insurance company to be of benefit to the worker.
6. If the worker dies during the period of employment, the employer shall notify the government agent and upon receipt of instructions from the government agent, either: i) provide suitable burial; or ii) remit to the government agent a sum of money which shall represent the costs that the employer would have incurred under Clause 6 (i) above, in order that such monies be applied towards the costs undertaken by the Government of Mexico in having the worker returned to his relatives in Mexico.

Article 6 Maintenance of Work Records and Statement of Earnings

The employer agrees to:

1. Maintain and forward to the government agent proper and accurate attendance and pay records.
2. Provide to the worker a clear statement of earnings and deductions with each pay.

Article 7: Travel and reception arrangements

The employer agrees to:

1. Pay to the travel agent the cost of two-way air transportation of the worker for travel from Mexico City to Canada by the most economical means.
2. Make arrangements: i) to meet or have his agent meet and transport the worker from his point of arrival in Canada to his place of employment and, upon termination of his employment to transport the worker to his place of departure from Canada; and ii) to inform and obtain the consent of the government agent to the transportation arrangements required in (i) above.

The worker agrees to:

3. Pay to the employer costs related to air travel and the work permit processing fee as follows: i) Costs related to travel will be deducted by way of regular payroll deductions at a rate of 10 per cent of the worker's gross pay from the first day of full employment. The amount deducted for travel is not to exceed CAD 632.00. ii) A cost of CAD 150 for the work permit processing fee. This amount will be deducted during the first six weeks of work through weekly proportional deduction. The aggregate payment to the employer for travel and the work permit processing fee is not to be less than CAD 150.00 or greater than CAD 782.00. Where a federal/provincial agreement on the selection of foreign workers exists with associated cost recovery fees, the cost of such provincial fees will be reimbursed to the employer from the worker's final vacation pay cheque.

The contracting parties agree:

4. That in the case of a transferred worker, the second employer may continue to make deductions in expenses associated with the program, starting from the aggregate amount deducted by the first employer, without exceeding the amounts indicated in the preceding paragraphs.

The contracting parties agree:

5. In the event that at the time of departure a named worker is unavailable to travel the employer agrees, unless otherwise stipulated in writing on the request form, to accept a substitute worker.

The receiving employer agrees:

6. That in the case of a transferred worker the receiving employer agrees to pay the travel agent in advance the cost of one-way air transportation of the worker between Canada and Mexico by the most economical means as expressed in the Memorandum of Understanding.

Article 8 Obligations of the Employer

The employer agrees:

1. That the worker shall not be moved to another area of employment or transferred or loaned to another employer without the consent of the worker and the prior approval in writing of HRSDC and the government agent.

The employer agrees and acknowledges:

2. That the workers approved under the Seasonal Agricultural Workers Program are authorized by their work permit only to perform agricultural labour for the employer to whom they are assigned. Any person who knowingly induces or aids a foreign worker, without the authorization of HRSDC to perform work for another person or to perform non-agricultural work, is liable on conviction to a penalty up to CAD 50,000 or two years imprisonment or both. Immigration and Refugee Protection Act S 124(1)(C) and 125.

The employer agrees:

3. That worker s handling chemicals and/or pesticides have been provided with protective clothing at no cost to the worker, received appropriate formal or informal training and supervision where required by law.

The employer agrees:

4. That according to the approved guidelines in the province where the worker is employed the employer shall take the worker to obtain health coverage according to provincial regulations.

The employer agrees and recognizes:

5. To be responsible for arranging transportation to a hospital or clinic, whenever the worker needs medical attention. The Consulate will work in partnership with the employer to ensure proper medical attention is provided to the worker in a timely fashion.

Article 9 Obligation of the worker

The worker agrees:

1. To work and reside at the place of employment or at such other place as the employer, with the approval of the government agent, may require.

2. To work at all times during the term of employment under the supervision and direction of the employer and to perform the duties of the agricultural work requested of him in a workmanlike manner.

3. To obey and comply with all rules set down by the employer relating to the safety, discipline, and the care and maintenance of property.

4. That he:

i) shall maintain living quarters furnished to him by the employer or his agent in the same state of cleanliness in which he received them; and

ii) realizes that the employer may, with the approval of the government agent, deduct from his wages the cost to the employer to maintain the quarters in the appropriate state of cleanliness.

5. That he shall not work for any other person without the approval of HRSDC, the government agent and the employer, except in situations arising by reason of the employer's breach of this agreement and where alternative arrangements for employment are made under clause X - 4.

6. To return promptly to Mexico upon completion of his\her authorized work period.

7. To submit/file his tax return. For that purpose, the government agent shall provide information on the adequate options to meet this obligation.

Article 9 Premature Repatriation

1. Following completion of the trial period of employment by the worker, the employer, after consultation with the government agent, shall be entitled for non-compliance, refusal to work, or any other sufficient reason, to terminate the worker's employment hereunder and so cause the worker to be repatriated. The cost of such repatriation shall be paid as follows: i) if the worker was requested by name by the employer,

the full cost of repatriation shall be paid by the employer; ii) if the worker was selected by the Government of Mexico and 50 per cent or more of the term of the contract has been completed, the full cost of returning the worker will be the responsibility of the worker; iii) if the worker was selected by the Government of Mexico and less than 50 per cent of the term of the contract has been completed, the cost of the north-bound and south-bound flight will be the responsibility of the worker. In the event of insolvency of the worker, the Government of Mexico, through the government agent will reimburse the employer for the unpaid amount less any amounts collected under Clause VII - "The worker Agrees to:".

2. If it is the opinion of the government agent that personal and/or domestic circumstances of the worker in the home country warrant, the worker shall be repatriated with full cost of the repatriation paid by the worker.

3. If the worker has to be repatriated due to medical reasons, which are verified by a Canadian doctor, the employer shall pay reasonable transportation and subsistence expenses. The employer cannot continue recovering the costs incurred through the cheques issued to the workers by the insurance companies. The Government of Mexico will pay the full cost of repatriation when it is necessary due to a physical or medical condition, which was present prior to the worker's departure from Mexico.

4. That if it is determined by the government agent, after consultation with HRSDC, that the employer has not satisfied his obligations under this agreement, the agreement will be rescinded by the government agent on behalf of the worker, and if alternative agricultural employment cannot be arranged through HRSDC for the worker in that area of Canada, the employer shall be responsible for the full costs of repatriation of worker to Mexico City, Mexico; and if the term of employment as specified in Clause I - 1., is not completed and employment is terminated under Clause X - 4., the worker shall receive from the employer a payment to ensure that the total wages paid to the worker is not less than that which the worker would have received if the minimum period of employment had been completed.

5. That if a transferred worker is not suitable to perform the duties assigned by the receiving employer within the seven days trial period, the employer shall return the worker to the previous employer and that employer will be responsible for the repatriation cost of the worker.

Article 11 Miscellaneous

1. In the event of fire, the employer's responsibility for the worker's personal clothing shall be limited to 1/3 its replacement cost to a maximum of CAD 150.00. The government of Mexico shall bear responsibility for the remaining cost of the replacement of the worker's clothing.

2. The worker agrees that any personal information held by the Federal Government of Canada and the Government of the Province in which the work is performed may be released to HRSDC, to Citizenship & Immigration Canada to the government agent, to the Foreign Agricultural Resource Management Service, in the case of Quebec, to the Fondation des entreprises en recrutement de main-d'oeuvre agricole étrangère and to the Insurance Company designated by the government agent, so as to facilitate the operation of the Foreign Seasonal Agricultural Workers Program.

The consent of the worker to the release of information includes, but is not restricted to: i) information held under the Employment Insurance Act, (including the worker's Social Insurance Number); ii) any health, social service or accident compensation related information held by the government of the province in which the work is performed, including any unique alpha-numerical identifier used by any province; iii) Medical and health information and records which may be released to Citizenship & Immigration Canada as well as the Insurance Company designated by the government agent.

3. That the agreement shall be governed by the laws of Canada and of the province in which the worker is employed. French, English and Spanish versions of this contract have equal force.

4. This contract may be executed in any number of counterparts, in the language of the signatory's choice, with the same effect as if all the parties signed the same document. All counterparts shall be construed together, and shall constitute one and the same contract.

5. The parties agree that no term or condition of this agreement shall be superseded, suspended, modified or otherwise amended, in any way, without the express written permission of the competent Canadian and Mexican authorities, as well as the employer and his worker.

6. Upon request of the worker, the government agent agrees to assist the worker and the employer with the completion of the necessary parental benefit forms.

Witness thereof the parties state that they have read or had explained to them and agreed with all the terms and conditions stipulated in the present contract

Date/Employee's signature/Name of employee/Employer's signature/Witness/Name of employer/Address/Corporate name/Telephone/Place of employment of worker if different From above/Government agent's signature/Witness

To enhance readability, the masculine gender is used to refer to both men and women.

Box 33: Memorandum of Understanding on Labor Cooperation between the Government of the Hashemite Kingdom of Jordan and the Government of the Republic of the Philippines (2010)

Article 4

Recruitment and deployment of workers shall be according to an employment contract that is valid only when authenticated by competent authorities of both Parties, and that shall be binding for both employers and workers. The employment contract shall indicate the salary, working conditions, and the cost of bringing the worker from and sending the worker back to the country of origin when the contract is completed, as well as a special provision for the insurance coverage of the worker in accordance with existing laws and regulations in the receiving country. All employment contracts shall be written in both English and Arabic.

Travel expenses

Bilateral labour agreements should impose on employers the responsibility to undertake the cost of travel from the country of origin to the place of work in the country of destination, and return. It is essential for the purpose of migrant workers' protection to ensure that cases in which the employer may not be responsible for travel expenses are strictly framed and as limited as possible. It is important that employers are still obliged to undertake travel costs when they unilaterally terminate the work contract, e.g. unsatisfactory performance of the worker. If such is not the case (see MoU between the Philippines and Korea, 2006, in Box 34), employers would have the means to exert pressure, which may lead to abuses and exploitation of workers. Some bilateral agreements confine payment of return travel by the employee in cases where they resign from their job (see Agreement on Manpower between the Philippines and Jordan, 1988, in Box 35). A more protective solution is to further restrict such provisions in order to suppress the obligation of the employer only in situations where employees resign during a determined period after the start of employment (see Recruitment Agreement between the Philippines and the UK, 2002, in Box 36). Such a period may be adjusted to the planned duration of employment abroad.

Box 34: Memorandum of Understanding between the Department of Labor and Employment of the Philippines and the Ministry of Labor of the Republic of Korea on the Sending and Receiving of Workers to the Republic of Korea under the Employment Permit System (2006)

Article 15

[...]

3. If a worker returns to the Philippines prior to the termination of his/her labor contract period due to disqualification in the health examination, maladjustment to the workplace, etc., he/she will bear the general expenses including the airfare for his/her departure from the Republic of Korea. If he/she is unable to afford such expenses the Philippine government shall assist the cost of his/her return to the Philippines.

Box 35: Agreement on Manpower between the Government of the Republic of the Philippines and the Government of the Hashemite Kingdom of Jordan (1988)

Article 5

The employer undertakes to pay for the travel expenses of the worker from his residence in his home Country to his workplace and, upon the termination of the employment contract, and in cases of the cancellation of the contract unilaterally by the employer, or unsatisfactory performance by the worker during the probation period, his return travel expenses to his residence in his home Country. The return travel expenses shall not be borne by the employer if the worker unilaterally quits the job or cancels the contract before its expiry date.

Box 36: Recruitment Agreement between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland (2002)

Article 17 Repatriation of employees

1. The DH [UK Department of health] shall ensure that any NHS [UK National Health Service, the employer under the Agreement] acting under the terms of this agreement agrees:
 - to be responsible for the cost of one economy class airfare for successful applicants from the place of interview in the Philippines to the place of work in England to take up employment.
 - Should the applicant unjustifiably refuse to travel, the applicant may incur administrative sanctions duly approved and pursuant to Section 2, Rule 7 of the POEA Regulations.
 - To be responsible for the repatriation expenses of the successful applicants if he/she remains in the NHS employers' employ for at least 24 months or provide monetary equivalent.
2. In the event of death in employment the NHS employer will fund the cost of the repatriation of the employee's body to the Philippines.
3. The POEA [Philippine Overseas Employment Administration] agrees that the NHS shall be responsible for repatriation expenses if the NHS employer following the allocated period of supervised practice does not deem the employee suitable for recommendation to the UKCC [UK Central Council, in charge of professional registration].
4. The POEA agrees that the NHS employer shall not be responsible for repatriation expenses if the employee resigns from their post less than 24 months after the date of taking up employment.
5. "Repatriation expenses" means the cost of one economy class airfare for successful applicants from the place of work in England to the place of original interview in the Philippines.

Training and information sharing

Bilateral labour agreements may include provisions regarding training selected migrant workers. Such migrant training may have professional content; they may also include information on migrants' rights, work and living conditions in the country of destination, cultural differences, etc. In some cases, intensive language courses can be organised (see Agreement between the Philippines and Norway, 2001, in Box 37). Migrant training can either be organised in the country of origin (see Agreement for the extension of the MoU between the Philippines and Korea, 2009, in Box 38) and/or in the country of destination (see Recruitment Agreement between the Philippines and the UK, 2002, in Box 39). Bilateral agreements can also foresee the participation of NGOs or International Organizations to organize/conduct migrant training. For instance, IOM provides language training courses and pre-departure orientation for caregivers from Sri Lanka and Moldova bound for Italy.

Box 37: Agreement between POEA Philippine Overseas Employment Administration and Aetat The Directorate of Labour Norway on Transnational Co-operation for Recruiting Professionals from the Health Sector to Positions in Norway (2001)

General Agreement

Language training

The Directorate of Labour shall organise and administer intensive Norwegian languages courses in the Philippines. The Directorate of Labour shall be responsible for the content of the course providing relevant partners with a standard syllabus. Costs related to performing the courses shall be met by the Directorate of Labour in Norway.

Appendix B describes and regulates the co-operation related to intensive training in the Norwegian language. [...]

Appendix A: Description and Regulations concerning Information and Placement

Information about living and working conditions

The Directorate of Labour shall have the overall responsibility for producing and providing the necessary information about living and working conditions in Norway for interested professionals in the health sector from other countries.

The Directorate of Labour shall provide the POEA with relevant information to be distributed to interested candidates.

Abbreviated information about living and working conditions in Norway may also be found at the following internet address: <http://www.aetat.no/english/index.html>

Box 38: Agreement for the Extension of the Validity of the Memorandum of Understanding on the Sending and Receiving of Workers to the Republic of Korea between the Department of Labor and Employment of the Philippines and the Ministry of Labor of the Republic of Korea signed on 20 October 2006 (2009)

Article 9 Preliminary Education

1. The POEA [Philippine Overseas Employment Administration] will conduct a preliminary education promptly for the workers who have signed labor contracts so that they can enter Korea in a timely fashion.
2. The POEA will decide the content and length of education through prior consultation with the MOL [Ministry of Labor Korea].
3. The POEA will either conduct the preliminary education by itself or select a public agency to be entrusted with the preliminary education through prior consultation with the MOL.
4. The Philippine Overseas Labor Office (POLO-Korea) may conduct orientation activity for, or provide information materials, to Korean employers to help them understand and appreciate the Filipino culture and to promote friendship and cooperation between Korea and the Philippines.

Box 39: Recruitment Agreement between the Government of the Republic of the Philippines and the Government of the United Kingdom of Great Britain and Northern Ireland (2002)

Article 14: On Arrival

1. The DH (Department of Health UK) will ensure that the NHS [UK National Health Service, the employer under the Agreement] employer provides an induction programme for successful applicants upon taking up employment.

Immigration status

Some bilateral labour arrangements explicitly specify the duration of stay of migrant workers in the country of destination. This is the case for agreements setting up seasonal employment programmes (generally for a period of six to nine months a year) or traineeship programmes.

When bilateral arrangements do not organize such specific labour migration programmes, they generally do not include provisions concerning the immigration status of migrant workers in the country of destination. National legislation will, therefore, apply. It must be noted that, in a number of countries, including most Middle Eastern countries, migrant workers cannot change employers without their permission, and termination of the work contract ends residency rights.¹²² Such provisions are known to create significant risks for exploitation and abuse of migrant workers by their employers. When considering concluding a bilateral arrangement with such countries of destination, countries of origin should try to obtain the inclusion of a specific provision regarding the possibility for migrant workers to change employers.

Social and cultural rights

Bilateral labour arrangements should impose on employers the obligation to ensure, if not provide, suitable accommodation to migrant workers (See Memorandum of Agreement between the Philippines and Iraq, 1982, in Box 40).

Where necessary, bilateral arrangements should also include provisions regarding the transfer of remittances (see MoU between the Philippines and the United Arab Emirates, 2007, in Box 41), as well as guarantees of trade union rights and the freedom to practice one's own religion (for a contrary example, see Model Employment Contract in Annex of the Additional Protocol to the Agreement between the Philippines and Qatar, 2008, in Box 42).

Box 40: Memorandum of Agreement Relating to Mobilization of Manpower between the Republic of the Philippines and the Republic of Iraq (1982)

Article 4

Regarding the mobilization of manpower, the party who desires to employ the workers shall submit to the other party the number and the type of manpower needed, their job descriptions and terms of employment specifying the following: (a) duration of contract; (b) wage, allowances; (c) working and living conditions; (d) accommodations; (e) welfare and other benefits. In case the employer cannot provide accommodation, he must pay the worker a monthly sum of no less than the minimum set by the receiving government.

Box 41: Memorandum of Understanding between the Government of the Republic of the Philippines and the Government of the United Arab Emirates in the field of Manpower (2007)

Article 8

Workers shall have the right to remit all their savings to their country of origin or elsewhere in accordance with the financial regulations of the United Arab Emirates.

¹²² In 2009, however, two Gulf countries, Kuwait and Bahrain, have amended the *Kafala* (sponsorship) system. In Kuwait, migrant workers now have the possibility to change employers without their consent at the end of the work contract, providing that they have completed three continuous years of work with the same employer. Bahrain has adopted a stronger reform of the *Kafala* system, which gives to migrant workers a general right to change employment after meeting certain notice requirements. The new legislation however, does not apply to domestic workers, and its effective implementation remains to be evaluated.

Box 42: Additional Protocol to the Agreement between the Government of the Philippines and the Government of the State of Qatar Concerning Filipino Manpower Employment in the State of Qatar Signed on 10 March 1997 (2008)

Annex: Model Employment Contract

Article 9

[...]

c. The Second Party [the worker] undertakes not to engage in political or religious affairs. He shall pay due regard and respect to local customs and traditions.

Administration and implementation

Provisions regarding the administration and implementation of bilateral labour arrangements should not establish an overly bureaucratic system that would only hamper the agreement's effective implementation. Bilateral labour agreements should specify the competent authority in each country (usually the labour ministries or offices) responsible for the implementation of the agreement and also outline a procedure for the coordination of their respective tasks and activities.

3.2. Social security arrangements

3.2.1. Migrant workers and social security

In its *2000 World Labour Report* the ILO defined social security as being:

the protection which society provides for its members through a series of public measures:

- to offset the absence or substantial reduction of income from work resulting from various contingencies (notably sickness, maternity, employment injury, unemployment, invalidity, old age and death of the breadwinner);
- to provide people with health care;
- to provide benefits for families with children.

More specifically, nine branches of social security can be identified: medical care; sickness benefits; maternity benefits; invalidity benefits; old age benefits; survivors' benefits; employment injury benefits; unemployment benefits; family benefits.

The organization of social security by the state can follow different models. To date, Armenia has followed a universal coverage system under which social security is financed from general government revenues and applies to the entire resident population, subject to a number of eligibility requirements, including a minimum period of residence and employment in the country. Social benefits under the Armenian system were in flat-rate amounts, regardless of previous earnings. Armenia is currently shifting from this universal coverage system to a social insurance system primarily based on contributions from workers and employers, currently the most common form of social security system throughout the world. Such a change in social security system implies significant consequences on the social security protection of Armenian migrant workers. A specific risk is the limitation – and even the exclusion – of access to social security benefits for returning migrants to Armenia.

Indeed, migrants are likely to face restrictions to social security rights due to two principles of the national legislation of the country of destination and/ or origin: the principle of territoriality and the principle of nationality. The principle of territoriality implies the limitation of the applicability of the social security legislation to the territory of the considered country. In the context of migration, it implies the impossibility to export social security benefits abroad and, due to common qualifying periods,¹²³ may lead to a loss or limitation of coverage abroad and/or upon return to the country of origin.

In practice, the combination of the principle of territoriality and qualifying periods constitutes one of the main legal obstacles to the full access of migrant workers to social security rights.¹²⁴ Many countries do not foresee the payment of benefits to migrant workers who reside abroad: in some cases only nationals are entitled to export benefits (e.g. India, Kazakhstan, Malaysia, South Africa) while in other cases, restriction of export of total benefits (e.g. China, the United Arab Emirates). The national legislation of a number of countries foresees the provision of a lump sum rather than a pension to the individual leaving the country.

The principle of nationality, which implies the exclusion of foreign workers from social security coverage under national law, is less common. In most cases, national security systems follow a principle of equality of treatment between nationals and foreigners and foreigners are rarely – entirely – denied access to social security under national schemes. However, a number of national legislations foresee the exclusion of foreign workers from access to specific social security benefits. For instance, in Hungary, Kuwait, Moldova, Qatar and Saudi Arabia, foreigners are excluded from old age, invalidity and survivors' benefit schemes.¹²⁵

It is crucial to underline that, in the vast majority of cases, migrant workers can only fully benefit from social security benefits when social security agreements are concluded between the considered countries of origin and destination.

3.2.2. Social security arrangements

During the past decades, Armenia has concluded a number of social security agreements with CIS Member States. However, given the current process of adopting a new social security system, it is likely that these agreements will quickly become obsolete. Moreover, Armenian migrant workers would benefit from the conclusion of new bilateral agreements with more recent countries of destination, especially when the considered national legislations tend to organise significant distinction of treatment between nationals and foreigners.

Bilateral social security agreements are generally built around five main elements: equality of treatment; determination of the applicable legislation; maintenance of acquired rights and provision of benefits abroad; maintenance of rights in course of acquisition; reciprocity.

¹²³ A qualifying period is a minimum period of affiliation that is to be fulfilled in order for someone to be entitled to a benefit. With the exception of employment injury benefits, access to social security benefits is conditional upon such qualifying periods. As noted by Kulke, "while such a qualifying period tends to be relatively short for short-term benefits, including sickness benefit, maternity benefit or unemployment benefit, it can be up to 15 years and more for old-age, invalidity and survivor's pensions" (Kulke, U., "Filling the Gap of Social Security for Migrant Workers: ILO's Strategy", in Chetail, V. (ed.), *Globalization, migration, and human rights: international law under review, Volume II*, 2007, p. 444).

¹²⁴ Another significant obstacle relates to the large portion of migrant workers employed in the informal sector. This goes beyond the object of the current section and will not be discussed here.

¹²⁵ Kulke, U., "Filling the Gap of Social Security for Migrant Workers: ILO's Strategy", in Chetail, V. (ed.), *Globalization, migration, and human rights: international law under review, Volume II*, 2007, p. 458.

Equality of treatment

While most national social security legislations apply equally to nationals and migrant workers, it is not necessarily the case in reality. A priority objective of a bilateral social security agreement is, therefore, to ensure that social security norms apply equally, regardless of the person's nationality.

Determination of the applicable legislation

In some instances, migrant workers are bound to pay contributions both to the social security system of the country of destination and that of the country of origin. It is a common objective of a social security agreement to determine which one of the two considered legal systems is to be applied to migrant workers. As a general rule, a person should only be subject to the social security legislation of the country of employment.

Maintenance of acquired rights and provisions of benefits abroad

Bilateral social security agreements guarantee the benefit of acquired rights – and rights in course of acquisition – in one country even if they have been acquired in another. Payment of social security rights should, therefore, be accessible to migrant workers, even if they no longer reside in the considered country. It is noticeable that social assistance benefits are generally excluded from social security agreements.

Maintenance of rights in course of acquisition

For most social security benefits, a qualifying period is required. It is common that migrant workers have not been contributing for long enough in the country of destination to benefit from social security rights. Social security agreements facilitate access to social security rights by taking into consideration contributions made in the country of origin before leaving for the country of destination. Two common methods of calculating the totalization of social security rights are foreseen by social security agreements: proportional calculation and direct calculation. A third method, integration, can also be used.

Proportional calculation involves first determining the theoretical amount of the benefit that would be payable if the totalized periods under the social security systems of all the countries taken together had been completed under the system of each country alone. In determining the theoretical benefit, the social security institution of each country applies the benefit-calculation rules specified in its own legislation. The actual benefit that an institution pays is determined by multiplying the theoretical benefit by a fraction that represents the ratio of the periods completed under the system administered by that institution and the totalized periods completed in all the countries taken together.¹²⁶

Under the method of direct calculation, the institution of each country calculates the benefit it will pay using the rules specified in its legislation, without the need for determining a theoretical benefit. Since direct calculation is a one-step process that is simpler to administer than proportional calculation, it is the preferred option for many countries.¹²⁷

¹²⁶ Tamagno, E., *Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements*, ILO, 2008, p. 17.

¹²⁷ *Ibid*, p. 18.

Under integration, the institution of one country pays a full benefit calculated according to its rules and taking into account the periods completed in all the other countries that are parties to the agreement. The other countries pay no benefits at all. The paying country is usually the one to the system of which the worker was last affiliated or the one in which the worker and/or family members reside at the time of the occurrence of the contingency giving rise to the benefit.¹²⁸

Reciprocity

Social security agreements are based on a reciprocity principle: each party agrees to apply the same mechanisms in order to facilitate access of their respective nationals to social security benefits. This generally implies a reasonable degree of comparability of the potential obligations that each party assumes as a result of the agreement. Armenia being mostly a country of country of origin, the principle of reciprocity may represent a difficulty when engaging in discussions with countries of destination regarding social security agreements. It is worth remembering, however, that economic factors are but one consideration implied when concluding a bilateral agreement. More political considerations regarding historical and cultural proximity between states and the wish to maintain close relations are also significant factors leading to the conclusion of bilateral agreements.

Box 43 below presents a number of guiding elements that may be of use for the Armenian authorities when negotiating a bilateral social security agreement.

Box 43: Negotiating, Concluding and Implementing a Bilateral Social Security Agreement¹²⁹

Preliminary discussions

The starting point for the conclusion of a social security agreement is usually an informal meeting of experts from the countries concerned to (a) exchange information on their respective social security programmes and (b) inform each other regarding their countries' preferences concerning the application of the principles underlying social security agreements (equality of treatment, portability of benefits, determining the legislation applicable, totalizing and administrative assistance).

The information exchanged will generally include the branches of social security for which each country has programmes in place, the scope of coverage by those programmes (the categories of workers who are covered), the types of benefits provided by each programme, the eligibility requirements for the benefits, and any other information which will assist the experts of the other countries to understand the country's social security programmes.

To the extent possible, the experts should provide each other copies of their respective social security legislation and examples of the social security agreements, if any, that their countries have already concluded.

¹²⁸ Integration can be an effective solution in the case of short-term benefits (for example, cash sickness and maternity benefits). However, for long-term benefits such as pensions for old age, invalidity and survivors, integration is generally only considered among countries in which the formula for calculating benefits, and hence the resulting amount of benefits, are similar and there is an approximately equal flow of migrant workers between them. If any of these conditions do not apply, integration will likely result in some countries incurring far higher costs than others. For this reason, integration is seldom used in relation to long-term benefits (Tamagno, E., *Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements*, ILO, 2008, pp. 18-19.).

¹²⁹ Adapted from Tamagno, E., *Strengthening Social Protection for ASEAN Migrant Workers through Social Security Agreements*, ILO, 2008.

In the course of the preliminary discussions, the experts will normally inform each other of the process that their countries follow for the conclusion of a social security agreement, including its approval. They may also discuss the probable timing of the next steps in the process of concluding an agreement and agree on the country that will prepare a preliminary draft of an agreement.

Preliminary discussions among social security experts are sometimes held “without prejudice”, in the sense that they do not commit any party to proceed to the formal negotiation of an agreement or to the terms and conditions that a country may propose in an agreement. This approach can be particularly helpful when a country is unsure whether it wishes to enter into an agreement but is, at least, prepared to consider the possibility.

Preparation of a preliminary draft of an agreement

Following the preliminary discussions, one of the countries concerned usually prepares a preliminary draft of an agreement that will serve as the starting point for negotiations. It is helpful if the country that will undertake this work is agreed in the course of the preliminary discussions.

The preliminary draft should reflect, to the greatest extent possible, the preferences regarding the application of the principles of agreements that the experts of the countries concerned have indicated during the preliminary discussion. If countries have indicated differing preferences, options could be given in the preliminary draft reflecting each of the preferences.

Sometimes it is decided that each country will prepare its own preliminary draft. This is especially done when countries have substantially differing views or if one country has “non-standard” provisions that they use in agreements and that reflect the specificities of their social security legislation or practice.

Negotiations

The countries concerned will hold one or more rounds of negotiations to agree on the text of the social security agreement between them. The starting point for the negotiations will be the preliminary draft or drafts. The negotiations usually involve a clause-by-clause review of the preliminary draft or drafts, starting with the title and preamble and continuing until the signatory block.

It will not always be possible during a single review to agree on the wording of every clause of an agreement. There will be some clauses on which the parties concerned will have differing views that cannot be immediately reconciled or regarding which the experts of a country may have to consult with officials of various ministries in their own government. Once all the points of view have been completely presented and questions, if any, answered, further discussion of such clauses should be deferred to the next round of negotiations or for resolution through an exchange of correspondence.

The number of rounds of negotiations required to conclude an agreement will vary. Most often, two rounds are required, each of three to five days’ duration. Some agreements, however, can be concluded in as little as one round, while others may require several rounds.

At the conclusion of the negotiations, when the complete text of the agreement has been agreed, the heads of each country’s delegation usually initial the text. This indicates the heads of delegation’s formal concurrence in the text. However, unless explicitly stated otherwise, initialling does not preclude subsequent modifications as a result of a further review of the text, provided the countries concerned agree to the changes.

Review of the agreed text and signing of the agreement

Although the heads of delegations have initialled the agreed text of an agreement in good faith, the text must nonetheless usually be reviewed by the relevant authorities of each of the countries. Any

modifications resulting from such a review should be kept to a strict minimum and should only involve questions that are essential for a country. If the modifications involve treaty practice or legal issues outside of the sphere of social security (for example, constitutional questions), these should be resolved through direct discussions between foreign ministries through diplomatic channels. Social security experts cannot be expected to resolve issues outside of their range of competence and responsibility.

Once the relevant authorities of each country have concurred with the final text of the agreement, the agreement is ready for signing.

Conclusion of an administrative agreement

The social security agreement establishes the legal framework for the coordination of the social security systems of the countries concerned. The agreement alters national social security legislation and creates rights and obligations that do not exist under national legislation alone (for example, eligibility for a pension through totalizing when eligibility cannot be established only under national legislation). The social security agreement also sets out the principles that will underlie the administrative assistance that the social security authorities and institutions of each country will provide to the authorities and institutions of the other country or countries.

A subsidiary instrument, known as an administrative arrangement, describes in greater detail how administrative assistance will be provided. It sets out the modalities for providing the assistance, the procedures that will be followed, etc.

Authorization to conclude an administrative arrangement is given in a provision of the agreement itself. Usually the ministries responsible for the application of the social security legislation of the countries concerned, designated in agreements as the “competent authorities”, are authorized to conclude the administrative arrangement.

Administrative arrangements are, essentially, contracts between the social security authorities and institutions that set out the terms and conditions through which the authorities and institutions will work together, and assist one another, to apply the agreement and the legislation to which the agreement applies.

The administrative arrangement will usually designate, by name, the specific agency or agencies of each signatory country that will serve as that country’s “liaison agency” for the application of the social security agreement.

The administrative arrangement is essential to the implementation and administration of the agreement. Therefore, it should usually be concluded and signed before the agreement enters into force so it can take effect on the same date as the agreement.

Length of time required to conclude an agreement

The time required to complete the eight-step process just described can vary significantly from one agreement to another. It seldom can be completed in less than a year and a half. Considerably longer is often needed.

A country which has little or no experience in the conclusion of social security agreements will usually require more time for its first few agreements than a country with considerable experience. It is important that a country just embarking on the conclusion of agreements proceed with a degree of caution, since the precedents set in its first agreements could determine the pattern for subsequent agreements and might be difficult to reverse or even substantially modify in later agreements.

3.2.3. Unilateral measures adopted by countries of origin

While social security agreements constitute the most efficient means to ensure full social security coverage to migrant workers, countries of origin can also take unilateral measures in this respect. The most common option is to offer voluntary coverage to migrants in order to allow them to cover retroactively the periods when they were employed abroad. An example is the Philippines social security system (SSS) through the following schemes: the Voluntary social insurance system, the Medical Care Program for Overseas Filipino Workers, the Philhealth Overseas Workers' Program and the supplementary pension fund and savings account (known as SSS Flexi-Fund). One has, nevertheless, to recognise that, in practice, affiliation to such voluntary schemes is generally very low.

CONCLUSION AND RECOMMENDATIONS

Armenia is an important country of emigration, where most migrant workers leave for Russia in order to work on a temporary basis in the construction sector. Armenian workers in Russia face numerous abuses and violations of their employment rights.

To date, Armenia labour emigration policy is very limited. It notably lacks a comprehensive approach that would include both activities in Armenia and in countries of destination. In Armenia, a priority should be to regulate the activities of employment agencies. Abroad, consular and diplomatic posts should work in close association with diaspora associations in order to provide Armenian migrant workers with an enhanced protection network. At least one labour attaché should be appointed in Russia. While Armenia has concluded a number of bilateral labour agreements during the past years and is in the process of signing new ones, the country lacks a proactive approach to bilateral relations. The Armenian government waits instead for proposals from countries of destination and does not develop strategies in order to provide new legal migration channels and better protection for its nationals.

Labour immigration flows towards Armenia are limited. However, it is the interest of the country to implement a more efficient labour immigration policy. At present, entry, stay and residence of migrant workers in Armenia is not organised due to the lack of secondary legislation. The 2006 Law on aliens provides a sound basis for the regulation of labour immigration. It now needs to be supplemented by regulations.

Despite the inherent difficulties to manage labour migration for a country of origin, Armenia is in relatively favourable position in this regard, as it can base policies on a number of in-depth studies and a rather solid dataset on migration.

The present report contains detailed guidelines for enhanced labour migration management in Armenia. This section summarises these recommendations and refers to specific sections of the report for more details.

Labour immigration in Armenia

A study should be conducted on the basis on the 2011 population census data in order to present and analyze data on the duration of stay, family situation, education, type of employment and life conditions of migrants in Armenia (see section I.A.1.).

The Law on aliens should be revised in order to meet the requirements of international law and the needs of the Armenian economy (see section I.B.1.).

Secondary legislation complementing the Law on aliens should be adopted for proper entry/stay/residence and employment of a foreigners' system to be implemented (see section I.B.1.).

Efforts should be made to gain a better understanding of labour shortages in Armenia (see section I.A.2.)

Labour emigration in Armenia

A comprehensive regulation of employment agencies should be adopted (see section II.B.1.1.).

Renewed consular assistance activities should be developed and implemented, including the appointment of a labour attaché in Russia and a closer cooperation with diaspora organisations regarding the protection of Armenian workers abroad (see section II.B.1.3.).

A more proactive approach should be adopted in order to open new labour migration opportunities and provide better protection to Armenian migrant workers. This could include the development of labour market strategies (see section II.B.2.) and the conclusion of bilateral agreements (see section II.B.3.).

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ANNEXES

ANNEX I: LAW ON ALIENS, 2006

CHAPTER 1 GENERAL PROVISIONS

Article 1. The Scope of This Law

1. This Law regulates the relationships associated with the entry of aliens into the Republic of Armenia, their stay and living the territory of the Republic of Armenia, transiting through the territory of the Republic of Armenia, exit from the Republic of Armenia, as well as other relationships associated with aliens.

2. The scope of the Law shall extend to the aliens arriving in the Republic of Armenia for the purpose of working at the diplomatic representations of foreign states, consulates and international organisations or their representations in the Republic of Armenia, or the aliens and their families staying/residing in the Republic of Armenia where the specificities of relationships associated with the latter are not established by the international agreements of the Republic of Armenia.

3. This Law shall not extend to the relationships associated with the grounds for granting/rejecting political asylum or a refugee status to, or losing of political asylum or a refugee status by aliens seeking a refugee status or political asylum in the Republic of Armenia.

Article 2. The Aliens

Under this Law, the concept of *alien* includes the persons considered to be non-nationals of the Republic of Armenia who have a citizenship of a different state (foreign citizens) or have no citizenship of any country (stateless persons).

Article 3. The Concepts Used in This Law

The following concepts are used in this Law:

passport or travel document (hereinafter referred to as *passport*) - an internationally recognised travel document granted by a foreign state or an international organisation and entitling to cross a national border;

authorization/license or entry visa (hereinafter referred to as *entry visa*) - a permit provided by the authorized body of the Government of the Republic of Armenia, which entitles an alien to enter the Republic of Armenia, transit through the territory of the Republic of Armenia, stay in the Republic of Armenia and exit the Republic of Armenia for the purposes, under the conditions and for the periods specified therein.

temporary residence status - a permit provided by the authorised body of the Government of the Republic of Armenia which entitles the alien to live in the territory of the Republic of Armenia for a specific time period;

permanent residence status - a permit provided by the authorised body of the Government of the Republic of Armenia which entitles the alien to permanently live in the area of the Republic of Armenia;

special residence status - a permit provided by the authorised body of the Government of the Republic of Armenia which entitles the alien to live in the territory of the Republic of Armenia within the validity period of the document endorsing such status;

work permit - a permit provided by the authorised body of the Government of the Republic of Armenia which entitles the alien to work in the Republic of Armenia;

country of origin - a state whose citizen the person is, or the state where the stateless person or the person whose citizenship is impossible to confirm, lives;

invitation or arbitration (hereinafter referred to as *invitation*) - a document which substantiates the alien's entry into and stay in the territory of the Republic of Armenia for the purposes and period stated therein;

deportation - the forced expulsion of the alien from the Republic of Armenia upon lack of lawful grounds for his/her stay or living in the Republic of Armenia;

collective deportation - the deportation of a group of at least two aliens without a decision passed based on an objective and reasonable discussion which would consider the individual data and the specific situation of each member of the group;

carrier - an organisation carrying out international passenger transportation by land and air transport;

accompanying adult - leader of a group of aliens under 18 arriving in the Republic of Armenia to participate in cultural, sports and youth events or for the purpose of group tourism; and

host organisation - a public administration or local self-government body of the Republic of Armenia, or a legal entity registered in the Republic of Armenia which organises cultural, sports and youth events or tours with the participation of aliens under 18.

Article 4. The Legislation on the Legal Status of Aliens in the Republic of Armenia

1. The relationships associated with the legal status of aliens in the Republic of Armenia shall be regulated by the Constitution of the Republic of Armenia, the international agreements of the Republic of Armenia, by this Law and other legal acts.
2. Where norms other than those specified by this Law are specified by the international agreements of the Republic of Armenia, the norms of the international agreements shall apply.

Article 5. The Principles of the Legal Status of Aliens in the Republic of Armenia

1. Aliens shall have rights, freedoms and obligations in the Republic of Armenia equal to those of the citizens of the Republic of Armenia, unless provided otherwise by the Constitution, the laws and the international agreements of the Republic of Armenia.
2. In the Republic of Armenia the aliens shall respect the Constitution and laws, other legal acts and the national customs and traditions of the Republic of Armenia.
3. In the territory of the Republic of Armenia the aliens shall bear responsibility equal to that of the citizens of the Republic of Armenia, except with the cases provided by the international agreements of the Republic of Armenia.

CHAPTER 2 THE ENTRY INTO, EXIT FROM AND TRANSITING THROUGH THE TERRITORY OF THE REPUBLIC OF ARMENIA OF THE ALIENS

Article 6. Entry into the Republic of Armenia

1. Aliens shall enter the Republic of Armenia through the national border crossing points based on a valid passport, an entry visa or a document certifying the residence status and upon the permission of the state body performing border control authorised by the Republic of Armenia unless any other procedure is stated by this Law or the international agreements of the Republic of Armenia.
2. Aliens under the age of 18 may enter the Republic of Armenia with their parents, any one parent, other lawful representative or in the company of an adult or unaccompanied, where they are

visiting their parents, any one parent, other lawful representative or a host organisation in the Republic of Armenia.

3. The entry of those aliens shall not be allowed into the territory of the Republic of Armenia who have arrived at a border crossing point of the Republic of Armenia without a passport, a document replacing passport or with an invalid passport or were rejected an entry visa at the border crossing point of the Republic of Armenia or were rejected an entry leave by the border control authorities; where possible, they shall be immediately returned to their country of origin or the state they have arrived from, by the transportation of the same carrier, except with the cases where they have arrived in the Republic of Armenia for the purpose of seeking a refugee status or an entitlement to political asylum.

4. Upon lack of own resources of aliens specified in Article 6/3 the costs of their return shall be met by the carriers who have carried such aliens to the Republic of Armenia, as stipulated by the international agreements, or shall be covered by the Republic of Armenia, after the procedure stated by the Government of the Republic of Armenia.

Article 7. The Stay of Aliens in the Republic of Armenia Entitled to Arrive in the Republic of Armenia without an Entry Visa

1. The citizens of those states for whom a procedure exists for arrival in the Republic of Armenia without an entry visa, may stay in the territory of the Republic of Armenia for a period of a maximum of 90 days within one year unless other periods are stated by the international agreements of the Republic of Armenia.

2. A special note shall be made in the passports of the aliens specified in Article 7/1 of this Law on the date of their arrival in the Republic of Armenia, pursuant to the procedure established by the Government of the Republic of Armenia.

Article 8. Rejecting an Entry Visa/Extension to an Alien to the Republic of Armenia, Invalidating the Entry Visa or Forbidding Entry

1. The issuance (extension of the term) of an entry visa to a foreigner shall be refused, the issued entry visa shall be revoked, or the entry into the Republic of Armenia shall be banned, if:

(a) he or she has been expelled from the territory of the Republic of Armenia or has been deprived of residence status, and three years have not elapsed upon the entry into force of the decision on expulsion or deprivation of residence status;

(b) he or she has been subjected to administrative liability for violating this Law and has not fulfilled the responsibility imposed on him or her by the administrative act, except for cases when one year has elapsed upon being subjected to administrative liability;

(c) there exist reliable data that he or she carries out activities, participates in, organises or is a member of such an organisation, the objective of which is to:

- harm the state security of the Republic of Armenia, overthrow the constitutional order, weaken the defensive capacity; - carry out terrorist activities;

- illegally (without an appropriate authorisation) transport across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances; or

- carry out human trafficking and/or illegal border crossings;

(d) he or she suffers from an infectious disease which threatens the health of population, except for cases when he or she enters the Republic of Armenia for the purpose of treating such a disease. The list of those infectious diseases shall be established by the Government of the Republic of Armenia;

(e) while seeking an entry authorisation, he or she has submitted false information on himself or herself, or has failed to submit necessary documents, or there exist data that his or her entry into, or stay in, the Republic of Armenia pursues an objective other than the declared one; or

(f) there are other serious and substantial threats posed by him or her to the state security or public order of the Republic of Armenia.

2. The issuance (extension of the term) of an entry visa to a foreigner may be refused, the issued entry visa may be revoked, or the entry into the Republic of Armenia may be banned, if he or she has been convicted of committing in the Republic of Armenia a grave or particularly grave crime provided for by the Criminal Code of the Republic of Armenia, and the conviction has not been cancelled or has not expired in the prescribed manner. The provisions of this part do not extend to persons having close relatives (spouse, child, father, mother, sibling [sister, brother], grandmother, grandfather) in the Republic of Armenia.

3. The entry visa issued to a foreigner shall be revoked, if he or she has taken up employment in the Republic of Armenia without a work permit.

4. As a matter of exception, if there are grounds referred to in points (a) and (b) of part 1 of this Article, the entry of foreigners may be allowed in strongly justified cases.

5. A notation — on refusal to issue (extend the term of) an entry visa, on revoking the entry visa, or banning the entry under this Article — in the form established by the Government of the Republic of Armenia shall be made in the foreigner's passport.

6. The data on persons referred to in parts 1 to 3 of this Article shall be entered in the data bank of foreigners regarded as undesirable in the Republic of Armenia.

The data bank shall be maintained by the public administration body authorised in the field of national security of the Republic of Armenia, which shall enter necessary information into the data bank. For the purpose of entering information into the data bank, information shall be submitted to the public administration body authorised in the field of national security by the Staff to the President of the Republic of Armenia, public administration body authorised in the field of national security of the Republic of Armenia, public administration body authorised in the field of police, public administration body authorised in the field of foreign affairs.

The right to make use of the data bank shall be vested in the Staff to the President of the Republic of Armenia, public administration body authorised in the field of national security of the Republic of Armenia, public administration body authorised in the field of police, public administration body authorised in the field of foreign affairs, authorised body carrying out border control, as well as courts of the Republic of Armenia, criminal prosecution bodies of the Republic of Armenia in cases provided for by law. The procedure for entering information into the data bank and making use of it shall be established by the Government of the Republic of Armenia.

(Article 8 edited by Law No. 4-N of 2 February 2010)

Article 9. The Entry Visa to the Republic of Armenia

1. Entry visas into the Republic of Armenia shall be issued for a period of up to 120 days of stay in the Republic of Armenia with a possibility for 60 days' extension unless provided otherwise by this Law or by the international agreements of the Republic of Armenia.

2. Unless provided otherwise by this Law or by the international agreements of the Republic of Armenia, the entry visas into the Republic of Armenia shall be issued for a single entry.

3. Entry visas into the Republic of Armenia shall be issued for individuals, and, as necessary, for groups.

4. The Government of the Republic of Armenia shall establish the list of those states whose citizens, to obtain an entry visa, may apply solely to the diplomatic service agencies and consulates of the Republic of Armenia in foreign states and solely based on the invitation stated by Article 11 of this Law.

5. The Government of the Republic of Armenia, based on the principle of mutuality or, as necessary, also unilaterally, can for the citizens if certain states establish no-entry-visa regulations or exempt persons of certain categories of the requirement on obtaining an entry visa.

6. A state duty shall be charged of the aliens for obtaining an entry visa to the Republic of Armenia, in the manner and amount stated by the Republic of Armenia Law on State Duty.

7. Pursuant to the law, the citizens of certain states or persons of certain categories may be exempted from the state duty on the entry visa, or the rates of state duties may be lowered or raised.

8. The procedure for consideration of an application on an entry visa to the Republic of Armenia, the list of the documents to be attached to the application and the procedure for issuing group visas shall be established by the Government of the Republic of Armenia.

Article 10. The Types of Entry Visas to the Republic of Armenia

1. The types of entry visas into the Republic of Armenia are as follows:

a) **visit entry visa** - for visits with the purpose of visiting or meeting with relatives/friends; for a family reunion (in the cases provided by Article 15/1/c or Article 15/1/d); for tourism/recreation, treatment; to study at the educational institutions of the Republic of Armenia; to participate in cultural, sports, scientific and other events and conferences held in the Republic of Armenia; for implementation of technical assistance, humanitarian, charitable and financial assistance short term projects, to participate in business negotiations, to carry out work/professional activities, to initiate economic activities (to establish a commercial company, a branch or a representation of a commercial company of a foreign state, to make an investment in the Republic of Armenia, and to import/export goods and services); as well as for crews of means of transportation of international air or ground passenger and cargo carriers, for a single entry or for multiple entry with a validity period of up to one year;

b) **official entry visa** - for persons holding an official passport:

- for employees without a diplomatic status of embassies and consulates accredited in the Republic of Armenia, international organisations or their representations having a residence in the Republic of Armenia, and their families, for multiple entry for a period of up to three years;

- for officials of the foreign states or international organisations arriving in the Republic of Armenia for official purposes, at the invitation of state bodies of the Republic of Armenia or the embassies and consulates accredited in the Republic of Armenia and international organisations or their representations, for a single or multiple entry with a validity period of one year; and

- for members of official delegations holding a regular passport;

c) **diplomatic entry visa** - for persons holding a diplomatic passport or a diplomatic status:

- for employees of embassies and consulates accredited in the Republic of Armenia, international organisations or their representations having a residence in the Republic of Armenia, and their families, for multiple entry for a period of up to three years;

- for members of delegations arriving in the Republic of Armenia on official, state or working visits or for official purposes and their families, as well as for officials, for a single or multiple entry with a validity period of up to one year; and

- for those arriving in the Republic of Armenia for unofficial purposes, for a single entry with a validity period of up to 120 days; and

d) **transit entry visa** - for those who travel across the territory of the Republic of Armenia by air or ground, for a single or multiple entry with a validity period of one year, with an up to three days' period of stay, with a possible extension for a maximum of up to 4 days.

2. The visas shall be encoded by the type of visit, in a manner stated by the Government of the Republic of Armenia.

3. In foreign states entry visas to the Republic of Armenia shall be issued by the diplomatic representations or consulates of the Republic of Armenia in the foreign states, and, at the crossing points of the national border of the Republic of Armenia or as necessary, also in the territory of the Republic of Armenia, by the public administration body authorised in the area of the Police of the Republic of Armenia and the public administration body authorised in the area of foreign affairs.

4. The public administration body authorised in the area of foreign affairs shall issue and extend the entry visas specified in Article 10/1/b) and Article 10/1/c), as well as issue electronic entry visas the procedure for whose provision shall be established by the Government of the Republic of Armenia. The public administration body authorised in the area of the Police of the Republic of Armenia shall issue and extend the types of entry visas specified in Article 10/1/a) and Article 10/1/d).

5. The validity period of single entry visas issued by the diplomatic representations or consulates of the Republic of Armenia in the foreign states shall exceed by two months the period of stay in the Republic of Armenia, while the period of a single entry visa issued at a border crossing point of the Republic of Armenia or, as necessary, also in the territory of the Republic of Armenia shall match the period of stay in the Republic of Armenia. The validity period of entry visas issued by diplomatic representations or consulates may be reconciled with the period of entry into the Republic of Armenia declared by the alien in writing.

6. An alien may apply to a diplomatic representation or consulate of the Republic of Armenia with the request to obtain an entry visa into the Republic of Armenia at most 4 months prior to the envisaged visit.

7. Visa authorities enter the data on persons having obtained an entry visa into the respective database managed by the public administration body authorised in the area of the Police. The procedure for managing the database of the persons having obtained an entry visa and entry and provision of data shall be established by the Government of the Republic of Armenia.

Article 11. The Invitation

1. An invitation for visiting the Republic of Armenia can be extended to an alien by:

a) a citizen of the Republic of Armenia living in the Republic of Armenia;

b) an alien holding a residence status in the Republic of Armenia;

c) legal entities registered in the Republic of Armenia; and

d) state bodies and local self-government bodies of the Republic of Armenia, the embassies and consulates accredited in the Republic of Armenia, and international organisations or their representations.

2. The invitation shall contain the data of the invitee and the inviter, the purpose of the invitation and the periods of stay of the invitee in the Republic of Armenia. The standard form of the invitation shall be established by the Government of the Republic of Armenia.

3. The invitation shall be valid upon endorsement by the public administration body authorised by the Government of the Republic of Armenia, for which a state duty shall be charged in the manner and amount established by the Law of the Republic of Armenia on State Duty.

4. When presenting the invitation to the public administration body authorised by the Government of the Republic of Armenia for approval, the citizens specified in Article 11/1/a) shall present a passport, the persons specified in Article 11/1/b) shall present a passport and residence card (a special passport of the Republic of Armenia), and the legal entities specified in Article 11/1/c) shall present the copy of the registration certificate provided by the State Register of the Republic of Armenia. The persons specified in this clause shall also present information on meeting of his/her living costs by the invitee, including the costs of his/her possible healthcare and departure from the Republic of Armenia, or an obligation to meet such costs out of resources available to themselves, in either case presenting a receipt on payment of the state duty.

5. The approval by the competent body may be rejected upon availability of grounds specified in Article 8/1 of this Law, or where the inviter has previously violated his/her obligations stated in Article 11/4 of this Law.

6. The invitations to visit the Republic of Armenia and the mediations to extend the entry visas shall be endorsed within a maximum of a 15 days period by:

a) the public administration body authorised in the area of the Police, in the cases specified in Article 11/1/a) and Article 11/1/b);

b) the public administration body authorised in the area of foreign affairs, in the cases specified in Article 11/1/c) and Article 11/1/d); and

c) the public administration body authorised in the area of labour and employment of aliens (hereinafter referred to as the Authorised Body), in the case of an invitation with the purpose of working/taking employment in the Republic of Armenia. The procedure for approval and registration of the invitations shall be established by the Government of the Republic of Armenia.

Article 12. Exit from the Republic of Armenia

1. Aliens may exit from the Republic of Armenia upon availability of a valid passport and a valid document certifying their lawful stay or residence in the territory of the Republic of Armenia before the time of the exit, unless provided otherwise by the law or international agreements.

2. The exit of an alien from the Republic of Armenia shall be forbidden where, in the manner provided by the law:

a) a decision has been passed in regard to him/her to engage him/her as a convict, before the completion of the proceedings of the case or stoppage of criminal prosecution against that person; and

b) a punishment has been inflicted on him/her the serving of which is possible only in the Republic of Armenia until the completion of the term of serving the sentence or release from serving the sentence pursuant to the law.

Article 13. Transiting through the Territory of the Republic of Armenia

1. The travel of aliens through the territory of the Republic of Armenia by air or ground transport from a state towards a third state shall be deemed as transit traffic through the territory of the Republic of Armenia.

2. In the case of transit traffic the aliens shall present travel tickets to a third state and/or an entry visa to a third state and may stay in the territory of the Republic of Armenia for no longer than 72 hours, the cases of emergency situations excepted.

3. Where a alien is in the transit zone and is not to enter the territory of the Republic of Armenia, he/she may stay in the transit zone for no longer than 48 hours, the cases of emergency situations excepted.

CHAPTER 3 THE RESIDENCE STATUSES OF ALIENS IN THE REPUBLIC OF ARMENIA

Article 14. The Residence Statutes of Aliens

1. The following residence statuses shall be established for aliens in the Republic of Armenia:

- a) temporary;
- b) permanent; and
- c) special.

2. The documents endorsing the temporary, permanent and special residence statuses in the Republic of Armenia shall be the temporary residence card, the permanent residence card and the special passport respectively, whose forms shall be established by the Government of the Republic of Armenia.

3. A state duty shall be charged for granting a residence status to aliens in the Republic of Armenia, in the amount specified by the Law of the Republic of Armenia on the State Duty.

Article 15. The Grounds/Bases and Periods for Granting a Temporary Residence Status

1. Temporary residence status shall be granted to every foreigner, if he or she substantiates that there are circumstances justifying his or her residence in the territory of the Republic of Armenia for one year and a longer term. Such circumstance may be:

- (a) study; or
- (b) existence of a work permit in accordance with Chapter 4 of this Law; or
- (c) marriage with a citizen of the Republic of Armenia or with a foreigner lawfully residing in the Republic of Armenia; or
- (d) being a close relative (parent, brother, sister, spouse, child, grandmother, grandfather, grandchild) of a citizen of the Republic of Armenia or of a foreigner holding permanent residence status in the Republic of Armenia; or
- (e) being engaged in entrepreneurial activities;
- (f) being of Armenian origin.

2. Temporary residence status shall be granted for a term of up to one year with a possibility of extension for one year each time. An application for extension of temporary residence status must be submitted at least 30 days prior to the expiry of the term of the status. The Government of the Republic of Armenia may establish a shorter term for submission of an application for extension of temporary residence status for study purposes.

3. A foreigner having obtained temporary residence status on the ground referred to in point (c) of part 1 of this Article may, in case of dissolving or invalidating the marriage with a citizen of the Republic of Armenia or with a foreigner holding a residence status in the Republic of Armenia, file an application for extension of the temporary residence status, if he or she has been married and has resided in the territory of the Republic of Armenia for at least one year.

(Article 15 supplemented by Law No. 4-N of 2 February 2010)

Article 16. The Grounds and Periods for Granting a Permanent Residence Status

1. Permanent residence status shall be granted to a foreigner, if he or she:

(a) proves the existence of close relatives (parent, spouse, brother, sister, child, grandmother, grandfather, grandchild) in the Republic of Armenia and

(b) has an accommodation and means of subsistence in the Republic of Armenia;

(c) has resided in the Republic of Armenia as prescribed by law for at least three years prior to filing an application for obtaining permanent residence status.

Permanent residence status may be granted also to a foreigner of Armenian origin or to a foreigner carrying out entrepreneurial activities in the Republic of Armenia.

The conditions referred to in point (b) of this part shall be considered sufficient, where the foreigner has means sufficient to cover his or her subsistence expenses and the subsistence expenses of his or her family members under his or her care, or has a family member or members who are able and have undertaken to provide means for his or her living.

2. Permanent residence status shall be granted for a term of five years with a possibility of extension for the same term each time. An application for extension of a permanent residence card must be filed at least 30 days prior to the expiry of the validity period of the permanent residence card.

(Article 16 edited by Law No. 4-N of 2 February 2010)

Article 17. Filing and Consideration/Processing of the Application on Obtaining a Temporary and Permanent Residence Status. Registration of Aliens Holding Temporary and Permanent Residence Statuses

1. The application on obtaining a temporary or permanent residence status shall be filed with the public administration body authorised in the area of the Police of the Republic of Armenia.

2. The procedure for consideration/processing of the application on obtaining a temporary or permanent residence status and the list of documents to be attached to the application shall be established by the Government of the Republic of Armenia.

3. The decision on granting or rejecting a temporary and permanent residence status shall be made by the public administration body authorised in the area of the Police of the Republic of Armenia within 30 days following the filing of the application.

4. The aliens holding a temporary or permanent residence status shall be registered by the public administration body authorised in the area of the Police of the Republic of Armenia, after the manner established by the Government of the Republic of Armenia.

5. An alien holding a permanent residence status, upon being away from the Republic of Armenia for over 6 months shall notify the public administration body authorised in the area of the Police of the Republic of Armenia in writing.

Article 18. The Grounds and Periods for Granting a Special Residence Status

1. Aliens of Armenian extraction shall be granted a special residence status. A special residence status can also be granted to other aliens evolving economic or cultural activities in the Republic of Armenia.

2. The special residence status shall be granted for a period of ten years. It can be granted more than once.

3. In the Republic of Armenia the application on obtaining a special residence status shall be filed with the public administration body authorised in the area of the Police of the Republic of Armenia, and, in a foreign state, with the diplomatic representation or consulate of the Republic of Armenia.
4. The procedure for consideration and timeframes of the application on obtaining a special residence status and the list of documents to be attached to the application shall be established by the President of the Republic of Armenia.
5. The decision on granting or rejecting a special residence status shall be made by the President of the Republic of Armenia. Such decision shall be final and shall not be appealed against.
6. The registration of the persons holding a special residence status shall be carried out by the public administration body authorised in the area of the Police of the Republic of Armenia pursuant to the procedure established by the Government of the Republic of Armenia.

Article 19. The Grounds for Rejecting a Residence Status

The granting of a residence status may be refused to a foreigner, where:

- (a) he or she has been expelled from the territory of the Republic of Armenia or was previously deprived of residence status, and three years have not elapsed upon the entry into force of the decision on expulsion or on depriving of residence status;
- (b) he or she has been convicted in the Republic of Armenia of committing a grave or particularly grave crime provided for by the Criminal Code of the Republic of Armenia, and the conviction has not been cancelled or has not expired in the prescribed manner;
- (c) there exist reliable data that he or she is engaged in such an activity, participates, organises or is a member of such an organisation, the objective of which is to: - harm the state security of the Republic of Armenia, overthrow the constitutional order, weaken the defensive capacity; - carry out terrorist activities; - illegally (without an appropriate authorisation) transport across the border arms, ammunition, explosives, radioactive substances, narcotic substances, psychotropic substances; or - carry out human trafficking and/or illegal border crossings;
- (d) he or she suffers from one of the diseases specified in Article 8(1)(d) of this Law;
- (e) there are serious and substantial threats posed by him or her to the state security or public order of the Republic of Armenia;
- (f) while seeking a residence status, he or she has submitted false information on himself or herself, or has failed to submit necessary documents, or there exist data that his or her stay in the Republic of Armenia pursues an objective other than the declared one;
- (g) he or she has been subjected to administrative liability for violating this Law and has not performed the responsibility imposed on him or her by the administrative act, except for cases when one year has elapsed upon being subjected to administrative liability.

(Article 19 edited by Law No 4-N of 2 February 2010)

Article 20. Appealing against the Rejection of the Application on Obtaining a Residence Status

1. Except for special residence status, a foreigner may appeal — through judicial procedure — against a refusal of an application filed for obtaining or extending a residence status.
2. If the validity period of the entry visa or of the residence status of a foreigner expires prior to the examination of the case by the court or entry into force of the decision rendered by the court, the public administration body authorised in the field of police of the Republic of Armenia shall issue a temporary stay permit to him or her until such time as the court decision takes legal effect.

3. If the court upholds the decision on the refusal to obtain or extend a residence status, a foreigner shall be obliged to voluntarily leave the territory of the Republic of Armenia within a term of ten days following the taking of legal effect of the court decision. 4. Where the granting of a residence status is refused, a foreigner may again apply for obtaining a residence status after one year; this shall be indicated in the decision on refusal.

A shorter term may be established by the Government of the Republic of Armenia for obtaining temporary residence status for study purposes.

(Article 20 supplemented by Law No. 4-N of 2 February 2010)

Article 21. The Grounds for Invalidating the Decision on Granting a Residence Status and Rejecting the Application on Extension of the Residence Status; the Consequences of Depriving of the Residence Status, and Appealing against the Depriving of the Residence Status

1. The residence status granted to an alien shall be deemed as invalid, and the alien shall be deprived of the residence status where:

a) it has been found out that when seeking a residence status he/she has presented false information about himself/herself, or where there are data to the effect that his/her stay in the Republic of Armenia has a purpose different from the one declared;

b) the marriage to a citizen of the Republic of Armenia or to an alien holding a residence status in the Republic of Armenia has been dissolved or annulled, which had served as a basis for granting a residence status to an alien, the case specified in Article 15/3 of this Law excepted;

c) in the case of holding a permanent residence status, he/she has been away from the Republic of Armenia for over 6 months or has left the Republic of Armenia permanently, without notifying the public administration body authorised in the area of the Police of the Republic of Armenia of his/her intention to depart; and

d) his/her stay in the Republic of Armenia poses a threat to the national security or the public order of the Republic of Armenia.

An alien's application on extension of the residence status may be rejected on the grounds stated in Article 21/1/a), Article 21/1/c) and Article 21/1/d).

2. The decision on invalidation of the residence status and rejection of the application on extension of the residence status shall specify the periods of voluntary departure of an alien from the territory of the Republic of Armenia, his/her place of residence prior to leaving the territory of the Republic of Armenia, as well as the prohibition on leaving that place of residence without permission.

3. An alien deprived of a residence status as well as an alien on whose application on the extension of the residence status a decision was made to reject, shall leave the Republic of Armenia within the period specified in the decision on depriving him/her of the residence status or rejecting his/her application on the extension of the residence status where he/she has not appealed against the decision by court within five days following the receipt of the decision on depriving him/her of the residence status or rejecting his/her application on the extension of the residence status.

4. The data of an alien deprived of a residence status and an alien on whose application on the extension of the residence status a decision was made to reject, shall be entered into the database stated in Article 8/6 of this Law.

CHAPTER 4 THE WORK OF ALIENS IN THE REPUBLIC OF ARMENIA

Article 22. The Work of Aliens in the Republic of Armenia

1. Aliens shall be entitled to freely manage their professional abilities, choose the type of profession and activities and engage in economic activities not prohibited by the legislation of the Republic of Armenia, adhering to the restrictions set by the legislation of the Republic of Armenia. The principle on equality of legal rights of the parties to working relationships established by the Labour Code of the Republic of Armenia shall be guaranteed irrespective of their sex, race, nationality, language, citizenship and other circumstances not related to the practical characteristics of the employee.
2. The employers in the Republic of Armenia shall have the right to conclude a work contract/service contract with the alien employee and use his/her labour based on the work permit/employment authorisation provided to the alien employee by the authorised body. When issuing a work permit to an alien employee the public administration body of the Republic of Armenia authorised in the area of the work and employment of aliens takes into account the needs of and the developments in the labour market of the Republic of Armenia.
3. To assess the needs of the labour market of the Republic of Armenia, a time period shall be established for the employer by the decision of the Government of the Republic of Armenia, during which he/she shall fill vacancies available to himself/herself by citizens of the Republic of Armenia. Upon lack of recommendation of a candidate by the national employment services meeting his/her requirements within the established period, the employer may find an alien meeting such requirements and apply to the authorised body for the provision of a work permit to a concrete alien employee for a concrete period, submitting the necessary documents established by the decision of the Government of the Republic of Armenia.
4. An alien may carry out work activities in the Republic of Armenia upon transfer by the employer of the work permit issued to himself/herself.

Article 23. Exceptions for Acquiring a Work Permit

The following entities shall be entitled to work in the Republic of Armenia without a work permit:

- a) those holding a permanent and special residence status of the Republic of Armenia, as well as those holding a temporary residence status of the Republic of Armenia with the grounds stated in Article 15/1/d) of this Law;
- b) those holding a temporary residence status of the Republic of Armenia with the grounds stated in Article 15/1/c) of this Law for a period not exceeding the residence period;
- c) family members of officials of diplomatic representations and consulates accredited in the Republic of Armenia and international organisations and their representations, based on the principle of mutuality;
- d) employees of the border areas and the persons of cultural and sports professions arriving for a short period;
- e) founders, directors or authorised representatives of commercial organisations with foreign capital;
- f) employees of commercial organisations of a foreign state, to work in the representations of such organisations based in the Republic of Armenia;
- g) foreign specialists arriving for a period of no longer than 6 months to train the employees on installation, repair and operation of the machinery, equipment and machine tools shipped by a foreign commercial organisation to their branch office or representation or procured from foreign commercial organisations;
- h) specialists or other persons arriving based on the international agreements of the Republic of Armenia;

- i) instructors of foreign educational institutions invited to deliver lectures at the educational institutions of the Republic of Armenia;
- j) accredited representatives of foreign organisations engaged in mass media activities;
- k) aliens holding a refugee status and having acquired political asylum in the Republic of Armenia and stateless persons, for a period not exceeding the residence period; and
- l) students doing work under work exchange programs during the holidays, based on respective international agreements.

Article 24. Issuing and Rejecting a Work Permit

1. The issuance and refusal of work permits shall be carried out by the authorised body as and within the time-limits prescribed by the Government of the Republic of Armenia.
2. A work permit shall be issued to a foreigner for a specific term requested by the employer in accordance with Article 22(3) of this Law, in compliance with the requirements of the same Article. A foreign citizen may be issued a new work permit as prescribed by this Law.
3. A work permit shall indicate the work the foreigner shall perform and the employer with whom he or she shall be recruited. A foreigner having obtained a work permit shall be granted temporary residence status or its term shall be extended for the term specified in the work permit.
4. State duty shall be levied on the employer for obtaining a work permit and for extending the terms of the required permits, as and in the amount prescribed by the Law of the Republic of Armenia —On state duty.

(Article 24 edited by law No. 3-N of 2 February 2010)

Article 25. The Grounds for Rejecting a Work Permit

The issuance of a work permit shall be refused, where:

- (a) the state of the labour market of the Republic of Armenia, based on its analysis, does not allow for that work;
- (b) citizenship of the Republic of Armenia is required under the laws of the Republic of Armenia for performing the given work;
- (c) the required information or documents are falsified; (d) the employer with whom the foreigner concerned shall be recruited has previously breached the requirements of admitting foreigners to employment;
- (e) there are reasons threatening the state security of the Republic of Armenia; (f) the employer does not hold a licence for engaging in activities subject to licensing.

(Article 25 edited by law No. 3-N of 2 February 2010)

Article 26. Appealing against the Rejection of a Work Permit

1. An alien shall be notified of the rejection of the work permit in written form.
2. An alien may appeal against the rejection of the work permit by court within five days following the rejection.

Article 27. Concluding a Work Contract/Service Contract

1. An employment contract (service contract) shall be concluded in accordance with the requirements of the labour legislation of the Republic of Armenia only for the validity period of the work permit. An employment contract (service contract) shall also cover issues related to

transportation of a foreign employee and members of his or her family to the Republic of Armenia, their social security and insurance, issues related to meeting them, providing with accommodation, their registration in the place of residence, and return.

2. Where an employer is wound up, a foreign worker shall be entitled to conclude a new employment contract (service contract) with another employer for the remaining effective period of the work permit, provided that at least three months are left till the expiry of the mentioned period, and the new employer has obtained the consent of the body authorised in the field of employment and occupation of foreigners.

3. Within a term of three days following the conclusion of an employment contract (service contract) with a foreigner, the employer shall submit its copy for registration to the public administration body of the Republic of Armenia authorised in the field of employment and occupation of foreigners.

(Article 27 supplemented by Law No. 3-N of 2 February 2010)

Article 28. Invalidation and Termination of the Work Permit

Article 28. Revocation and termination of a work permit

1. A work permit shall be revoked, where:

(a) a foreigner has obtained the work permit in a fraudulent manner;

(b) a foreigner has not concluded an employment contract (service contract) within one month after obtaining the work permit, or he or she has taken up another employment without a permit.

A work permit shall be terminated if the term of the employment contract (service contract) has expired, or the contract has been rescinded.

2. A work permit shall be revoked by the body authorised in the field of employment and occupation of foreigners.

3. The authorised body shall, within a term of five days, notify in writing the public administration body authorised in the field of police of the Republic of Armenia, the employer, and the foreigner of the decision on revoking the work permit.

(Article 28 supplemented by Law No. 3-N of 2 February 2010)

Article 29. Combat against Illegal Migration

1. Where the employer does not provide the alien who has legally entered the Republic of Armenia with the work the latter has received a work permit for, the employer shall meet the costs of his/her (and his/her family members who were allowed to accompany him/her) return to his/her country of origin and transportation of his/her personal possessions.

2. In order to make accurate information available to alien employees, the public administration body of the Republic of Armenia authorised in the area of labour and employment of aliens provides free of charge assistance and services and consultancy aimed at combating misleading information. The public administration body of the Republic of Armenia authorised in the area of labour and employment of aliens shall provide free of charge consultancy to an alien on the provisions/terms of the work contract between the employer and the alien prior to the entry of the latter into the Republic of Armenia, as well as to verify their de facto compliance after the entry into the Republic of Armenia.

CHAPTER 5 VOLUNTARY DEPARTURE AND DEPORTATION OF ALIENS FROM THE TERRITORY OF THE REPUBLIC OF ARMENIA

Article 30. Voluntary Departure of Aliens from the Republic of Armenia

An alien shall leave the territory of the Republic of Armenia voluntarily where:

- a) his/her entry visa or residence status validity period has expired;
- b) the entry visa has been invalidated on the grounds stated in Article 8/1, Article 8/2 and Article 8/3 of this Law;
- c) his/her application on acquisition or extension of a residence status has been rejected; and
- d) he/she was deprived of residence status on the grounds stated in Article 21.

Article 31. Bringing an Action on Deportation of an Alien

Where in the cases provided by Article 30 of this Law the alien has not left the territory of the Republic of Armenia voluntarily, the public administration body authorised in the area of the Police of the Republic of Armenia shall bring an action on deportation and present it to court.

Article 32. Circumstances Prohibiting Deportation of Aliens

1. It is prohibited to deport aliens to a state where human rights are violated, especially as the alien is threatened by prosecution for race, religion, social origin, citizenship or for political beliefs, or where such aliens may be subjected to torture or cruel, inhuman or degrading treatment or punishment, or death penalty.

The proofs of availability of the threat of prosecution or a real danger of torture or cruel, inhuman or degrading treatment or death penalty shall be presented to the court by the alien in question.

2. It is prohibited to deport an alien living in the Republic of Armenia where he/she:

- is a minor, and his/her parents live in the Republic of Armenia on legal bases;
- he/she has a minor child under his/her care; or
- he/she is of age over 80.

3. The collective deportation of aliens shall be prohibited.

Article 33. The Rights and Duties of Aliens during Investigation of the Case on Deportation

An alien liable to deportation from the Republic of Armenia shall enjoy all the rights provided by the laws of the Republic of Armenia for court defense.

Article 34. The Decision on Deportation of an Alien

1. As a result of the investigation of the case on deportation, the court shall pass a decision on the deportation or rejection of the deportation of an alien.

2. The court decision on deportation shall specify the date of deportation of the alien, the route, the national border crossing points, the covering of the deportation costs, his/her living place prior to leaving the territory of the Republic of Armenia, his/her obligation to appear at the respective unit of the public administration body authorised in the area of the Police on a routinely stated regular basis, as well as the prohibition on leaving the place of living without permission, and the being detained or released before deportation in the case of being arrested, in the cases stated in Chapter 6 of this Law.

3. The court decision on rejecting deportation shall specify the obligation of the public administration body authorised in the area of the Police to grant a temporary residence.

Article 35. Appealing against the Decision on Deportation

1. An alien may appeal against the decision on deportation in the manner stipulated by the law.
2. In the case of appealing against the decision on deportation the deportation of an alien from the Republic of Armenia shall be suspended.

Article 36. Carrying out the Decision on Deportation

1. A note on the decision on the deportation shall be made in the passport of the alien.
2. The decision on the deportation of an alien shall be carried out by the public administration body authorised in the area of the Police of the Republic of Armenia.
3. The public administration body authorised in the area of the Police of the Republic of Armenia shall carry out a separate registration of deported aliens, information on who shall be entered into the database specified in Article 8/6 of this Law.
4. The diplomatic representation or consulate of the country of origin of the deported alien or the diplomatic representation of another state representing the interests of the state in question shall be informed of the deportation within a three day period.
5. Where the deportation costs are not met by the alien, such costs shall be covered by the National Budget of the Republic of Armenia.

CHAPTER 6 DETENTION OR ARREST OF ALIENS IN THE CASE OF VIOLATION OF THIS LAW

Article 37. Detention of Aliens Having no Leave for Entry at the Crossing Points of the National Border of the Republic of Armenia

1. Upon impossibility to return an alien to his/her country of origin or to the country where he/she has arrived from, as stipulated by Article 6/3 of this Law, the aliens who have arrived at the crossing point of the national border of the Republic of Armenia without a passport or with an invalid passport or the aliens who have been rejected an entry visa at the border crossing point of the national border of the Republic of Armenia or have not acquired an entry permission from the border control authority may be kept/detained at the transit zone or elsewhere, at a special shelter created for that purpose.
2. Where the aliens specified in Article 37/1 are family members, they shall be kept together.
3. Where the person specified in Article 37/1 is a person who has not completed the age of 18 and is traveling without a parent or unaccompanied by a lawful representative, he/she cannot be kept at the special shelter and shall be immediately escorted to his/her parent/parents or lawful representative.
4. The border control authority shall, after placing the alien in the special shelter, apply to court within 24 hours to acquire a decision on the permission to detain the alien for up to 90 days.
The alien shall be taken to court accompanied by a representative of the border control authority, for the court to pass a decision.
5. Where the return of an alien to his/her country of origin is impossible within 90 days, the alien shall be granted a temporary permission by the public administration body authorised in the area of the Police of the Republic of Armenia before the removal of the alien from the Republic of Armenia but for no longer than 1 year.
6. The procedure for the activities of the special shelters at the border crossing points and in the transit zones and the procedure for detainment of the aliens shall be established by the Government of the Republic of Armenia.

Article 38. Arrest of an Alien for the Purpose of Deportation

1. An alien may be arrested and kept in a special shelter in the manner stated by this Law where there are ample grounds to suspect that he/she may hide before the investigation of the deportation case in court or the carrying out of the legally effective decision on deportation. After the arrest and placement of the alien in the special shelter, the public administration body authorised in the area of the Police of the Republic of Armenia shall apply to court within 48 hours to acquire a decision on the permission to detain the alien for up to 90 days.

2. The public administration body authorised in the area of the Police of the Republic of Armenia shall no later than within 24 hours inform the diplomatic representation or consulate of the country of origin of the arrested alien or the diplomatic representation of another state representing the interests of the state in question and/or the close relatives of the alien in the Republic of Armenia of the arrest.

3. The arrested alien may be kept at the special shelter before coming into force of the court decision resulting from the investigation of the deportation case but for no longer than 90 days. Upon entry into force of the court decision the provisions of Article 36 of this Law shall apply to the alien.

4. The procedure for the activities of the special shelters operating in the territory of the Republic of Armenia and the procedure for keeping the arrested aliens shall be established by the Government of the Republic of Armenia.

Article 39. The Rights of Arrested or Detained Aliens

The aliens detained or arrested in the cases provided by Article 37 and Article 38 of this Law shall be entitled to:

- learn of the reasons for his/her arrest or detention through a language known to himself/herself or through an interpreter;
- to appeal against any decision passed in regard of himself/herself by court;
- a visit by a lawyer or other legal representative (including NGOs) and an official of the diplomatic representation or consulate of his/her country of origin;
- apply to court with the claim to release him/her; and
- to receive necessary healthcare.

CHAPTER 7 EXTRADITION OF AN ALIEN AND TRANSFER FOR THE PURPOSE OF SERVING THE FURTHER PUNISHMENT IN CONFINEMENT

Article 40. Extradition of an Alien and Transfer for the Purpose of Serving the Further Punishment in Confinement

1. Extradition of aliens shall be performed pursuant to the procedure established by the Criminal Procedure Code of the Republic of Armenia and the international agreements of the Republic of Armenia.

2. The aliens who were sentenced to confinement in the Republic of Armenia may be transferred to their country of origin to serve the further punishment, pursuant to the procedure established by the international agreements of the Republic of Armenia.

Article 41. Circumstances Excluding Extradition of Aliens

Extradition of aliens shall be prohibited where capital punishment is envisaged for the deed the aliens are called to liability for, or there are serious grounds to suspect that they may be subjected to torture, cruel, inhuman or degrading punishment or treatment.

CHAPTER 8 PROTECTION OF INDIVIDUAL/PERSONAL DATA ON ALIENS AS PROVIDED BY THIS LAW

Article 42. Protection of Individual/Personal Data on Aliens

When processing the data on aliens as well as other persons in the database of the aliens judged to be 'undesirable' specified by Article 8/6 of this Law, in the database of aliens having obtained an entry visa specified by Article 9/4, in registration of invitations specified by Article 11/6, in registration of aliens holding a temporary or permanent residence status specified by Article 17/4, in registration of aliens holding a special residence status specified by Article 18/6, and in registration of deported aliens specified by Article 36/3, such individual/personal data shall enjoy the protection stipulated by the Law of the Republic of Armenia on Individual/Personal Data.

CHAPTER 9 LIABILITY IN THE CASE OF VIOLATION OF THIS LAW

Article 43. Liability in the Case of Violation of This Law

In the case of violation of this Law the alien, the inviters, as well as the employers shall bear responsibility as stipulated by the Law.

CHAPTER 10 CLOSING AND TRANSITIONAL PROVISIONS

Article 44. The Entering into Force of This Law

1. This Law shall come into force on the tenth day following the official promulgation.
2. Upon coming into force of this Law, to invalidate the Law of the Republic of Armenia on the Legal Status of Aliens in the Republic of Armenia (HO-110, dated June 17 1994).

Article 45. Transitional Provisions

1. A residence status — granted based on the Law of the Republic of Armenia — On the legal status of foreign citizens in the Republic of Armenia prior to the entry into force of this Law — shall be effective till the expiry of its validity period. After the expiry of the period, foreigners may obtain a residence status provided for by this Law, if there are relevant grounds prescribed by this Law.
2. Within 90 days after the entry into force of this Law, the citizens of those States with whom the Republic of Armenia has a regime without entry visa, shall be obliged to leave the Republic of Armenia or apply for obtaining an appropriate residence status as prescribed by this Law, unless otherwise provided for by the international treaties of the Republic of Armenia.
3. Foreigners — not holding a work permit provided for by this Law — working in the Republic of Armenia before the entry into force of this Law, shall be obliged to apply for obtaining a work permit within 30 days after the entry into force of this Law.

Employers who, before the entry into force of this Law, have signed an employment contract (service contract) with foreigners without a work permit provided for by this Law, shall bring these contracts into compliance with the requirements prescribed by this Law within a term of 15 days after the entry into force of this Law, and shall submit their copies for registration to the body authorised in the field of employment and occupation of foreigners.

(Article 45 supplemented by HO-3-N of 2 February 2010)

President of the Republic of Armenia

January 16, 2007

Yerevan, HO-47-N

R. Kocharian

Translation arranged by the International Organization for Migration

ANNEX 2: DRAFT LAW ON REGULATION OF OVERSEAS EMPLOYMENT

CHAPTER I. GENERAL PROVISIONS

Article 1. Subject of Regulation

1. The present law shall regulate the relations related with overseas employment.
2. The law shall define the basics for regulation of overseas employment, principles of state policy for regulation of overseas work, procedure and conditions of departure for overseas employment, authorities of state entities in the functions related to regulation of overseas employment and intermediaries having the right to provide intermediary services in the area of overseas work (hereinafter intermediary).

Article 2. Scope of Application

1. The law shall apply to state entities with authorities related to relations in the area of overseas employment, intermediaries and citizens of the Republic of Armenia departing for overseas employment in the procedure established by this Law.
2. The law shall not apply to:
 - 1) Any individuals commencing employment in foreign states, as well in Diplomatic Missions, Consular offices of the Republic of Armenia, commercial and other representations, international organizations in compliance with the Legislation and international treaties of the Republic of Armenia;
 - 2) Tourists as well as Armenian nationals permanently residing abroad;
 - 3) Armenian nationals leaving for overseas employment on their own, i.e. without intermediary and on own initiative.

Article 3. Objectives of State Policy for Regulation of Overseas Employment and Principles of Their Achievement

Objectives of state policy for regulation of overseas employment are as follows:

- 1) Expansion of opportunities to exercise the right to employment by Armenian citizens in the short and mid run;
- 2) Reduction of illegal migration from Armenia;
- 3) Protection of rights and legal interests of persons leaving for overseas employment.

Principles of state policy for regulation of overseas employment are as follows:

- 1) Conditioned with the situation in specific countries – provide the population with information on inexpediency of departing to these countries for temporary overseas employment;
- 2) In the functions of regulating overseas employment exclude discrimination on the grounds of overseas employee's nationality, race, sex, language, religion, political or other views, social background, property or other status and other circumstances not related to the performance of employment.

Article 4. Basic Terms

The following basic terms shall be used in this law:

- 1) Overseas Employment: work performed by an overseas employee in a foreign state for an employer of that state;
- 2) Foreign Employer: a legal entity or an individual with the right of hiring employees in a procedure stipulated by the legislation of the foreign state;
- 3) Intermediary Service: consulting by any intermediary to persons leaving for overseas employment as regards to finding foreign employers, conclusion of an employment contract for leaving to a foreign state, other issues related to overseas work, including legal and other necessary services;
- 4) Overseas Employee: a citizen of the Republic of Armenia permanently residing in the territory of the Republic of Armenia, who is employed by a foreign employer;
- 5) Organization of Overseas Employment: Complex of organizational and legal measures undertaken by state entities and their officials as well as intermediaries as stipulated by this law and other legal acts, aimed at recruitment in the territory of the Republic of Armenia of persons leaving for overseas employment and provision of adequate work through employment agreements with foreign employers.

Article 5. Legislation on Regulation of Overseas Employment

1. Relations linked to overseas employment are regulated by the Constitution of the Republic of Armenia, International Treaties of Armenia, Labor Code of the Republic of Armenia, legislation on Population Employment of the Republic of Armenia, this Law and other legal acts.
2. If international treaties of the Republic of Armenia define norms other than stipulated for under this law, norms of international treaties shall be applied.

CHAPTER II. AUTHORITIES OF STATE ENTITIES IN REGULATION OF OVERSEAS EMPLOYMENT

Article 6. Authorities of the Government of the Republic of Armenia

The Government of the Republic of Armenia shall:

- 1) Conclude intergovernmental agreements for regulation of overseas employment as well as for protection of interests of labor migrants;
- 2) Define the authorized government entity in the area of overseas employment.

Article 7. Authorities of the Authorized Government Entity in Regulation of Overseas Employment

The government entity authorized by the Government of the Republic of Armenia shall:

- 1) Through the authorized government entity in the area of foreign affairs collect information on demand and supply in the labor markets of foreign states, conditions of hiring foreign nationals in such states; develop and implement measures for improving the regulation of overseas employment;
- 2) Based on respective studies and applications of the RA citizens examine and reveal cases of violation of overseas employee rights and if required apply through diplomatic mission of Armenia or consulate to the authorized government entity in the area of foreign affairs to intervene in the case or initiate criminal case;
- 3) Conduct campaign aimed at preventing illegal migration by disseminating truthful information among the public, at the request of persons leaving for overseas employment, provide consultation on employment contracts concluded with a foreign employer;
- 4) Both on its own initiative and in accordance with intergovernmental agreement and in the procedure prescribed by the law, conclude international interagency agreements with relevant state authorities in foreign states;

- 5) Prepare annual activity report and submit it to the Government of the Republic of Armenia by February 10 of the following year;
- 6) Exercise authorities proceeding from this law and other legal acts aimed at coordinating regulation of overseas employment, as well as making implementation of related functions organized;
- 7) Develop proposals aimed at legislative improvement of overseas employment and submit them to the Government of the Republic of Armenia in an established procedure.

Article 8. Responsibilities of State, Local Government and Local Self-Governance Entities

In compliance with this law and Decrees of the Republic of Armenia, the authorized government entity shall be supported by central and local government entities of the Republic of Armenia in regulation of overseas employment within their jurisdiction.

Article 9. Authorities of Diplomatic Missions and Consular Offices in the Functions Related to Regulation of Overseas Employment

1. Diplomatic Missions and Consular Offices of the Republic of Armenia in foreign states shall undertake measures for studying the labor market in their hosting countries, obtaining relevant information on possible changes in the labor market and their predicted trends. On the basis of available materials and studies Diplomatic Missions and Consular Offices shall submit proposals to the Ministry of Foreign Affairs of the Republic of Armenia on expediency of recruiting specific specialists for overseas employment in their host countries, work possibilities for them in those countries, labor legislation of the host country, entry and exit, as well as other issues related to regulation of overseas employment. The Ministry of Foreign Affairs of the Republic of Armenia shall periodically provide the received materials and proposals to the authorized government entity of the Republic of Armenia.
2. Diplomatic Missions and Consular Offices of the Republic of Armenia in foreign states shall provide the overseas employees with relevant information and consultancy, help with their adaptation in foreign states and maintenance of their links with native culture, intervene and help during disagreements with the foreign employer.
3. In cases of war, epidemic, natural or manmade disasters or other emergencies in foreign states, the Diplomatic Missions and Consular Offices of the Republic of Armenia shall take measures provided under the legislation and international treaties of the Republic of Armenia for safe removal of overseas workers from these states, their transportation to the Republic of Armenia or temporarily to another country.

CHAPTER III. ORGANIZATION OF OVERSEAS EMPLOYMENT

Article 10. Cases of Departure for Overseas Employment and Cases of Non-Involvement in Overseas Employment

1. Persons having reached the age allowed by the Law of Armenia, which also meets the requirements of the legislation of foreign state may leave for overseas employment.
2. Persons, whose overseas employment term coincides with a period when the exit of these persons from the Republic of Armenia is prohibited in the order prescribed by the law and international treaties of the Republic of Armenia, may not leave for overseas employment.
3. Involvement of citizens of the Republic of Armenia shall not be allowed if it contradicts the Labor Code of the Republic of Armenia due to health.

Article 11. Inclusion of Overseas Employment Period in the Length of Service of Overseas Employees

The period of overseas employment shall, in a procedure provided by the law, be included in the general and professional length of service of a citizen of the Republic of Armenia having left for overseas employment and shall be taken into consideration upon assigning pensions and unemployment benefits, benefits for temporary loss of ability to work, as stipulated by the legislation of the Republic of Armenia, given that the citizen has made social insurance contributions during the period of his/her overseas employment as established by the Government of the Republic of Armenia.

Article 12. Intermediaries in the Area of Overseas Employment

1. Intermediaries in the area of overseas employment shall be organizations deemed commercial by the law of the Republic of Armenia and individual entrepreneurs if they received a license for being engaged in such activities in a procedure set out by the law of the Republic of Armenia. Commercial organization registered in foreign states may serve as an intermediary if it received a license for job placement in foreign states in a procedure set out by the law of the Republic of Armenia.
2. Intermediaries shall study labor markets in foreign states, cooperate with foreign employer or employment agencies, provide intermediary services to persons willing to leave for overseas employment in terms of finding an overseas employment for them.
3. Intermediaries shall conclude contracts with persons willing to leave for overseas employment in order to arrange overseas employment.

Article 13. Licensing of Intermediaries in the Area of Overseas Employment

1. Licensing of intermediaries engaged in activities of arranging overseas employment, i.e. issuing license, extending its validity, reformulation, suspension and termination shall be defined by the Law on Licensing.
2. Annual state duty shall be paid for the issuance of license in the amount and timeframes set out by the Law on State Duties.

Article 14. Duties of the Intermediary

The intermediary shall be obliged to:

- 1) Provide free preliminary orientation information on overseas employment and foreign employers to persons wishing to leave for overseas employment and legal assistance on issues related to the conclusion of employment contract with a foreign employer for overseas employment or preparation of other related documents necessary for the conclusion as well as provide information on Diplomatic Mission or consulate of Armenia in the foreign state;
- 2) Sign contracts set out under Article 15 of this law for arranging overseas employment;
- 3) Arrange the transportation of persons leaving for overseas employment to the foreign states only on the basis of contracts concluded with overseas employees and foreign employers or persons authorized by the foreign employer.
- 4) Personally or through an authorized representative ensure the overseas employees with accommodation, hiring by foreign employer in accordance with terms stipulated by intermediary service contract set out under Article 15 of the law if the foreign employer or overseas employees have not assumed these duties by relevant contracts.
- 5) Within three days after arrival in a foreign state, the Diplomatic Missions and Consular Offices in the given state shall be provided with the list of persons having arrived for overseas employment with information concerning them.
- 6) Carry out other obligations proscribed by this law and other laws.

Article 15. Contract Concluded between Person Willing to Leave for Overseas Employment and Intermediary

The intermediary shall conclude intermediary services contract with persons willing to leave for overseas employment, according to the procedure set forth by the legislation of the Republic of Armenia.

In the referred contract the parties shall stipulate the scope of services that the intermediary shall be obliged to provide to the person willing to leave for overseas employment, as well as the fees and order of payment for intermediary service.

The contract shall contain information on the preferences of the person leaving for overseas employment in terms of destination countries, occupation or nature of work, amount of salary, duration of work and other important employment details.

Payments by persons willing to leave for overseas employment for services provided by the intermediary shall be conditioned with the signing of an employment contract with a certain foreign employer.

The person willing to leave for overseas employment shall pay the full amount for the intermediary services if he/she refuses to sign an employment contract after agreeing to the terms offered by a foreign employer indicated by the intermediary.

The result of performance of intermediary duties assumed by the contract on intermediary service shall be to find a certain foreign employer and have an employment contract signed with the foreign employer and the person wishing to leave for overseas employment according to the stated preferences of the latter.

Article 16. Contract on Overseas Employment

1. In accordance with terms stipulated by intermediary service contract set out under Article 15 of the law, in case of finding the required work and getting consent on the conditions of the proposed work with the person leaving for overseas employment a contract on overseas employment shall be concluded between the person leaving for overseas employment and foreign employer.

2. The overseas employment contract shall determine:

- a) A person wishing to leave for overseas employment directly and a foreign employer;
- b) A person wishing to leave for overseas employment and the authorized representative of foreign employer.

3. The following terms should be disclosed in the overseas employment agreement:

- 1) Name of foreign employer;
- 2) Location (legal address);
- 3) Type, nature and conditions of proposed work (working hours, etc.);
- 4) Amount of salary and conditions;
- 5) Duration of contract;
- 6) Conditions of settlement and residence of an overseas worker in a foreign state employer's office;
- 7) Terms of social security (insurance) of an overseas employee;
- 8) Conditions envisaged by the parties or international treaties of the Republic of Armenia.

Article 17. Conclusion of Contract on Overseas Employment

Contract on overseas employment may be concluded:

- 1) Directly between the person willing to leave for overseas employment and the foreign employer;
- 2) Between the person willing to leave for overseas employment and the authorized representative of the foreign employer.

Article 18. Contracts between Intermediary and Foreign Employer

1. The contract signed between the foreign employer and the intermediary shall determine duties of the parties with regard to recruitment of persons leaving for overseas employment in the Republic of Armenia, their selection, transportation to relevant foreign state, meeting them and their transportation to the employer's office, registration in the residence place, getting work permit (permits), conclusion of employment contract according to requirements of Article 16.2 of this Law with the employer, professional examination in the Republic of Armenia and arrangement of medical check-up, arrangement of return to Armenia after completion of employment and conditions which may be considered important for overseas employees.

2. The contract concluded between an employer and intermediary must also envisage whether an employer or an intermediary shall sign an employment contract with a person leaving for overseas employment.

If an intermediary is authorized to sign an employment contract with a person leaving for overseas employment on behalf of the employer, the important conditions of an employment contract must be defined in the overseas worker's recruitment contract signed between the employer and intermediary.

3. The intermediary shall provide one copy of the concluded employment contract to overseas employee before his/her departure from the Republic of Armenia. The contract on overseas employment shall be made in Armenian or another language understandable for the overseas employee.

CHAPTER IV.

FINAL PROVISIONS

Article 19. Responsibility for Violation of this Law

Persons violating the requirements of this Law shall be held responsible in the procedure set out by this Law.

Article 20. Entry of the Law into Force

This law shall become effective on the 10th day following its official promulgation.

ANNEX 3: AGENDA OF THE NEEDS ASSESSMENT MISSION

IOM Mission in Armenia

Project Development and Implementation Unit

“Technical Assistance to the Armenian Government to initiate labour migration arrangements” Project

Funded by the IOM Development Fund

Agenda for Labour Migration Needs Assessment Mission

Monday, February 21, 2011 – Friday, February 25, 2011

Day 1. Monday, 21 February 2011

13:30 – 14:30	IOM Armenia Mission Staff Ms. Ilona Ter-Minasyan, Head of Office; Ms. Kristina Galstyan, Head of Project Development and Implementation Unit
14:30 – 15:45	Central Bank Mr. Hrant Suvaryan, Head Financial Supervision Department; Mr. Artur Stepanyan, Head, Monetary policy department; Mr. Narek Ghazaryan, Monetary policy department; Mr. Vahe Vardanyan, Head of Financial system stability and development Department Mr. Rolan Mnatsakanyan, Head of the Economic research department
16:00 – 17:00	State Labour Inspectorate of the Ministry of Labour and Social Issues Mr. Armen Smbatian, Deputy Head Mr. Gevorg Gevorgyan, Head, Labour Conditions Oversight Division
17:00 – 18:30	State Migration Service at the Ministry of Territorial Administration Dr. Gagik Yeganyan, Head Mr. Hambartsum Abrahamian, Head Migration Policy and Programmes Division

Day 2. Tuesday, 22 February 2011

09:30 – 11:30	Ministry of Labour and Social Issues Mr. Arayik Petrosyan, Deputy Minister, Ms. Anahit Martirosyan, Head of International Relations Department
11:30 – 12:30	Ministry of Education Dr. Kariné Harutyunyan, Deputy Minister Mr. Robert Abrahamyan, Head of Primary and High Specialized Education Department Ms. Gayané Harutyunyan, Executive Director of the National Academic Recognition Information Centre Ms. Angelina Hovhannisyan, Leading Specialist, External Relations and Diaspora Department

12:30 – 14:00	Lunch Break
14:00 – 15:00	State Social Security Service, Ministry of Labour and Social Issues Mr. Ara Harutyunyan, Deputy Head; Ms. Hasmik Torosyan, Assistant to the Head of the Service
15:30 – 17:00	National Statistics Service Mr. Gagik Gevorgyan, Member of the State Statistics Council (overseeing demography, sociology and public activity sectors) Mrs. Kariné Kouiumjian, Head of the Population Census and Demography Division; Mrs. Lusiné Kalantaryan, Head of the Labour Statistics Division
17:00 – 18:30	Ministry of Health Mr. Sergey Khachatryan, Deputy Minister Ms. Isabella Abgarian, Head of Legal Department Ms. Hasmik Safaryan, Leading Specialist, International Relations Department

Day 3. Wednesday, 23 February 2011

09:15 – 10:30	Police Department for Passports and Visas Colonel Norayr Muradkhanyan, Head of Department for Passports and Visas
10:45 – 12:30	Police Directorate to Combat Organized Crime Colonel Ruben Dovlatyan, Head of Department to Combat Crimes of Irregular Migration and of High Technologies Major Armen Petrosyan, Head of Division to Combat Irregular Migration Major Robert Grigoryan, Deputy Head of Division to Combat Irregular Migration
12:30 – 13:45	Lunch Break
13:45 – 15:00	National Competitiveness Foundation of Armenia Ms. Jemma Israelyan, Director for Investor and Donor Relations
15:00 – 16:30	Ministry of Economy Mr. Mekhak Apresyan, Head of Department of Tourism and Regional Economic Development Mr. Artak Bagdasaryan, Head, Department of Economic Policy and Strategies Development Mr. Karen Sargsyan, Head of EU Affairs Division, Department of EU and International Economic Affairs
16:30 – 17:30	Ministry of Diaspora Mr. Vardan Marashlyan, Deputy Minister Mr. Arman Yeghiazarian, Head of Department of Repatriation and Investigations
17:30 – 18:30	Confederation of Trade Unions of Armenia Mr. Levon Khacahtryan, Executive Secretary and Head of the Educational-research Center, Ms. Elen Manaserian, Labour Migration Project Manager

Day 4. Thursday, 24 February 2011

09:30 – 11:00	Ministry of Justice Dr. Aram Orbelian, Deputy Minister
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11:10 – 13:00	State Employment Service of the Ministry of Labour and Social Issues Dr. Sona Harutiunyan, Head, Mr. Garik Sahakyan, Deputy Head
13:00 – 14:15	Lunch Break
14:15 – 15:45	Chamber of Commerce and Industry of Armenia Mr. Araik Vardanyan, Executive Director Mr. Vladimir Amiryan, Head of International Relations Department
16:00 – 16:30	Meeting with the State Migration Service Mr. Hambardzum Abrahamyan, Head Migration Policy and Programmes Division, State Migration Service
16:30 – 18:00	Ministry of Foreign Affairs Ambassador Tigran Seiranian, Head of the Consular Directorate Ambassador Vahram Kazhoyan, Head of International Organizations Directorate Ambassador Armen Ghevondyan, Head of the CIS Directorate; Ambassador Areg Hovhannisyan, Head, Middle East Directorate; Mr. Mher Margaryan, Head of EU Desk, European Directorate Mr. Artur Madoyan, Head of Migration Desk, Consular Directorate

Day 5. Friday, 25 February 2011

09:30 – 10:30	Meeting with State Employment Service Agency Mr. Garik Sahakyan, Deputy Head of the State Employment Service Agency
10:30 – 13:00	Meeting with Organizations members of the Donor Coordination's Migration Management Coordination Group [ILO, OSCE, UNDP, German Embassy, GTZ, Armenian UN Association, People in Need, Eurasia Partnership Caucasus Research Resource Centres, International Center for Human Development, Armenian Red Cross Society]
13:00 – 14:00	Lunch
14:00 – 15:30	Meeting with Police Mr. Robert Grigoryan, Deputy Head of Division to Combat Irregular Migration
15:30 – 17:00	Wrap-up meeting with IOM Mission in Armenia Head of Office and Head of PDIU

Needs Assessment Team:

Team Leader:

Mr. Alexandre Devillard

IOM Armenia:

Ms. Kristina Galstyan, Head of Project Development and Implementation Unit, IOM Mission Armenia

Ms. Ilona Ter-Minasyan, Chief of Mission, IOM Mission Armenia

ANNEX 4: COMMENTS AND QUESTIONS FROM THE STATE MIGRATION SERVICE AND COMPILED ANSWERS

Additional Questions Received from the State Migration Service of the Ministry of Territorial Administration (10 July 2012; No: 01/06/1570-12)

- Except for licensing, what are the alternatives for state monitoring over the activities of intermediaries in international practice, what are their strengths and weaknesses and, in the expert's opinion, which is the best option for Armenia;
- Although in the assessment the expert makes a reference to the effects of international labour migration – decreased unemployment rates, remittances, etc. – it would be also useful if international experience in increasing effects of labor migration on human development of different countries could be presented, which would enable development of an action plan on increasing such effects in Armenia;
- In the assessment the expert very superficially refers to the verification of the state authorized body issuing work permits to foreign nationals in Armenia. It would be desirable if international experience on the issue – specifically EU experience – could be presented, especially, given the requirement for submitting recommendations on an authorized body issuing work permits to foreign nationals in Armenia provided under point 6.1.3. of the 2012-2016 Action Plan for Implementation of the Concept for the Policy of State Regulation of Migration in the Republic of Armenia approved by the Government of Armenia on 10 November 2011.

Answers to questions from the State Migration Service (letter of 10 July 2012, No: 01/06/1570-12)

1. Regulation and monitoring of private employment agencies

Two main approaches to regulation and monitoring of private employment agencies have classically been considered by states: firstly, a strict prohibition of their activities; secondly, a regulation approach, the scope and density of which may vary greatly from one country to another. Currently, most states have abandoned the prohibition approach. Concerning the regulation approach, an important distinction is to be made between registration and licensing. Registration implies that private employment agencies simply need to register with the competent public authority in order to exercise its activities, while licensing requires the previous authorization of the competent authority before starting its activities.

The report focuses on licensing, which is the generally favoured system with regard to labour migration, as it authorises better control of administration over agencies. The report also presents a moderate licensing approach, with a view to not deter the efficiency of the work of agencies and ultimately, the protection of workers.

However, it must be outlined that registration also offers means of control, which represent a fraction of the control activities to be implemented in the licensing system. Hence, the sections of the report referring to “services of private employment agencies and collection of fees” (section 1.1.2.4.) and “monitoring activities of private employment agencies and enforcing sanctions” (section 1.1.3.) apply *mutatis mutandis* to the registration system.

The licensing system still presents the advantage for administration to operate a “prevention test” by only allowing the activities of agencies that have the means to operate in an efficient and legal way. In addition to the developments included in the report, it can be mentioned that a few conditions for issuing a licence can be lowered. The criteria of management capability and marketing capability (section 1.1.2.2.) can be reduced to an educational background criterion. However, when the private employment agency sector grows, the full requirements included in the report should be foreseen.

2. Migration and development

The relationship between migration and development is a very complex and controversial issue that goes far beyond the scope of the report. However, a few elements can be presented with regard to remittances and highly-skilled migration.

Remittances can represent a very relevant percentage of national GDP. They are an important source of income for many low- and middle-income households. They often contribute to improving household living conditions and to reducing vulnerability of family members, especially women and children. Remittances therefore constitute a steady source for poverty reduction. However, economic dependence on remittances may reduce recipient families’ motivation to develop their own income-generating activities. Moreover, as remittances are spent largely on consumption,

when the national economy has a limited capacity to respond to the high demand for goods that result from these inflows, this situation encourages inflation.

The migration of highly-skilled workers has potential positive and negative consequences, as shown in a simplified way in the table below:

Positive effects	Negative effects
<ul style="list-style-type: none"> - Availability of opportunities to emigrant workers that are not available at home - Inflow of remittances - Technology transfers and investments - Integration into global markets 	<ul style="list-style-type: none"> - Net decrease in human capital stock, especially those with valuable professional experience - Loss of heavy investments in subsidized education - Reduced quality of essential health and education services - Tax revenue declines

It must also be outlined that the return of highly-skilled migrants very much depends on the economic and political situation of the country of origin. When this situation is not favourable, practice shows that incentives for return tend to fail (see the example of South Africa in the box below).

An example of incentive for return: the Health Professions Council of South Africa (HPCSA) amnesty for health professional returnees

In 2007, South Africa's medical diaspora included more than 1,500 physicians practising in Canada and thousands more who had migrated to the UK, Australia, New Zealand and the United States.

At the same time, South Africa was (and is still) facing a staffing crisis with regards to public health services.

In order to counter a major disincentive that was discouraging emigrated medical doctors from returning to South Africa, the Health Professions Council of South Africa (HPCSA) agreed to a waiver of penalties for those practitioners who had failed to pay their annual registration fees. The amnesty period started on 1 February 2007 and expired on 30 April 2007.

In order to benefit from this amnesty, doctors had to meet several conditions, including the requirement that they perform 100 hours of community service within six months of return at a public sector facility.

During these three months, only 59 physicians returned to South Africa.

3. Delivery of work authorizations

Here are a number of complementary details regarding the delivery of work authorizations, based on common practices of European states. The following details are based on the approach of the labour market test, as favoured in the report.

Conditions of delivery

Before employing a foreign worker, the potential employer should try to find a suitable candidate already present in the Armenian labour market. He should present a job offer to the national employment agency and other placement agencies (such as private employment agencies, etc.). When applying the labour market test, the competent authority should take into account the efforts undertaken by the employer to fill the position within the national labour market. In addition, the competent authority should take into account available data concerning the labour market situation for the considered occupation in the considered region. It is only when there is a significant gap between the labour offer and demand that the competent authority may refuse the delivery of the work authorization on this second ground.

In addition, the delivery of the work authorization should also take into consideration the salary of the worker. The salary should at minimum be equal to the minimum salary in the country. In order to avoid any kind of discrimination, the competent authorities should also verify that the work and salary conditions of the foreign worker (type of work contract, work hours, level of remuneration, etc.) are identical to those that would be applicable to a worker already within the Armenian labour market. A comparison between the conditions of employment and salary of the foreign worker and those of the workers already employed by the considered employer should also be made in order to avoid discrimination.

Procedure of delivery

The procedure should be initiated by the employer, which should first try to find an adequate candidate on the national labour market. If no suitable candidate can be found, the employer should conclude a work contract with the considered foreign worker.

The employer should then present a request for a work authorization to the competent authority. The file could include the following elements:

- work contract concluded with the foreign worker;
- applicable fees for the work authorization procedure;
- status of the firm and other relevant documents (registration docs, etc.)
- cover letter from the employer, explaining the difficulties of recruiting a candidate on the national labour market and justifying the choice of the selected foreign worker;
- justifications of the efforts undertaken to fill the position within the national labour market.
- CV and diplomas of the foreign worker

If the examination of the employer's file by the competent services leads to a positive decision, part of the file should be transmitted to the consular services in order to process the visa and organize the medical visit.

LABOUR MIGRATION IN ARMENIA:

EXISTING TRENDS AND POLICY OPTIONS

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