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A Triple Win in Migration:
Ensuring Migrant Workers' Rights to Protect All Workers

Manolo Abella

August Gächter

Juliet Tschank

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Foreword

The lack of socio-economic welfare and workers' rights for migrants has heightened in times of the global financial and economic crises. The protection and welfare of migrant workers often comes second to the economic benefits they bring to both countries of destination and origin. While there cannot be a single, pan Asia-Europe Meeting (ASEM)[1] policy on migrant welfare, the exchange of experiences and evaluation of the different practices and approaches used in different countries allows the identification of policies and practice that will improve the understanding and management of migration in Asia and Europe.

This publication is a result of a programme that the Asia-Europe Foundation (ASEF) and Friedrich-Ebert-Stiftung (FES) Office for Regional Cooperation in Asia embarked on to provide a platform for an ASEM-wide dialogue on labour migration. The programme focus is on the impact of migration policies on the socio-economic welfare of migrant workers and to examine and improve the formulation of migration policies in sending and receiving countries.

The publication identifies good practices across ASEM countries as well as key migration issues relevant to ASEM countries and their policymakers. It looks at essential policies in both regions in support of fair and equitable migration systems; reducing migration risks and providing migrants access to protection; and the integration of migrants in sending and receiving countries. The aim is to draw from actual experience some useful lessons on how labour migration can be governed by host and origin states in a way that contributes positively to individual welfare and to socio-economic development.

We appreciate the immense efforts of the two lead researchers and authors of this report, Mr Manolo ABELLA, Senior Research Associate, COMPAS, and former Director of the International Migration Programme of the International Labour Organisation (ILO) in Geneva, and Mr August GÄCHTER, Project Manager, Centre for Social Innovation in Vienna. Without their hard work, commitment and guidance this publication would not have been possible. Our thanks also go to Ms Juliet TSCHANK, Research Associate, Centre for Social Innovation in Vienna, who contributed towards the research and writing.
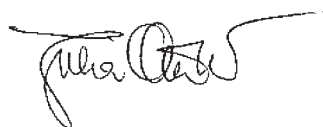
A draft version of this report was presented to Asian and European experts in the field of labour migration in Geneva, Switzerland on 8–9 November 2013. The expert group comprised of representatives of ASEM governments, international and regional organisations, non-governmental and civil society organisations, think tanks and academia, trade unions and the private sector. We would like to thank all of them for their enthusiasm, constructive criticism and useful input during these two days.

The editors would also like to thank the FES Geneva office, in particular Mr Matthes BUHBE and Ms Yvonne THEEMANN for their support and assistance during the workshop and in pre-launching this publication during an official side event at the 26th UN Human Rights Council in June 2014.
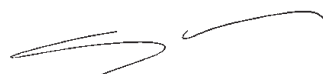
Our appreciation also goes to the speakers at the official side event at the 26th UN Human Rights Council, namely Ms Imelda M. NICOLAS from the Commission on Filipinos Overseas (CFO); Mr Jasmin REDZEPOVIC from Building and Wood Workers' International (BWI); and Dr Piyasiri WICKRAMASEKARA from Global Migration Policy Associates (GMPA).

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Julia MÜLLER
Director
Friedrich-Ebert-Stiftung (FES)
Office for Regional Cooperation in Asia

Thierry SCHWARZ
Director
Political and Economic Department
Asia-Europe Foundation (ASEF)

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1   The Asia-Europe Meeting (ASEM) is an intergovernmental forum for dialogue and cooperation established in 1996 to deepen relations between Asia and Europe, which addresses political, economic and socio-cultural issues of common concern. ASEM brings together 51 member states (30 European and 21 Asian countries), the ASEAN Secretariat, and the European Union.

Abbreviations

ALFEA: Association of Licensed Foreign Employment Agencies (Sri Lanka)

AMS: Austrian Public Employment Service (Austria)

ASEAN: Association of Southeast Asian Nations

ASEF: Asia-Europe Foundation

ASEM: Asia-Europe Meeting

BAC: Bureau de l'Amiable Compostieur (The Office of the "Amiable Compositeur")

BAIRA: Bangladesh Association of International Recruitment Agencies

BMET: Bureau of Manpower, Employment and Training (Bangladesh)

CFDT: Confédération française démocratique du travail (French Workers' Democratic Confederation)

CIETT: International Confederation of Private Employment Agencies

CIF: Construction Industry Federation (Ireland)

CWSD: Combatting Wage and Social Dumping (Austria)

DWAG: Domestic Workers Action Group (Ireland)

EEA: European Economic Area

EFTA: European Free Trade Area

EHCR: European Convention of Human Rights

ENIC: European Network of National Information Centres

EOP: Employers' Orientation Programme

EPS: Employment Permit System (Korea)

EU: European Union

EUI: European University Institute

EURES: European Employment Service

EU-SILC: European Union Statistics on Income and Living Conditions

FDFA: Federal Department of Foreign Affairs (Switzerland)

FES: Friedrich-Ebert-Stiftung

GLA:	Gangmasters Licensing Authority (UK)
HRD:	Human Resources Development Services
IBEC:	Irish Business and Employers' Confederation
ICM:	India Centre for Migration
ICOE:	Indian Council of Overseas Employment
ICRRA:	The Immigration Control and Refugee Recognition Act (Japan)
ICTU:	Irish Congress of Trade Unions
ICWF:	Indian Community Welfare Fund
IG BAU:	Industriegewerkschaft Bauen-Agrar-Umwelt (German Trade Union for Building, Forestry, Agriculture and the Environment)
ILITS:	Integrated Labour Inspection Training System
ILO:	International Labour Organization
IMO:	International Maritime Organization
IOM:	International Organization for Migration
ISCO:	International Standard Classification of Occupations
ISIC:	International Standard Industrial Classification
KILM:	Key Indicators of the Labour Market
LFS:	UK Labour Force Survey
MARINA:	Maritime Industry Development Authority (Philippines)
MoEWOE:	Ministry of Expatriates' Welfare and Overseas Employment (Bangladesh)
MOIA:	Ministry of Overseas Indian Affairs
MOU:	Memorandum of Understanding
MRA:	Mutual Recognition Agreement
MRCI:	Migrants Rights Centre Ireland
MTUC:	Malaysian Trade Union Congress
NARIC:	National Academic Recognition Information Centre
NDPB:	Non-departmental Public Body

NESC:	National Economic and Social Council (Ireland)
NHS:	National Health Service (UK)
NISG:	National Institute for Smart Government (India)
NRF:	National Recruitment Federation (Ireland)
OECD:	Organization for Economic Co-operation and Development
ÖIF:	Der Österreichische Integrationsfonds (Austrian Integration Fund)
OWWA:	Overseas Workers Welfare Administration (Philippines)
PHEO:	Private Household Employees Ordinance (Switzerland)
POEA:	Philippine Overseas Employment Administration
POLO:	Philippine Overseas Labour Offices
SEF:	Serviço de Estrangeiros e Fronteiras (Immigration and Border Service of Portugal)
SIRC:	Seafarers International Research Centre (Philippines)
SLBFE:	Sri Lanka's Bureau of Foreign Employment
SME:	Small and Medium Enterprises
TUC:	Trade Union Congress (UK)
UNESCO:	United Nations Educational, Scientific and Cultural Organization
WHO:	World Health Organization
WKO:	Wirtschaftskammer Österreich (Austrian Federal Economic Chamber)
ZZPR:	Związek Zawodowy Pracowników Rolnictwa (Polish Trade Union)

Executive Summary

The Asia-Europe Foundation (ASEF) and the Friedrich-Ebert-Stiftung (FES) Office for Regional Cooperation in Asia have commissioned a study of migration policies and programmes in Asia and Europe with a view to identifying those that have contributed significantly to the welfare of migrants, their host countries and their countries of origin. The study involved an extensive desk review of contemporary national policies and practices usually employed by states of origin and states of employment in regulating the cross-border movements of workers as well as their integration in the host societies. Included in the review are effective schemes for the training and placement of workers in decent jobs abroad; regulations and incentives to reduce the cost of recruitment, admission policies and programmes which enhance productivity while protecting jobs and wages; measures supporting the right of migrants to decent jobs and equal treatment; and schemes that facilitate their socio-economic integration. Particular attention was paid not simply to the declared aims of policies and programmes but more importantly to their actual impact on the lives of the migrant workers at the different stages of the migration cycle.

The following is a brief summary of lessons drawn from the many examples of good policies and practices in Asia and Europe described and analysed in this report.

Policies and Practices in Receiving Countries

1. Transparent policies and simple procedures for admission of foreign workers minimise the need for intermediaries and the risk of fraud, reduce the cost of migration, and encourage migrants to go through legal channels.

Closely monitoring labour market conditions, identifying specific skills shortages, assessing skills equivalence between source and destination countries, and establishing minimum standards – especially wages – for employing foreign workers contribute significantly to maximising the gains from migration and avoiding some of its adverse consequences. Both Australia and the United Kingdom identify the skills they wish to admit and have transparent policies for admission. They have managed to absorb large numbers of skilled foreign workers without adverse consequences on wages and at the same time raising productivity. To facilitate skills-to-job matching among member states, the Council of Europe and UNESCO have established the European Network of National Information Centres (ENIC) to ensure that qualifications from one member state are recognised in another. The ENIC network cooperates with the National Academic Recognition Information Centres (NARIC), a similar network of qualifications recognition set up by the EU for member states, the four European Free Trade Area (EFTA) countries and Turkey.

2. The best way to protect the jobs and wages of national workers is to protect migrant workers.

For countries that decide to bring in foreign workers, it is essential that there be policies and measures in place to ensure equal treatment and protection in law and practice of the migrants' basic rights. Where unequal treatment is tolerated, "path dependence" on foreign workers quickly develops as employers will always tend to minimise labour costs.

This report cites examples of the rapid rise of foreign worker populations in Asian countries as well as in EU and EFTA member countries. While the policies of Asian countries diverge widely, examples of wage, employment and admission policies contributing simultaneously to rising competitiveness and to greater equality in society and among workers are much easier to find elsewhere in the world. Policies in the EU and EFTA countries make a conscious effort to ensure that all migrant workers are paid as much as non-migrant workers in the same occupations. The aim is to make sure migrant workers are not being used by employers to undercut the wages of natives. Conventional measures to this end — for instance, labour market testing — had proven easy to subvert, as they also have in Asia, and cannot be applied to migrant workers who are EU or EFTA citizens. Instead there is now the freedom to change employers any time, i.e. to leave unsatisfactory working conditions,

and there is no pressure any more to earn as much as possible during a short period of time because workers themselves decide how long they want or need to stay. Further, there are now laws stipulating equality of working conditions, such as the 1996 EU Directive (1996/71/EC) specifying that "posted" workers, i.e. workers employed by a company in one country but performing work in another country, must also be covered by minimum standards applicable in the country where they work, or the 2000 Directive (2000/78/EC) that establishes "a general framework for equal treatment in employment and occupation."

Importantly, member countries are under an obligation to establish agencies effectively enforcing the legal standards. The integration of migrant workers into local trade unions has also proven an effective way of protecting native wages from being undercut, especially in cases where migrant workers are not only members but can also advance in the trade union hierarchy.

3. Authorities and migrant workers both benefit if they have a common language to communicate in. Language markers have been found to serve as a basis for discrimination in access to employment.

At national level, many EU states subsidise language training and make it a requirement for permanent residency. Municipalities and many agencies, on the other hand, realise they need to be able to reach out to migrants and provide services to them regardless of whether the migrants have had an opportunity to learn the local language. The municipalities therefore equip themselves with the necessary language skills.

Useful as it may be in some respects, the acquisition of local language skills by migrant workers has proven ineffective in ensuring equal treatment for them in the labour market and in employment. Making the migrant workers fit for the market is only one side of the coin. It is also important to oblige employers and agencies to treat them fairly and equally and not to discriminate against them. Discrimination creates inequality, and inequality is a danger to the standards protecting native workers.

4. Opportunities for gaining entry into employment may elude immigrants. There is a need for governments to address the problems with holistic programmes involving local communities and enterprises.

The lack of fundamental skills among young immigrants has been addressed in Switzerland by running pre-apprenticeship courses in vocational schools aimed at improving literacy and numeracy. Some countries like Denmark offer wage subsidies to encourage enterprises to try hiring immigrants. Denmark has put the responsibility for the integration of migrants coming from outside the EU in the hands of municipalities. Municipalities are required to offer a three-year compulsory introduction programme to immigrants residing within their jurisdiction. They are encouraged to enter into partnerships with enterprises especially to create mentorship opportunities. However, it was found that while distributing the task of absorbing refugees across the country helps avoid overburdening a few cities and municipalities, it also prevents immigrants from using their own social networks in an effort to help themselves.

Policies and Practices in Origin Countries

While the protection of migrants' rights is the responsibility of host states, these are, in practice, best safeguarded when the migrants are able to secure decent jobs and are well prepared with skills and information about their rights and responsibilities. The review of country experiences brought out some important lessons.

5. Responsiveness of training policies to skills demands in the international labour market is crucial to securing decent jobs abroad and to protection against fraud and exploitation.

The reason the Philippines and India succeeded in establishing "niches" in the international labour market for their medical professionals, IT engineers, and seafarers was to a very large measure due to the responsiveness of their training institutions to the emerging demands for skills abroad. Indians account for well over half of all software engineers admitted to the US every year under the H-1B visa scheme. Sixteen engineering institutes in India produced some 170,000 graduates with advanced engineering degrees in 2005. In the Philippines, the number of nursing schools mushroomed from 40 in 1970 to 350 by 2005. In 2000, Filipino nurses accounted for 15 per cent of all foreign-born nurses in OECD countries. The Philippines also emerged as the biggest supplier of seafarers on board ocean-going ships in the world because its schools for maritime occupations, numbering over a hundred, were able to adapt their curriculum to the demands of the shipping industry.

6. The benefits of migration cannot be maximised unless the migrating workers are made fully aware of their rights and conditions of employment.

Most origin countries in Asia set minimum standards for employment contracts entered into by their nationals (usually contained in standard or "model contracts") to protect workers against making ill-informed decisions. They also require workers to go through a briefing or information session prior to departure in order to ensure that they fully understand their contracts and their rights and responsibilities. Improving the content and timing of these briefings continues to be a challenge for the national authorities but their value in protecting migrant workers has not been questioned.

7. Employers should be able to hire workers directly without the need to go through private fee-charging job brokers.

Policies and strategies to reduce recruitment costs are among the first steps required to protect workers against the many risks involved in migration processes. However, the task is made difficult when the supply of workers far exceeds demand and paying recruiters above legal limits is widely considered a "victimless crime". Moreover, some of the measures taken by origin countries — ostensibly to protect workers such as not allowing foreign employers to hire workers directly — have led to raising the costs for the workers. Many protective measures add to the complexity of procedures that migrants are required to go through leaving many of them little option but to hire the services of intermediaries. Debt bondage is the usual consequence of costly procedures where aspiring migrants without resources borrow the needed funds from their recruiters or employers (in the form of advances) or from informal money lenders at usurious rates. The governments of Sri Lanka and Bangladesh have both established loan-guarantee schemes to enable migrants to borrow money from selected banks at low interest rates.

8. Effective care for workers abroad requires sensitised and trained personnel in consulates and embassies

Migrants require a variety of support services from their own governments, i.e. in resolving disputes with employers, renewing travel documents, obtaining legal defence in criminal cases, escaping from intolerable treatment by employers, and many other contingencies. As labour migration accelerates, normal diplomatic missions overseas are easily taxed beyond their capacities to meet the needs of migrants. Contributory schemes to support overseas "on-site" services such as the 34 centres abroad of the Overseas Workers Welfare Administration of the Philippines and more recently the Indian Community Welfare Fund have gone a long way towards improving the capacity of origin states to meet their needs.

Cooperation between Countries of Origin and Employment

9. Migration is inherently a bilateral, if not a multilateral, issue that requires cooperation between origin and destination states.

In the EU, the free mobility of workers throughout the territory of the Union has been guaranteed by the Social Charter and facilitated by a number of multilateral projects such as the NARIC. No such schemes have yet been developed in Asia although the Cebu Declaration on the Protection of Migrant Workers adopted by the ASEAN leaders in 2007 is a promising start, as well as the subsequent Mutual Recognition Agreements (MRAs) to facilitate the mobility of selected professionals and skilled workers. ASEAN will launch its 8th MRA (on tourism professionals) in 2015.

With respect to non-EU citizens, bilateral agreements with source countries are again becoming important instruments used by the EU countries in administering immigration programmes and effectively regulating labour markets. In Asia, bilateral agreements on labour migration are fairly recent in origin and have not generally been seen as examples of good practice. One exception to this is Korea's reform of its guest worker programme involving bilateral agreements with source countries to replace private agencies in organising recruitment and to discourage migrants from working in Korea illegally. Cooperation has already brought down previously high recruitment costs incurred by migrant workers.

Conclusion

Migration is not a problem to be solved but a process to be managed. Effective management of the movements of workers across national borders requires cooperation between the governments of origin and destination countries; facilitating information flows between job-seekers and employers; minimising the need for third-party intervention in recruitment (which simply raise costs); taking measures to insure that migrant workers enjoy treatment equal to national workers; and engaging local governments and civil society in the effort to integrate migrants in the communities where they work and live. Despite their many differences, origin and destination states in Asia and Europe can learn much from each other in exchanging experience on how to manage these challenging processes.

I. Introduction

UN statistics show that the global landscape of migration has altered. While Europe remains the most popular destination region, it has been Asia that has exhibited the highest growth as a host region for migrants between 2000 and 2013 (UN DESA 2013). As more and more people relocate, seeking opportunities to better their lives away from their home countries, migration has become an integral part of individual and community action and a central dynamic of globalisation.

However, while the economic contributions of migrant workers to the development in both their home and adopted countries have been well-acknowledged, studies[2] indicate that the lack of institutional and legal frameworks continues to make the management and coordination of migratory flows problematic and that migrant workers remain the most susceptible to abuse, exploitation and discrimination.

Migration policy is usually a fragmented portfolio under different government departments with the focus being driven by economic policy and security concerns; social policy concerns have little influence[3]. Even when it comes to the analysis of migration policies, the focus of many studies has been on the legal aspects of migration policies or on the processes that go into developing them; little attention has been paid to consequences these policies have for the welfare of migrant workers.

However, the growing scale of international migration has generated new questions about the rights and protections available to migrants. While there is a lot of attention on the economic assimilation of immigrants, the equally important dimension of social integration is often as neglected as is the guarantee of decent working conditions. In particular, the lack of access to social services and portability of social rights raises concerns about the vulnerabilities of migrant workers. Respect, protection and enforcement of migrants' human and workers' rights as well as equal treatment and opportunities in national legislation is an essential component of good migration management and development.

Out of the 232 million migrants in the world today, nearly 140 million of them comprise of Asian and European migrants (UN DESA 2013); the two regions host nearly two thirds of the world's migrant population. However, at the time of writing, out of the 49 ASEM[4] member countries, only 14 have ratified the *International Labour Organization's (ILO) Convention 97 Concerning Migration for Employment (1949)* and *ILO Convention 143 Concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers* (1975); only 3 have ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers.[5]

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[2]   For details, see Chanda 2012, Migration between South and Southeast Asia – overview of trends and issues, ISAS Working Paper No. 140 – 2 February 2012, Institute of South Asian Studies.
[3]   See the UN thematic on MDGs 2012.
[4]   Since the 10th ASEM Summit (16-17 October 2014), ASEM brings together 51 member states (Australia, Austria, Bangladesh, Belgium, Brunei Darussalam, Bulgaria, Cambodia, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Japan, Kazakhstan, Korea, Lao PDR, Latvia, Lithuania, Luxembourg, Malaysia, Malta, Mongolia, Myanmar, Netherlands, New Zealand, Norway, Pakistan, Philippines, Poland, Portugal, Romania, Russian Federation, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Thailand, United Kingdom, Viet Nam) plus the ASEAN Secretariat and the European Union.
[5]   For more information about the international instruments protecting migrant workers, see the ILO webpage, http://www.ilo.org/migrant/areas/ international-standards-on-labour-migration-and-protection-of-migrant-workers-rights/lang--en/index.htm.

A Triple Win in Migration: Ensuring Migrant Workers' Rights to Protect All Workers

The following table charts the ratification status of some of the international instruments for the protection of migrant workers that ASEM countries are party to:
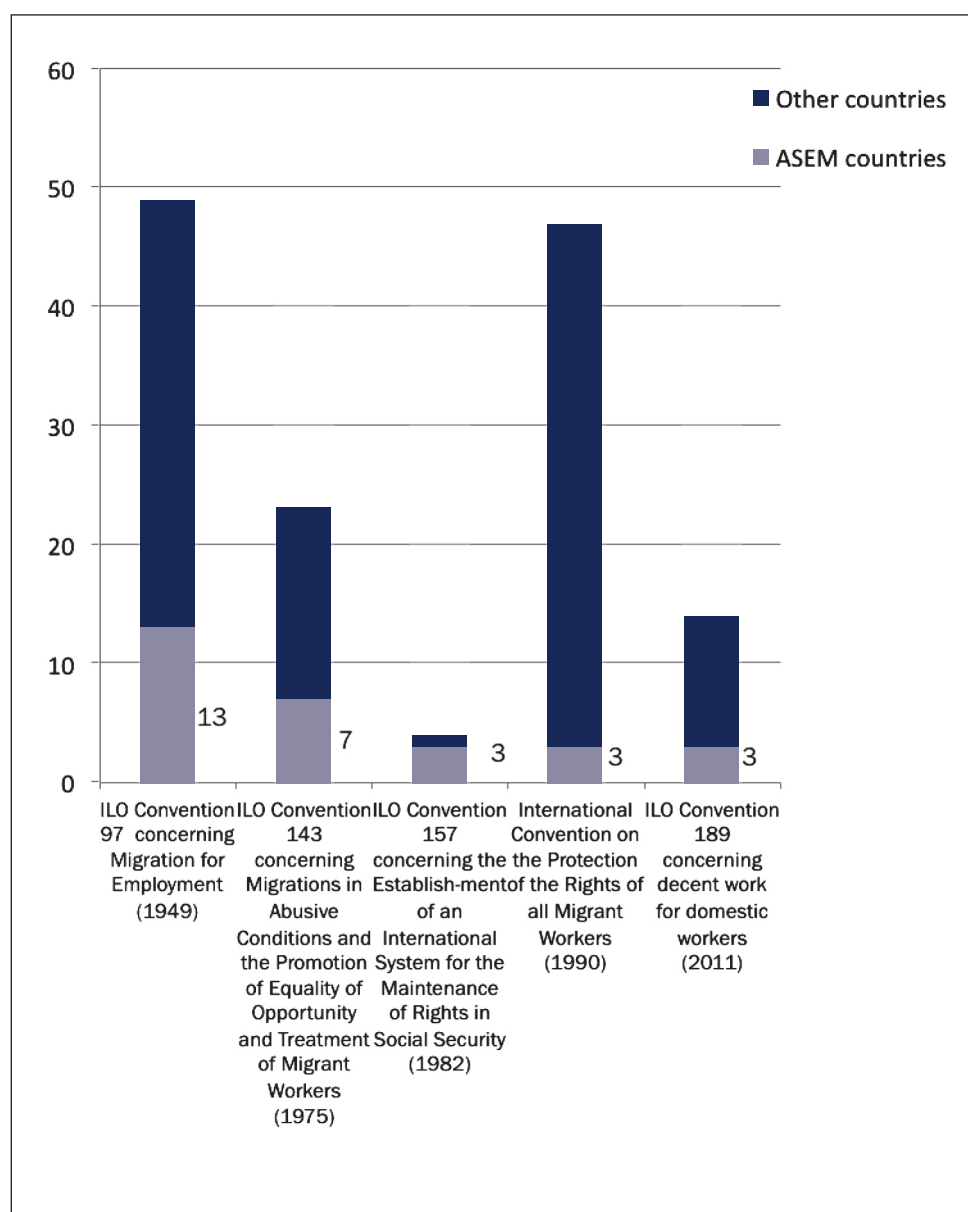
Source: ILO (2014), NORMALEX, Information System on International Labour Standards

While there are many political and technical reasons for non-ratification, many academics, trade union and civil society experts have noted that the propensity to treat migrants' labour as commodity adds to the reluctance of countries to ratify such conventions. Three traditional tendencies in the public and political discourse on migration, both relating to the issue of the human rights of migrants, have been observed (Asia-Europe Foundation 2004):

- First, the human rights of many migrants are secondary to economic development and the maintenance of social and political cohesion. Migration policy and migrant rights become de-linked, with the former relating primarily to economic or political goals which, in effect, "commodifies" migrants.

- Second, the treatment of migrants as economic goods makes them vulnerable to a range of derogatory conjecture, often as a prelude to expulsion or restriction of future migration in the face of economic downturn.

- Third, the emotive and divisive language used by the tabloid press creates an often fractious and hostile discourse on migrants that appears to restrict policy options.

In the process of the framing of the post-2015 development agenda where the emphasis is on putting 'people first', migration has been recognised as a 'development enabler'; this however is contingent on not just the size of moving populations and access to opportunities but also on "the 'quality' of migration opportunities, i.e. whether respect for and the protection of migrants' rights are guaranteed: Under which conditions does migration take place?" (Rosengärtner and Lönnback 2013).

The protection and rights of migrants have been a recurring policy concern in ASEM dialogue. At the 9th Summit, ASEM leaders expressed their commitment "to ensuring the protection of human rights of migrants and their families, including migrant workers particularly in the face of economic difficulties and to strengthening mechanisms for international cooperation" and "underlined the need to identify appropriate means of maximising development benefits and responding to the challenges which migration poses to countries of origin, transit and destination" (ASEM Chair's Statement, 2012). Since 2006, the ASEM Labour Ministers have been meeting on a bi-annual basis – the 2012 conference was hosted by Vietnam, where Ministers recognised the contributions of migrant workers in both countries of origin and destination – and called for the exchange of experience for developing effective policies in ensuring the rights of migrant workers.

Migration Policy Questions

While the main policy debate on migration for most of the past 60 years has been about how to secure sufficient foreign labour without turning these workers into permanent settlers, the reality in Europe—and to a smaller degree in Asia—has been the massive settlement of migrant workers. In Europe, the main debate at the municipal and regional levels has been very different from that of the national level. The debate has centred on how to approach the immigrant population and their offspring: Should they be excluded or included? Should they be hindered from social mobility or supported in it? And should they be kept silent or be permitted to have a say in the community? At EU level, debates on the issues of labour needs and immigrant settlement were taken up but separately and in isolation from each other. In Asia, where permanent settlement is only considered an option for the highly skilled, debate on such issues has not yet come to the fore. We will term the first issue as the 'migration debate' and the second issue as the 'integration debate'.

Given the reality of settlement, the integration debate could not be permanently ignored at the national level of policymaking. Thus, from the late 1970s onwards, from country to country, policies relating to admission, reception and integration of migrants emerged. This process is still incomplete and countries are continuing to join the bandwagon. In some places these new policies are reasonably encompassing and coherent from the start, while in others they remain haphazard and inconsistent. Such policies are also generally differentiated by legal categories. Between EU and the European Free Trade Association (EFTA) member countries, EU citizens enjoy almost uninhibited freedom of movement but residence remains tied to sufficient income. Access to employment is free for EU and EFTA citizens except while transition rules for new member countries are in force. Access to self-employment is usually unaffected by transition rules. An important second category are the refugees under the 1951 Geneva Convention. These can either be in the process of attaining protected status or have already been granted protected status. The third category are citizens of states outside the EU and EFTA, some of whom may enter freely for tourist purposes while others require a visa. They almost always need one or more permits to access employment, gain permanent settlement, and to bring family members to reside with them. Further regulations cover such questions as whether to grant access to state welfare benefits, and to what extent; under which conditions to naturalise migrants; if and when to provide language tuition; when to demand language proficiency; and how to school children of migrants.

A new subcategory, so-called highly skilled or highly qualified migrants, attained prominence around the year 2000 and has remained on the agenda since. There has been considerable wavering on the definition of such migrants. In the EU Blue Card Scheme, the European Council effectively settled on a definition of highly

paid migrant workers while national legislation in its wake, frequently opted for a combination of pay and occupational skill with some allowances for level of education—in a bid to exclude immigration into jobs at the low end of the occupational hierarchy, yet permit immigration into middle-level occupations such as nurses that might not be paid highly either. Given the EU-wide shift to higher education, the number of young people becoming available for middle-level occupations has tended to shrink. Therefore, governments and social partners have become more conscious of the need for such immigration. However, young, well-trained middle-level workers conversant in languages such as Danish, Flemish or German, or are capable of learning them quickly, are hard to find. Some countries are in fact quite active in recruiting such workers but do so mostly within the EU. However, this is not a sustainable solution for the future.

The first question always tended to be, who among non-EU/EFTA country citizens should be granted integration? And who should be barred from it? Governments and administrations have never been able to resist the urge to draw a clear line, even when they are aware of the inherent risks, i.e. that individual cases would arise where public sentiment might not coincide with how the line had been drawn by lawmakers. At times, such cases arose in large numbers. Often, the line was drawn with specific dates, e.g., all those who were present in the country at a certain date, or those who could prove to have been living in the country for a certain period up to that date, would be granted a permit to stay and all the others would be put into a legal bracket preventing them from obtaining the right to stay.

Once the question of "who" has been ticked off, the next important question is how to treat integration. Should it be a special responsibility and thus allocated to one particular government department, or should it be regarded a cross-cutting issue that all government departments should take into account in their policymaking and administrative practices? There is no common answer in this matter. Early adopters, like Sweden or France, have recently abolished government departments dealing specifically with integration, presumably because after more than 30 years of fostering the acquisition of competence among all government departments, the specialists were no longer needed. In other countries, specialised departments are still new, sometimes remaining controversial precisely because the other departments have not yet become particularly adept at dealing with issues of migration and integration, or at accepting such a mandate as part of their remit. The organisational question also includes one regarding the best level at which to deal with integration issues. Should policies be made and measures be taken by the national government, by provincial or regional bodies, or by the municipalities? And what could or should be the role of non-governmental organisations, including trade unions, employer organisations, religious bodies, equality bodies, human rights advocacies, and migrant self-organisations?

From around 1990, the policy and public debate in the EU once again turned to how to keep people from becoming long-term immigrants. Technological innovations, such as computer tracking of expiring visas, kept firing hopes that after a century of failure in administering temporary worker schemes, such schemes would finally become possible. So far, human rights issues, privacy issues, and not least cost considerations have kept policymakers at the EU and national levels from going beyond speculation about a possible future framework.

Methodology

This report refrains from labelling policies or practices as "good" for the simple reason that we did not investigate in any formal sense their conformity with human rights standards. Fulfilling or surpassing them—not only in the applicable legal standards but in actual practice—is nonetheless the underlying measure of the quality of policy and practice maintained throughout the report. For the same reason, this report also hesitates to openly criticise practices or policies. At times, it does point to fairly obvious inconsistencies, either between policies or between policy and intent, particularly when a more appropriate solution can be shown to exist nearby.

Labelling policy measures as "good" or "bad" is difficult even under the best of circumstances. Where it occurs, the criteria for such labelling generally remain in the dark. Efforts at finding criteria have tended to focus on procedure—rather than on content or on effect—by asking questions like: Were the needs assessed adequately?

Were the goals actually derived from the needs? Were the measures sensibly related to the goals? Were the measures carried out? Were the goals achieved? Was there an evaluation? And were all stakeholders involved in all steps of the process including the evaluation?

On the other hand, policy outcomes are commonly being measured in terms of employment rates, unemployment rates and so on (see, for instance, Kraszewska et al. 2011). The link between policy measures and their outcomes, however, remains ambiguous. This state of affairs results chiefly from a lack of data—especially longitudinal data that consistently and reliably covers sufficiently long periods before and after a policy change—and from a lack of resources to perform the required analyses. The lack of evidence is reflected in this report by the obvious fact that selection could not be based on measured impact. Had such measures been available, preference would have been given to policies maintaining, for instance, high employment rates (of the working age population that are not in training nor in education) for both migrants and natives, both female and male, and for all working age population groups. Policies that are equitable and which favourably impact other indicators included in the International Labour Organization's KILM database[6] would also have been included, had they been available.

While referencing the KILM indicators would go a long way towards assessing how policies advance human rights, it would still leave a wide range of thematic areas and within them a wide range of issues, untouched. First of all, this concerns the whole theme of migration, i.e. access to other countries, the process of being selected for such access, and the conditions under which access is effectively gained. Secondly, for many human rights standards it is either difficult to construct an indicator representing them adequately, or data are scarce. Data scarcity in turn is usually a result of prohibitive cost, difficulty in posing questions, or administrative and political obstacles. Thus, by far, the bulk of the examples presented in this report had to be chosen on the basis of intended rather than proven effect[7]. Considering how disappointing, rather than promising, many practices look a decade or two later, this is certainly not a satisfactory criterion. On the other hand, it rarely happens that a practice seen as a failure at present will become more acceptable over time. Thus, it may be that while some of the practices that we have included today in this report may not be looked upon as favourably in hindsight in the years to come, it remains unlikely that those we consciously excluded will in the future come to be seen as models of good practice. This is not to say that all the policies and practices not mentioned in these pages are lamentable. Many policies and practices are poorly documented, or are documented in less accessible languages, which precluded them from being reported here. We depended on having materials available in written languages we know, and on those which had available translations.

This report, although meant to highlight commendable examples, includes a number of practices that are either clearly not good practice or appear as good only in relative terms, i.e. when compared with the worse practices in the past or in the region. The latter are best practices rather than good ones in the sense that emulating them would represent progress for all other governments in a region, although they might still be a long way from qualifying as "good" when compared with practices outside the region. We also attempt to document the wide range of issues permitting better or worse policy and practice, and in most instances we have highlighted the diversity of approaches and stakeholders that can, or may have to, contribute to good solutions. This is because while there is rarely one solution applicable to all situations, a good solution may be found for the local context.

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[6]   KILM stands for Key Indicators of the Labour Market; in its current 8th edition it consists of 18 chapters: 1. Labour force participation rate; 2. Employment-to-population ratio; 3. Status in employment; 4. Employment by sector; 5. Employment by occupation; 6. Part-time workers; 7. Hours of work; 8. Employment in the informal economy; 9. Unemployment; 10. Youth unemployment; 11. Long-term unemployment; 12. Time-related underemployment; 13. Inactivity; 14. Educational attainment and illiteracy; 15. Skills mismatch; 16. Wages and compensation costs; 17. Labour productivity; and 18. Poverty, income distribution, employment by economic class and working poverty (see http://www.ilo.org/empelm/what/WCMS_114240/lang–en/index.htm).

[7]   For a detailed mapping of migration policies from Asian and European countries, see Annex 1: Mapping Migration Policies of Asian and European Countries.

This report includes practices from countries whose migration policymaking has at times made the news. It needs to be acknowledged that a single policy decision that the media have picked up may not be representative of a country's policies, and may not even be representative of the policies the government of the day subscribes to. Further, it is not uncommon for unusually restrictive migration policies to come hand-in-hand with circumspect integration policies, or for more liberal migration policies to be combined with an equally laissez-faire approach to integration, i.e. with an absence of policies or even goals.

Last but not least, this report needs to be considered as a complement to broader reports covering labour and employment issues in general. It cannot substitute for those but can hopefully add depth to some of the issues they cover.

II. Practices in Receiving Countries

Foreign Worker Admission Policies

Policies and programmes to open up markets to low-skilled foreign workers from abroad are of rather recent vintage in the East Asian region (Abella, 2007). For instance, until 1990, Korea's Immigration and Emigration Law did not allow unskilled foreign workers to enter the country for employment purposes (Han and Choi, 2006). Japan, too, formally maintains a policy of not admitting low-skilled workers. Its Immigration Control and Refugee Recognition Act (ICRRA), passed in 1951, did not include the low-skilled category among the various migration categories (or statuses) which could be admitted into the country. Since then, the Act has been amended several times but the ban on the admission of unskilled workers has remained.

Foreign nationals in Japan and Korea have not exceeded 1.6 per cent of their respective labour force, and no more than 2.4 per cent in other advanced economies in the region. These are small compared with other advanced countries. In 2008, foreign nationals accounted for 12 per cent of Germany's labour force; 9.5 per cent of the UK's; 8 per cent of Sweden's; 7 per cent of France's; and 8.5 per cent of Italy's labour force (Cangiano, 2012, figure C1). The foreign-born represent 38.4 per cent of Singapore's labour force; 24.9 per cent of Australia's labour force; 17.8 per cent of Canada's labour force; and 15.1 per cent of the US labour force.

The decade of the 1980s saw the East Asian countries, together with cities such as Hong Kong and Singapore, emerge as new magnets for labour migration in the region. From 1986 to 1992, Korea's Gross National Product rose at the rate of 9.2 per cent a year. The growth of fixed capital formation was at an unprecedented high which enabled labour productivity to grow at 2.5 times that of Japan and the US. The widening of the income gap with many of Korea's neighbours inevitably led to cross-border movements of labour. The numbers of undocumented foreign workers were estimated to have grown from only about 4,200 in 1987 to 65,000 five years later (Yi, 2006).

In the case of Japan, the 1985 rise of the yen (100 per cent to the US dollar) was a signal event which saw a simultaneous rise in the number of foreign nationals reported as working without authorisation. The number of foreigners apprehended by the authorities for immigration law violations — including overstaying their visas or engaging in activities not permitted by their visa status — rose dramatically from less than 7,000 in 1984 to over 36,000 in 1990 (Abella 2007). These of course only represented a small proportion of the actual numbers that were working without regular documents.

With the growing tide of illegally resident foreign workers in Japan, the ICRRA was amended in 1989 to provide for employers' sanctions and penalties for those who brokered the illegal employment of workers.[8] Despite the tough penalties, the number of illegal workers in Japan continued to rise yearly, from about 100,000 in mid-1990 to about 300,000 by the end of 1992 out of some 563,700 unskilled foreign workers in Japan as of 1992[9] (Abella 2007).

The volume of foreign labour inflows to Japan rose at an average of 7.7 per cent a year over the period 1995 to 2004. In Korea, the growth was almost 22 per cent a year over the decade ending in 2002. Not only did the inflows grow, it was noticed that the number of migrants did not go up and down with economic fluctuations. This led Tsuda and Cornelius (2003) to claim that in Japan there was merely an illusion of controlling immigration.

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[8]   A penalty of three years imprisonment or a 3 million yen fine was meted out to those who hire foreign workers illegally, under the 2004 Amendment to ICRRA. There was also a penalty for illegally resident workers: one-year imprisonment or a 2 million yen fine.

[9]   The Immigration Bureau of the Ministry of Justice based these estimates on the number of foreigners who overstayed their visas and were presumed to be working in Japan illegally.

A Triple Win in Migration: Ensuring Migrant Workers' Rights to Protect All Workers

Approaches to the Admission of Low-skilled Foreign Workers

Japan and Korea eventually opened their previously shut doors to the entry of low-skilled foreign labour. Both Korea and Japan started with a remarkably similar response — that of admitting low-skilled workers as trainees. Korea eventually replaced the trainee programme with a regular guest worker programme, while Japan continues to bar general admission of low-skilled workers, except for foreign nationals who can claim Japanese ancestry. The accommodation of low-skilled foreign workers in immigration policy took place in stages over three decades, reflecting the complexity of the political processes needed to generate acceptance of liberalising entry as well as the conditions in the labour market. At the beginning both countries severely curtailed entry to foreign unskilled workers, a policy often attributed to public sentiment to maintain their imagined ethnic homogeneity. More important was the fact that conditions in the supply of labour helped the policy's sustainability. In both countries, the number of people employed in agriculture was still large in the 1960s and 1970s, giving the labour market sufficient flexibility to respond to the demands of industry for more workers. In both countries the baby boom in the 1950s also brought more workers into the labour market during the 1970s and 1980s.[10]

Foreign workers were first admitted to Korea through the "side door" as "industrial trainees". The Korean Federation of Small Business, a private sector association, brought strong pressure on the government to allow its members to bring in unskilled foreign labour (Seol and Skrentny, 2003). The programme (Industrial Trainee System) explicitly addressed the labour shortage being experienced by small business enterprises. While Korea's policies on admission of foreign labour and the setting of quotas were supposed to be decided on by the Committee for Foreign Workers' Policy, it was the Korean Federation of Small Business that effectively administered the programme. The Federation negotiated agreements with the governments of supplying countries, organised the recruitment of the workers, and allocated the trainees to companies. The programme has been widely criticised as not really serving to provide training but only as a means to provide small business with low wage foreign workers who are not entitled to the same rights as Koreans. These shortcomings motivated foreign trainees to sooner or later leave the programme and work illegally as ordinary workers in other companies. Migrant workers in Korea numbered 82,000 at the end of 1994 and about 333,000 towards the end of 2005 of whom only 167,000 were legally employed (Abella 2007).

Unlike in Korea, training in Japan was largely overseen by the government. The number of trainees rose from 17,000 in 1987 to almost 40,000 in 1993 (ibid). According to the Japanese Ministry of Economy, Trade and Industry (2008) foreign trainees and technical interns numbered some 160,000 in 2005–2006.

1. Guest-worker programmes in Asia

The emerging labour admission schemes in the rest of Southeast Asia are mostly "guest worker programmes" where foreign workers are only admitted in certain sectors for limited periods of time and do not enjoy the same rights as native workers as far as mobility in the labour market, ability to organise unions, and membership in old age pension schemes are concerned. Governments set quotas in consultation with industry groups but these appear to be interpreted by administering authorities with some flexibility. Quotas may be set at industry level or expressed as a ratio of foreign to local workers at the enterprise level, and are usually accompanied by other measures. Singapore, for instance, pioneered the use of a "foreign worker levy" for each foreign worker employed, with the objective of discouraging their use by raising associated labour costs. Work visas are granted when employers have convinced the authorities that they have first tried but failed to find local workers. In all countries, policies are more welcoming of professional and higher-skilled foreign workers who are usually entitled to bring their families, and in a few cases such as Singapore, it can pave a path to permanent residence.

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[10]   In Japan, the labour force participation of newly graduated students of second-generation baby boomers reached its peak in 1991. See Mori (1997) for a comprehensive study of Japan's experience with temporary labour migration.

In the following, we look at a few examples of recent approaches to admission of foreign labour as guest workers. In Asia, Korea's Employment Permit System (EPS) provides a good example of minimising worker-paid migration costs by excluding for-profit agencies and by supervising their employment to insure equal treatment with local workers. The EU Blue-Card system is cited as an example of a simplified single procedure for admission of highly skilled workers from third-countries who are also given free mobility within the Union. Systems to facilitate decisions on admission without the need for labour market tests are illustrated in the UK's use of a labour-shortage list and in Austria's Red-White-Red Card programme, which allows highly qualified third-country nationals to obtain complete mobility in the labour market with a view to permanent settlement. Finally, the experience of Singapore in using a foreign worker levy as a financial penalty to discourage over-dependence on foreign labour is cited as an example of a policy that has apparently had unintended consequences of depressing wages of the low-skilled in the country and forcing employers to seek ever cheaper workers from lower-income sources.

2. Government-organised recruitment of migrant workers in Korea

In 2004, Korea, to correct the growing problems with illegal employment that resulted from the "trainee system", created a temporary guest worker programme known as Employment Permit System (EPS). The new programme was intended to replace the trainee scheme but had the same objective of opening up doors for the temporary employment of low-skilled foreign workers. It differed from the trainee scheme in that workers could now be brought in and treated as regular workers, and not as trainees on allowances. The EPS has the following features that may be held up as best practice in the region:

- Yearly quotas are set by the Korean Government after assessing the dimensions of labour shortage in agriculture, fishery, construction and manufacturing (enterprises with 300 or less workers);

- Employers must register with the Human Resources Development Service of Korea (HRD Korea) and can only choose from workers in HRD Korea's registry of workers who passed the Korean language proficiency test and are deemed qualified by an origin country authority;

- Migrant workers are to receive equal treatment in wages and other conditions of employment as Korean workers except that they cannot bring their families and can only change employers after approval by HRD Korea;

- The probationary period is limited to a maximum of three months;

- Migrant workers are to be covered by social insurance, including membership in the National Pension Plan for workers from countries giving reciprocal rights to Koreans;

- Recruitment is only conducted through designated government agencies in origin countries and HRD Korea, completely excluding private job brokers; and

- Workers selected by the employers will be informed through the designated government agency in the origin country and will be issued a visa and work permit valid for three years, which is renewable for another three years on the condition that the employer applies for extension prior to the end of the first contract and the worker returns home for six months in-between contracts.

HRD Korea and origin country authorities have been in frequent dialogue on how to improve the EPS, including introducing greater transparency in the decision-making process since applicants are not informed if they are already shortlisted by Korean employers. However, the system has been configured precisely to keep the process away from public view in order to prevent unscrupulous individuals from intervening.

3. Singapore's levy system and its unintended consequences

In 1980, Singapore's government introduced a "foreign worker levy" that employers paid for each foreign worker who earned less than S$3,000 a month. The imposition of this levy was meant to raise the cost of employing foreign workers and reduce dependence on them. According to Hui (2013) the intent was "to provide a clear and strong incentive for businesses to upgrade their operations, invest in productivity-enhancing changes in the workplace, train workers and reduce dependence on low-skilled workers." Over the years, the foreign worker levies have been raised across the board, and currently range from S$300 to S$600 for construction and services sectors and S$250 to S$550 for the manufacturing sector.

There is controversy as to whether the policy has had the intended effect of reducing dependence on foreign workers. In 1980, foreign workers represented a mere 7.4 per cent of Singapore's employed work force compared to over 34 per cent of the workforce in 2012 (Yeoh and Lin, 2012). As Hui (2013) has argued, a higher levy will not drive an increase in productivity if the higher wage costs faced by employers are passed on to the foreign workers in the form of lower wages. Employers, according to Hui (2013), are able to offset higher wage costs caused by the levy by sourcing workers through employment agents who compete in lowering labour costs by intensifying or expanding recruitment of workers from cheaper sources at the expense of the quality trainability and productivity of workers. This has led to perpetuating labour-intensive production methods to minimise costs instead of the alternative high-productivity system of competition based on quality, service, innovation and more technologically efficient methods of production.

While the levy's intended effect of discouraging the employment of foreign worker appears not to have been achieved, the effect on wages of the low-skilled may have been adverse. From a study of wage and productivity growth in Singapore, Hui (2013) concluded that the growth of the foreign worker population has been accompanied by stagnating or even declining wages at the lower end of the wage distribution. The Singapore government has chosen not to intervene in wage setting, preferring the use of the levy system to influence enterprise decisions on labour use. To protect migrant workers against abuse, the Ministry of Manpower is conducting a greater number of inspections and launching a compulsory Employers' Orientation Programme (EOP) for first-time employers of foreign domestic workers. The EOP, conducted either online or in a classroom, explains the obligations and responsibilities of employers or provides advice on forging a harmonious working relationship with foreign domestic workers. Employers are also monitored; those who apply for five or more domestic workers within a 12-month period are required to attend a classroom EOP or attend an interview.

The Admission of Highly Qualified Foreign Workers

1. Right to free movement for holders of EU Blue Card

The EU Blue card was created through the adoption of the EU Blue Card directive on 25 May 2009 (Council Directive 2009/50/EC)[11] by the European Council. It gives highly qualified workers from outside the EU the right to live and work in an EU country, provided they have higher professional qualifications, such as a university degree, and an employment contract or a binding job offer with a higher salary compared to the average in the EU country where the job is (European Commission, 2011a).

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[11]   The EU Blue Card directive (Council Directive 2009/50/EC) is available at http://eurlex.europa.eu/LexUriServ/LexUriServ.
       do?uri=OJ:l:2009:155:0017:0029:en:PDF.

Box 1. EU Blue Card: What is a highly qualified worker?

According to the European Commission (2011a), someone is considered a highly qualified worker if they have a work contract of at least one year, and if they meet the conditions listed below.

- Able to prove that they have "higher professional qualifications", either by showing a higher education qualification (such as a university degree) or by having at least five years of relevant professional experience;

- They must work as paid employees, since the EU Blue Card does not apply to self-employed work or entrepreneurs;

- Their annual gross salary must be high, at least one and a half times the average national salary;

- They must present a work contract or binding job offer in an EU country for at least one year;

- They must have the necessary travel documents. They must have health insurance for themselves and any relatives who come to the EU with them; and

- They must prove that they fulfil the legal requirements to practise their profession, where this profession is regulated.

Until Croatia's accession in mid-2013 into the European Union, 24 out of the 27 EU member states participated in the scheme. The United Kingdom, Ireland and Denmark are not party to this scheme.

The EU Blue Card directive goes hand in hand with the EU Single Permit Directive (Council Directive 2011/98/EU)[12] adopted on 11 December 2011. This directive enables third-country nationals to obtain work and residence permits through a single procedure, and also enjoy common rights similar to those of EU nationals with regard to working and salary conditions, pensions, social security and access to public services. These permits are valid for a period of one to four years with a possibility of renewal. This scheme also allows the participating non-EU nationals free movement within the Schengen area[13], favourable conditions for family reunification and a permanent residence perspective (EU Blue Card Network, 2013).

Complementary to the EU Blue Card, some EU member states, like Germany and Austria, have introduced new policy measures to encourage the employment of highly skilled foreign workers. As from 1 January 2012, Germany has a new "Jobseeker Visa". Non-EU/EFTA graduates with a German degree, or another recognised degree or a foreign degree comparable to a German degree, can acquire a Jobseeker Visa which allows them to enter Germany or remain in Germany after graduation for a period of six months to seek employment. Although a person is not allowed to work with this visa, after finding employment, securing an employment visa and residence permit becomes relatively easy. To obtain the visa, proof of a university degree and the means to support oneself for the planned period of the job search is required (German Federal Foreign Office, 2014 and Y-axis Overseas Careers, 2013).

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[12] The EU single permit directive (Directive 2011/98/EU) is available here: http://eurlex.europa.eu/LexUriServ/LexUriServ. do?uri=OJ:L:2011:343:0001:0009:EN:PDF.

[13] The Schengen area comprises of 26 EU and non-EU member states, which guarantees free movement of people and goods between one another. These countries include all EU member states except Ireland and the United Kingdom, which have opted out of the Schengen area, and Romania, Bulgaria, Croatia and Cyprus, which are Schengen candidate countries. Iceland, Liechtenstein, Norway and Switzerland, i.e. the four European Free Trade Association (EFTA) countries, are not EU member states but participate in the Schengen area. Freedom of movement does not per se include the freedom to settle or to be employed.

2. Easy admission for labour-short occupations in the UK

In the UK, prior to 2011, the regulations regarding the issuing of visas to third-country highly skilled workers were favourable in that they allowed highly skilled migrant workers, who were qualified for the jobs in the British "list of occupations in short supply", to easily acquire a visa (i.e. Tier 1 visa) following the points system without having an existing job offer. It allowed migrants to live and work in the UK for an initial period of two years after which they could apply for an extension. In April of 2011, this visa was replaced with the Tier 2 visa, which is aimed at highly skilled third-country migrants with an existing job offer in the UK and where the employer is willing to sponsor the applicant. This has made the process somewhat tougher for highly skilled workers (GOV. UK, 2014).

3. Austria's Red-White-Red card for labour-short occupations

In mid-2011, Austria introduced the Red-White-Red Card, which is issued to very highly qualified workers or skilled workers with third-country citizenship for shortage occupations. At the first instance the permit is valid for only 12 months, but renewal is possible. Spouses and dependent children may be brought along. Third-country master or diploma graduates from Austrian universities may reside in the country for up to six months after their graduation to seek employment. Once they find employment corresponding to their level of qualifications they can be issued with the Red-White-Red Card without a labour market test. This does not apply to graduates who have only obtained a bachelor degree in Austria. Having obtained a Red-White-Red Card and having worked in Austria for a minimum of 10 months with the specified employer, third-country migrants and their families can apply for the Red-White-Red Card Plus, which entitles the holder to fixed-term settlement and unlimited labour market access (BMASK, 2011b).

Access to Employment

1. Enhancing Employment Prospects for Migrant Workers

There are many examples of efforts made by public employment services, non-governmental organisations, municipalities, regional and national governments and others to enhance the employment prospects of immigrant workers. These efforts usually either try to increase employability by imparting occupational and social skills or try to improve job search efficiency by providing information on how to find job openings, by providing network contacts, by training local ways of presenting oneself in writing or in person to employers, and so on. Such projects and programmes are often aimed at specific groups of immigrants, be it women, men, a certain age group, a certain level of education, certain origin countries, etc. — and many of these initiatives are local or regional. In many countries, all these initiatives collectively cover a wide range of levels of education, origin countries and age groups, as well as both sexes.

We provide an example concerning a group often perceived to be particularly problematic, i.e. young immigrants with deficiencies in basic skills. The issue in this instance is not formal but actual access to employment. Its key feature is paying attention to this group in the first place, and an important aspect is the broad stakeholder involvement.

2. Training low-skilled young immigrants for employment

New immigrants are usually young and often highly motivated. However, some of them lack even fundamental skills, such as literacy or numeracy, or they could be literate in another script instead of that which is commonly used in the country of arrival. The requirements for soft and social skills may also be quite different from the place of origin.

In order to support access to paid and formal apprenticeship, which is the primary channel into the labour market, vocational schools in Switzerland pay special attention to young people who have just arrived in the country. A number of vocational schools run pre-apprenticeship courses that help young immigrants to address skill gaps (i.e. numeracy and literacy) before joining mainstream programmes. The classes are small and the tutors build links to employers to ensure that the students acquire employment placements. The vocational schools also maintain a close relationship with the federal government and take part in national conferences to ensure that they follow the national agenda closely and develop a common approach in the context of Switzerland's highly decentralised system. Their closeness to the local community ensures that the training programmes they carry out are relevant to local conditions (Froy, 2006: 45).

3. Mentoring for immigrants

In 2008, the programme "Mentoring for Migrants" was launched at the initiative of the Austrian Federal Economic Chamber (WKO), i.e. the national chamber of commerce, with the Austrian Integration Fund (ÖIF) and the Public Employment Service (AMS) as participating partners. This programme supports immigrants in gaining access to adequate employment (WKO, 2013) by linking well-connected members of the business community in Austria as mentors to qualified migrants. Through this cooperation, migrants are able to gain important contacts and also gain more knowledge of the language, the legal framework, the mentality of the people as well as the local culture. As the matching of the mentors and mentees is a key factor to success, special attention is paid to occupational and regional factors as well as language skills. About five hours a month are dedicated to the mentoring for a period of six months (WKO, 2013). According to Hasenöhrl (2014), since the launch of the programme, more than 1,000 mentoring pairs have been formed and many of the migrants in the programme have found employment.

Role of Employment Agencies

The formalisation, registration and supervision of employment agencies are key elements in a strategy to overcome the dangers of exploitation in the workplace. In licensing employment agencies, the authorities may require adherence to a code of conduct, which includes regulations to protect workers such as prohibiting employment agencies from charging fees from workers and encouraging members to also ratify the ILO Private Employment Agencies Convention no. 181 of 1997. Some codes may aim to encourage diversity.

The examples provided below include regulation by law as well as national and international self-regulation. They attempt to highlight the complexity of the issue and the circumspection required in regulating the various kinds of employment agencies.

1. Regulating labour suppliers in the UK

The death of 23 Chinese cockle pickers on 5 February 2004 on Morecambe Bay, England, highlighted the need to control and regulate labour providers, known in the UK as "gangmasters". Following this incident, the UK Parliament passed the Gangmasters (Licensing) Act 2004, which provided for "the licensing of activities involving the supply or use of workers in connection with agricultural work, the gathering of wild creatures and wild plants, the harvesting of fish from fish farms, and certain processing and packaging; and for connected purposes" (The National Archives UK, 2004). The Act led to the setting up of the Gangmasters Licensing Authority (GLA), a non-departmental public body (NDPB)[14], to protect workers and to drive out illegal practices and exploitation within the food production industry. Foreign workers account for 95 per cent of workers in the sector that GLA regulates. The Act also aimed to put an end to practices such as debt bondage and forced labour.

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[14] A non-departmental public body (NDPB) is defined as a "body which has a role in the processes of national government, but is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers" (GOV.UK, n.d.).

Since October 2006 it has become a criminal offence to engage in providing labour without a licence, and from December 2006 a labour user to hire workers from an unlicensed provider. To ensure compliance, GLA carries out inspections. Failure to comply can result in a licence being revoked, heavy fines and up to 10 years' imprisonment. GLA has developed a risk profile system that determines the riskiest businesses and receives information from other sources, such as local government and the police. To maintain a fair approach, the enforcement officers also carry out random compliance inspections. By June 2011, 1,160 labour providers in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging had obtained GLA licences; 109 applications for licences had been refused; and 145 licences revoked. Since 2005, there have been numerous calls in the UK for the GLA's mandate to be extended to other sectors of the economy where migrant and contract labour is common (and where abuses are also reported), notably in the construction, catering, cleaning and care sectors (Dottridge, 2011: 21).

2. Voluntary code of practice for recruiters in Ireland

The National Recruitment Federation (NRF) in Ireland is a voluntary organisation founded in 1971 to establish and maintain standards and codes of practice for the recruitment industry. Membership is granted only to organisations that meet its criteria of excellence (including adherence to the provisions of the Employment Agency Act 1971[15] and all other relevant government legislation and amendments) and agree to abide by the NRF Code of Conduct (National Recruitment Federation Ireland, n.d.). Its strict code of conduct outlines, among others, the duties of employment agencies to their clients. An elected ethics committee comprising of three to four members and an independent arbitrator receive grievances and decide on appropriate action (National Recruitment Federation Ireland, n.d.). Members have the duty to protect the right of the job seekers to privacy and to inform them of all details about a job they recommend. This is particularly useful for migrant workers who may lack information, putting them at a vulnerable position. Members are barred from revealing the details about applicants to potential employers without their consent.

3. Recognition of private employment agencies' role

There has been a transformation in the view of the International Labour Organization (ILO) on private employment agencies over the last two decades. Traditionally, the ILO favoured public employment services over private recruitment agencies, as private employment agencies were seen to be prone to abusive practices in their pursuit of profit (ILO, 2005). Since 1997 with the adoption of the ILO Private Employment Agencies Convention No. 181 (1997) the ILO has signalled its recognition of private recruitment agencies as a legitimate actor in the labour market. The International Confederation of Private Employment Agencies (CIETT), founded in 1967 in Paris, contributed to this change in perspective of the ILO (CIETT, 2014). CIETT is the authoritative voice representing the interests of agency work businesses. It consists of 47 national federations of private employment agencies and seven of the largest staffing companies worldwide: Adecco, Gi Group, Kelly Services, Manpower, Randstad, Recruit Co. and USG People. Its main objectives are to help its members conduct their business in a legal and regulatory environment that is positive and supportive, and to gain recognition for the positive contribution the industry brings to better functioning labour markets. CIETT fully endorses the ILO Convention 181 on Private Employment Agencies[16] and also encourages its members to ratify this ILO instrument (CIETT, 2013a).

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[15]   The Irish Employment Agency Act of 1971 set out the principles of licensing recruitment agencies in Ireland. The full Act can be found at http://www. irishstatutebook.ie/1971/en/act/pub/0027/print.html.
[16]   The 1997 Private Employment Agencies Convention is an International Labour Organisation (ILO) convention http://www.ilo.org/dyn/normlex/en/ f?p=NORMLEXPUB:55:0:::55:P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C181,/Document.

4. Social responsibility in the recruitment industry

CIETT developed a global Code of Conduct[17] which contains commonly agreed principles for conducting the agency work business around the world, based on national codes of conduct as well as international standards for the industry. The Code includes, for instance, the principle of prohibiting the charging of fees to job seekers, respect of laws, principle of transparency, commitment to safety at work, respect of diversity and respect for fair competition (CIETT, 2013b). It contains a second section, a Charter that stresses the commitment of CIETT members to social responsibility. By adopting this Charter, CIETT members make a commitment to principles of non-discrimination, access to training, no replacement of strikers by agency workers, and promotion of social dialogue as an appropriate way to organise the industry (CIETT, 2013b).

Combating Discrimination

There has been increasing recognition of the need to combat discrimination. Early steps were included in the United Nations Declaration of Human Rights, in the widely ratified ILO Convention 111, and in Europe in the European Convention on Human Rights (ECHR). The European Union reacted to a string of atrocities committed against immigrants and refugees in the mid-1990s, by declaring 1997 the Year Against Racism.[18] At the same time the European Commission began to draw up directives outlawing discrimination in more specific ways than had previously been done. Two separate directives and an EU Charter of Fundamental Rights were tabled in late 1999 and adopted in 2000. To this day, they remain the most speedily adopted directives by the EU.[19] The weak point in combating discrimination in the EU today is not a lack of legislation but its implementation in the courts and especially its prevention. In a number of member states, only small portions of the population even know there are protections against discrimination, and these are not necessarily the ones who are most in need of protection.

1. Attempts to measure discrimination

Proving individual discrimination is difficult and is usually done before a court of justice, or as in the case of France, before the French Equal Opportunities and Anti-Discrimination Commission, known as Haute Autorité de Lutte Contre les Discriminations et pour L'égalité or HALDE, an independent administrative authority that has the legal authority to adjudicate all discrimination related matters.[20] However, measuring discrimination on grounds of racial or ethnic origin is a totally different matter. Among the various approaches used, a method (known as "situation testing" in the UK and as "market auditing" in the US) has emerged as the most and perhaps the only valid procedure (OECD, 2008a, 2013). It has been applied widely in Europe and North America and in recent years the sophistication of its use has increased markedly. The original studies, from the mid-1960s to the mid-2000s, merely measured the incidence of discrimination while more recently the measurement of the degree of discrimination has also been attempted (Pager et al., 2009; Agerström et al., 2012). The basic procedure consists of sending pairs of (for all practical purposes) identical applications for a single job vacancy except that one application exhibits some kind of a migration-related marker and the other one does not. If the procedure is repeated about 200 times, statistically useful results begin to emerge. Recent samples in correspondence testing have been in the thousands. As simple as the basic idea may be, its practical implementation has become a science.

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[17]   The full CIETT Code of Conduct, which governs its members, can be found here: http://www.ciett.org/fileadmin/templates/ciett/docs/CIETT_Code_Conduct.pdf.

[18]   In 2000, the EU introduced its Anti-Discrimination Directives. See Annex 2 of this report.

[19]   Once a directive is duly adopted at EU level, the member states usually have three years to transpose it into national law. If the transposition is not undertaken or remains incomplete, the Commission has to warn the member state and subsequently has to initiate a so-called treaty "violation process". In the case of the discrimination directives, almost all member states ended up being threatened with one, some because they were dragging their feet, among them Germany and Austria, and others because of the shoddy quality of the transposition. The Charter of Fundamental Rights was not meant to undergo a similar process of national adoption and EU-level review. It merely needed to be declared and on its basis the EU Fundamental Rights Agency was founded. Many years later, however, in the spring of 2012, the Austrian Supreme court found the Charter to enjoy equal rank with the country's constitution. Its Article 21 contains a deceptively simple sentence: "Discrimination … is forbidden."

[20]   For further details about the activities of the HALDE including decisions made by the Commission, see http://www.defenseurdesdroits.fr/connaitre-son-action/la-lutte-contre-les-discriminations.

2. Testing that reveals extent of discrimination

There has been much academic testing of discrimination in employment as well as in housing and other markets throughout Europe. Between 1992 and 2006, several governments in the EU asked the ILO to perform discrimination testing along the lines laid down in the ILO handbook on testing (Bovenkerk, 1992). They included the Netherlands, the German federal state of North Rhine-Westphalia, Spain, Belgium, Italy, Sweden and France. The handbook was also used in testing in Denmark and Switzerland. The migration marker in all these tests was either a slight accent or a foreign name. The results were surprisingly uniform showing net discrimination rates in the vicinity of 35 to 40 per cent. In similar tests pitching Caucasian applicants and applicants of African descent against each other in the US, net discrimination rates were considerably lower.

In a number of countries, France and Belgium among them, courts have accepted testing results as evidence against companies being sued, even when the samples are very small.[21] There are also indications that labour courts in Germany are becoming more willing to do so (Federal Anti-Discrimination Agency, 2014).

3. Using anonymous job applications against discrimination

A number of field experiments have been conducted in European countries to find out if anonymous applications reduce discrimination in the recruitment process. Krause et al. (2012) argue that discrimination is not uniform and the effects of anonymous job applications depend on the initial situation in the organisation where they are implemented, the culture and size of the organisation as well as the culture of the country. An example of these field studies is the "More Migrants in the Civil Service — Intercultural Opening of the National Administration" initiative by the German state government of North Rhine-Westphalia, in 2010. The main aims of this initiative were to increase the number of migrants and migrants' children in the public service sector, reduce the possibility of migration-related discrimination in the recruitment of workers in the public sector, and increase the intercultural competence of the officials of the state administration (Kraska and Ciekanowski, 2012: 2).

The aim of the anonymous application process was to present applications in a way that human resources managers were not provided with any information that would encourage or trigger discrimination or favouritism. In this case the following information was made anonymous: name, age, gender, place of birth of the applicant, any reference to migration, and a photo was omitted. After reviewing the applications, the selection committee invited the chosen applicants for interviews or aptitude tests. This was the first stage where the anonymity was broken. After this process, the decision on the application was sent to the applicants by post including a questionnaire about their experience of the process (see Annex 3 for details).

Removing Obstacles to Job Access

Access to employment in the public sector is very often subject to special regulations favouring citizens more than elsewhere in the economy. There is a gradation, however, between the civil service, state agencies, and companies owned by the state, or between positions constitutive of the state, positions in agencies run by the state, and positions in organisations merely owned by the state. Thus access to employment in a steelworks company owned by the state might be substantially easier than in a state-run hospital or a state-run public transportation company, which might in turn be substantially more accessible than a job in a ministerial or municipal office.

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[21]   For detailed review of discrimination testing in France, see Cediey, E.; Foroni, F. (2008),
   Discrimination in access to employment on grounds of foreign origin in France : a national survey of discrimination based on the testing methodology of the International Labour, International Migration Programme. - Geneva: ILO,(International migration papers ; 85E), available at http://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—migrant/documents/publication/wcms_201429.pdf

1. Giving access to employment in sectors previously limited to citizens

Only one of the 10 European countries covered by Koopmans et al. (2012) had liberalised access to public service employment for citizens of other countries in the 1980s, but eight of them did in the 1990s, and only one continued to liberalise in the 2000s. Two countries, i.e. Austria and the Netherlands, did not liberalise at all. Britain instituted a very substantial liberalisation in the 1980s, Germany and Norway, and also Belgium, considerable ones in the 1990s, Sweden made small ones in both the 1990s and the 2000s. Teaching positions in public schools were not, and are still not, accessible in Austria, Belgium, Germany and France, but became accessible in the Netherlands in the 1980s, and in Denmark in the 1990s, and were accessible throughout in Switzerland, Norway, Sweden and the UK. Positions in the public administration were not, and are still not, accessible in Austria and France; were inaccessible and became partly accessible in Germany in the 1990s; were partly accessible and became more fully accessible in Switzerland in the 1990s; were inaccessible and became generally accessible in the Netherlands in the 1980s, and in Belgium in the 1990s; were partly accessible throughout in the UK; and were generally accessible throughout in Denmark, Norway and Sweden.

Constitutional provisions barring citizens of other countries or at least of non-EU member countries from employment in the civil service in any form were removed in the UK and softened in Germany, both in the 1990s. The other eight countries covered by Koopmans et al. (2012) all maintained them.

Quotas for the employment of immigrants in the public sector were introduced in the Netherlands in the 1980s while the UK and Norway did so in the 2000s after they had introduced softer forms of affirmative action in the 1990s. Softer or indirect forms of affirmative action were also introduced, in the 1990s, in the Flemish part of Belgium (Flanders), in Denmark, and in Sweden. In Austria, Switzerland, Germany, France, and the French-speaking part of Belgium (Wallonia), neither quotas nor other kinds of affirmative action exist in the public sector.

2. Ethical recruitment to avoid causing brain drain in developing countries

Facilitating the admission of the highly skilled from developing countries may have negative consequences. In 2004, the National Health Service in the UK initiated a campaign by the name "London calling?" to recruit medical doctors and registered nurses from abroad (Buchan et al., 2004). Such campaigns have been criticised by the international community as leading to brain drain in developing countries, which in turn may lead to a reduction in domestic health care delivery capacity in the sending countries (Stewart et al., 2007). As a consequence of such criticisms, the United Kingdom adopted the points system in 2008 and additionally a code for ethical recruitment, the main article of which says, "Any international recruitment of healthcare professionals should not prejudice the healthcare systems of developing countries. Healthcare professionals should not be actively recruited from developing countries, unless there is a Government-to-Government agreement to support recruitment activities" (NHS Employers, 2013). Dustmann and Frattini (2011) have analysed the impact of migrants on the provision of public services in the United Kingdom using data obtained from the UK Labour Force Survey (LFS) from 1994 to 2010. In their report they reveal that the number of immigrants in the UK public service has increased from 7 per cent in 1995 to 13.3 per cent in 2010 (see Annex 4 for details on their key findings).

Recognition of Skills and Qualifications

1. Validation of Skills — Finland's programme

In the later chapter on cooperation between origin and receiving countries, we provide examples for the recognition of academic degrees. Here, however, we focus on a bigger and thornier issue, i.e. the recognition of non-academic, often informally acquired skills. An example of a problem shared by all workers regardless of migration is that they may acquire skills going beyond the specific job they perform at the moment but have nothing to prove it. Employers, too, can only take the worker's word for it and may in fact appreciate

reliably certified experience and skill. The procedure is called "validation", and we provide an example from the forefront of the practice.

The validation of informal and non-formal skills and competencies falls under the EU education and culture policies. There is no EU-wide legislative instrument in this area. However, in many European countries, this is an increasingly important phenomenon and is being developed by different countries at different speeds. Finland has one of the most comprehensive validation programmes for non-formal and informal learning in Europe since the competence-based qualification system was established in the mid-1990s. This system enables individuals to validate vocational skills through competence tests irrespective of how or when the skills were acquired. The competence tests consist of "authentic work assignments" (Finnish National Education Board, 2014: 5). Other than providing proof of ability to do jobs requiring certain skills, hence improving one's chances in the labour market, the qualifications gained provide eligibility to further study in polytechnics and universities. These qualifications are open to all regardless of their age, work experience and educational background. The qualification tests are conducted by educational centres and adult education centres. The Finnish National Board of Education appoints qualification committees that ensure the consistent quality of qualifications and issue qualification certificates (Finnish National Education Board, 2014).

According to the European Centre for the Development of Vocational Training (Cedefop), the number of individuals accessing competence-based qualifications has been growing since 1997. From 1997 to 2006, the number reached just under 365,000 individuals. Of these individuals, 199,000 (54.5 per cent) obtained a full qualification and nearly 82,000 were partly qualified (22.5 per cent) (Cedefop, 2008).

Decent Work

1. Granting Legal Status to Irregular Migrants

Acquiring legal status and authorisation to work is a *sine qua non* for migrants to defend their basic human and labour rights, and to find remedies against exploitation at work and discrimination in their daily life. Legalisation measures also offer host societies significant benefits by reducing one of the main causes of the growth of illicit trade, social marginalisation, and corruption, while at the same time enabling the government to have greater control over the employment of migrants and requiring them to pay their share of taxes. Many countries in Europe as well as in Asia have at one time or another undertaken a regularisation of residence or of employment status, and many have done so repeatedly. Some have done so in a wholesale manner, others on a case by case. The 2005 regularisation in Spain is often cited as an example of a successful programme.

1.1 Spain's approach to regularisation

In January 2005, Spain's Parliament passed Organic Law 4/2000, concerning the rights and liberties of foreigners in Spain and their social integration, (ILO, 2013c). This was the sixth regularisation programme since 1985. The main aim cited by the Spanish government was to end illegal employment and control the black market.[22] The process started in February 2005 and took three months until May 2005. It applied to employed workers but not to their children or spouses. It was also not applicable to students and the self-employed. The employers of the interested parties had to file the applications on behalf of their workers. An exception applied to domestic workers who worked for more than one household; they were allowed to apply personally and had to prove that they have worked 30 hours or more a week.

To be eligible, a migrant worker had to fulfil the following requirements (ILO, 2013c):

- "Have an original and full copy of their passport or travel document";

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[22] Unlike the previous regularisation procedures, the government called this particular process "Proceso de Normalización" or "Normalisation Process." According to Levinson (2005), the change in language indicated a shift in the way the government publicly frames the regularisation of immigrants — from "legalisation", which to the public signifies a permanent bestowal of resident status, to "normalisation", which is considered a less threatening term (Levinson, 2005: 4).

- "Have lived in Spain for at least six months prior to the regulation's entry into force";

- "Be registered at the population registry in any Spanish town prior to 8 August 2004 and have remained continuously in Spain during this period";

- "Have an offer of a future employment contract for at least six months (three months for individuals working in agriculture)";

- "Accreditation of officially approved degrees or certificates, or proof of their capacity to perform their profession";

- "No criminal records, either in Spain or the country of origin, proof of which is translated and attested by the diplomatic mission or consular office of the country of origin";

- "No prohibition of entry into Spain, unless this entry prohibition stems from an expulsion due to irregular residence or work";

- "Potential beneficiaries must also commit to affiliating themselves to the Spanish Social Security system, if they are not already affiliated."

The applying organisation must prove that they are registered with the social security scheme and are compliant with all the tax obligations. The company and the employee must have signed a work contract for a minimum period of six months (ILO, 2013c). Roughly 700,000 applications were filed and 577,923 were approved. Although only foreign workers were eligible and not their families, it was noted that this process gave the workers an opportunity to regularise their families. As many as 400,000 dependants of migrants also obtained the relevant documentation to legally live in Spain (ILO, 2013c).

This law allowed the provision of healthcare to all immigrants registered in a municipality with a certificate of local registration, regardless of their legal status. They could do this without the municipalities reporting them to the migration authorities of the ministry of foreign affairs. However, following several amendments, this aspect of the law was toughened limiting foreign women to the right to public health during pregnancy, childbirth and post-partum irrespective of their legal status. This limitation also applies to undocumented migrants under the age of 18 (Spanish Immigration Act 2009).

This regularisation process in Spain is considered to be one of the most successful because, as mentioned above, it provided the beneficiaries the opportunity to regularise their family members' status. Furthermore, because it was part of a comprehensive programme, and was thus able to engage both workers and employer organisations.

Posted Workers — Curbing "Social Dumping"

Posting of workers refers to an arrangement where foreign employers without a business base in a particular country temporarily post workers in another country to carry out a temporary assignment. This process is usually done to benefit the receiving country by providing relatively cheaper labour than local workers. Posted workers are usually paid wages and are covered by social security schemes of their home countries, which are often lower than those of the receiving country. Many private employment agencies throughout the EU have taken advantage of this arrangement by opening up branches in countries where wages and social security costs are low, and then deploying the workers to another country or the agency's country of origin (Plant, 2011: 10).

1. EU measures to protect "posted" workers

In 1999 the European Commission directive concerning the posting of workers in the framework of the provision

of services (European Union, 1996) came into force. It aims to protect posted workers by clarifying the rules governing their employment in the host country. An EU member state that is hosting a posted worker is required to ensure that the worker is protected by the minimum standards of the host country, particularly with respect to holiday allowances, minimum rates of pay, health, safety and hygiene at work, maternity protection and non-discrimination, among others.

To ensure the correct application, the Commission proposed an enforcement directive in the spring of 2012 and in December 2013, the Council of Employment and Social Affairs Ministers agreed on a general approach which the European Council and European Parliament would use as a basis to form the enforcement directive.

According to the general approach outlined in the press release (European Commission, 2013a), the enforcement directive would:

- "Set more ambitious standards to raise the awareness of workers and companies about their rights and obligations as regards the terms and conditions of employment";

- "Establish rules to improve cooperation between national authorities in charge of posting (e.g., obligation to respond to requests for assistance from competent authorities of other member states; a two working-day time limit to respond to urgent requests for information and a 25 working day time limit for non-urgent requests)";

- "Clarify the definition of posting, in order to avoid the multiplication of "letter-box" companies that do not exercise any genuine economic activity in the member state of origin but rather use posting to circumvent the law";

- "Define member states' responsibilities to verify their compliance with the rules laid down in the 1996 Directive (e.g., member states would have to designate specific enforcement authorities responsible for verifying compliance; obligation of member states where service providers are established to take necessary supervisory and enforcement measures) and the inspection measures they should undertake";

- Require posting companies to:

  o "Designate a contact person for liaison with the enforcement authorities to declare their identity, the number of workers to be posted, the start and end dates of the posting and its duration, the address of the workplace and the nature of the services";

  o "Keep basic documents available such as employment contracts, payslips and time sheets of posted workers";

- "Improve the enforcement of rights, and the handling of complaints, by requiring both host and home member states to ensure that posted workers — with the support of trade unions and other interested third parties — can lodge complaints and take legal and administrative action against their employers if their rights are not respected";

- "Ensure that administrative penalties and fines imposed on service providers by one member state's enforcement authorities for failure to respect the requirements of the 1996 Directive can be enforced and recovered in another member state. Sanctions for failure to respect the Directive must be effective, proportionate and dissuasive."

2. Additional measures taken by member states

Some EU member states, for example Belgium and Germany, were at the forefront pressing for changes in the directive to make it tougher in order to prevent the abuse of foreign workers, especially in the construction industry. Germany banned the posting of temporary foreign workers in the construction sector unless the German collective agreement for this sector is made to cover them. Belgium has a total ban on all temporary agencies in this industry (EIRO, 1999).

Austria adopted more flexible restrictions on the posting of workers. They do not aim to keep the workers out but to make sure they enjoy the same working conditions as other workers and are paid at least Austrian minimum wages in a given industry and occupation. From 1 May 2011, the Act Against Wage and Social Dumping introduced wage controls for all workers employed in Austria including posted workers. The Act requires employers based in a foreign country to keep all pay documents readily available at the work-site in Austria for the duration of an employee's employment. These documents, which should be in the country's main language, i.e. German, should indicate the number of hours an employee has worked and provide evidence that the employer has remunerated the employee. The competence centre for Combatting Wage and Social Dumping (CWSD) verifies whether an employee, not subject to social security obligations in Austria, has been paid in accordance with the minimum wage agreement in force in the given industry.[23] If CWSD ascertains that an employer has not fulfilled these requirements, it is obliged to report to the District Administration Authority. This authority can then impose a number of penalties on employers depending on the degree of violation of terms. These penalties vary from fines to prohibiting the employer from operating in Austria for a period of at least one year (BMASK, 2011a).

Protecting Domestic and Household Service Workers

The rights of workers employed in private households have proven difficult to enforce. For this reason they tend to get violated more easily and more frequently than most other workers. Much hard thinking has gone into improving this situation. We present a range of recent examples covering action by legislators, enforcement agencies, social partners, and NGOs. In the later chapter on cooperation between origin and receiving states, another example will be given.

At the 100th session of the ILO's annual International Labour Conference in Geneva in 2011, delegates adopted the Convention Concerning Decent Work for Domestic Workers and an accompanying Recommendation by an overwhelming margin of votes.[24] Under the ILOs' tripartite structure, each of the organisation's 183 member states is represented by two government delegates, an employer and a worker delegate. The Convention affirms that domestic workers have the same fundamental rights that all workers have: the rights to freedom of association and collective bargaining; the elimination of all forms of forced labour; the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation (ILO, 2011a).

1. Examples of measures to protect domestic workers by EU member states

In Europe the biggest employers of domestic workers are Spain, France and Italy where many migrant women use domestic work as an entry into the labour market. The European Union Labour Force Survey of 2004 showed that 36 per cent of all female workers in Spain found work as domestic workers, and in Italy and France, 27.9 per cent and 21.1 per cent, respectively. In the three countries, a large proportion of domestic workers are migrants and also women (Oso Casas and Garson 2005).

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[23]   Note that the minimum wage is not the same as a living wage or the wage that will sustain a worker and his or her family at a decent standard of living.
[24]   More detailed information on the ILO Convention 189 can be found in the chapter 'Cooperation between Origin and Receiving Countries', see section on decent work.

The UK has a relatively low proportion of domestic workers. Previously, domestic workers employed by diplomats could obtain permanent residence after five years of working legally in the UK but in April 2012 the rules were changed, making six months the longest period a domestic worker from outside the European Union could work in the country. Exceptions were made for workers in diplomatic households who could stay in the United Kingdom for a maximum of five years as long as they had the same employer during this period. This is a revision of a 1998 law that allowed migrant domestic workers to change employers to avoid exploitation (ILO, 2013a). It also contravenes the Organization for Security and Co-operation in Europe (OSCE) Guide on Gender-Sensitive Labour Migration Policies, which states that: "The validity of a work visa should not be limited to a specific employer and migrant workers should be allowed to change their place of employment to reduce dependency on a particular employer" (OSCE, 2009).

2. Protecting migrant domestic workers in Switzerland

The Swiss Federal Council adopted the Private Household Employees Ordinance (PHEO)[25] in 2011. The ordinance specifies the minimum standards with regard to wages and working conditions and requires that domestic workers be covered by health, accident, invalidity and pension insurance (Kartusch, 2011). The ordinance demands that the worker understands at least one of the languages in which advice is available in Switzerland (German, French, Italian, English, Spanish and Portuguese). Prospective domestic employees are required to apply for a visa unaccompanied and in person, at the appropriate Swiss diplomatic mission where they receive information on Switzerland and on their rights and obligations. A competent Swiss official must be satisfied that the private household employee has understood the conditions of his/her employment contract, and they are informed on whom to contact if they should encounter difficulties after their arrival. In addition to the visa requirement, domestic employees have to acquire a 'legitimisation card' which acts as the residence permit and has to be renewed annually in person. This procedure creates an opportunity for Swiss officials to form a rapport with the domestic workers, making it easier for the workers to report exploitation and at the same time making it easier for the Swiss authorities to remind the workers of their rights.

A specialist Arbitration Office (Bureau de l'Amiable Compositeur, or BAC), set up in 1995 after a surge in media reports of cases of abuse of domestic workers by diplomats in Switzerland, facilitates out-of-court settlements for cases initiated by both employers and employees, where the latter initiate about 80 per cent of the cases. If BAC fails to find a resolution, it can refer the case to relevant courts or can also refer the workers to other organisations for further help depending on their problem. It also provides workers with financial assistance and loans if need be (Kartusch, 2011; Orfano, 2011: 46). The Geneva Welcome Centre, founded in 1996 by the Swiss Federal Government and the Canton of Geneva, assists workers to find a new job within 30 days of termination of their employment, free of charge (Kartusch, 2011).

3. Civil society assistance for migrant domestic workers in Ireland

The Domestic Workers Action Group (DWAG), made up of migrant women working as nannies, caregivers for the elderly, and housekeepers in Ireland, was established in 2013 by Migrants Rights Centre Ireland (MRCI). DWAG has carried out a lot of awareness raising activities as well as campaigns to make sure domestic work is recognised as work in society (MRCI, Domestic & Care Work).

4. Collective agreement for domestic workers

After Spain and France, Italy has the highest number of domestic workers in the EU. In 1995 there were 200,000 domestic workers in Italy and by 2008 the figure had more than doubled to 420,000 of which 88 per cent were female and 78.4 per cent migrant workers (ILO, 2013b). After two years of negotiations, on 13 February 2007, a new national collective agreement on domestic workers was signed. The signatories included three trade unions affiliated to the three main Italian trade union confederations as well as two employer associations (ILO, 2013b).

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[25] The Swiss Private Household Employees Ordinance (PHEO) of 6 June 2011 is available at: http://www.eda.admin.ch/eda/en/home/topics/intorg/un/unge/gepri/manodp.html.

The agreement limits domestic workers' working hours to:

- a maximum of 54 working hours a week for live-in assistance to family members who are not self-sufficient;

- a maximum of 40 hours a week for live-out assistance; and

- a maximum of 30 hours a week for part-time, live-in assistance to self-sufficient individuals.

The agreement also established salary increases for domestic workers and set the worker contribution payable to the supplementary pension fund as 0.55 per cent and the employer contribution at 1 per cent of the salary. Domestic workers were also granted the same maternity rights and coverage as workers in other sectors (ibid).

5. Trade union services for domestic workers

Migrant workers facing abuse in the workplace are usually wary of contacting the authorities for fear of reprisal, and are more inclined to approach trade unions for assistance. In Spain, trade unions have set up local advice centres (Dottridge, 2011: 29). Some trade unions provide workers with advice as well as contributions to start their own organisations. Since domestic workers find it particularly hard to organise because they are employed in individual households, one of the main trade unions in France, the Confédération française démocratique du travail (CFDT) has organised a union in the capital for domestic workers, child minders and employees of companies providing personal services (Dottridge, 2011: 29).

Exposing and Combating Wage Discrimination

Practically speaking, and sometimes also legally, migrant workers are in an inferior position when taking action to protect their working conditions, especially when it comes to wage rates and hours. They often have little awareness of their formal rights, lack experience of local employment standards, lack the language skills to speak up, and may not be informed about who to turn to. For their protection, and thus also for the protection of local workers, it is essential that receiving country organisations establish trusted links with workers as individuals or with their organisations, and that essential parameters, such as wage rates and hours, be monitored. We provide an example from Malaysia where both are being done by the trade unions.

1. Malaysia's trade union campaigns to promote migrant worker rights

The Malaysian Trade Union Confederation (MTUC) has been on the forefront of campaigns to protect the basic rights of foreign workers employed in Malaysia. MTUC campaigns to encourage migrant workers to join trade unions; has officers attending to the complaints and problems brought to the trade union's attention; monitors working conditions, housing, victimisation by unscrupulous job brokers as well as by national authorities; and undertakes surveys of conditions and treatment especially of those in low-skilled occupations. Box 2 below shows an example of a survey undertaken by MTUC. This survey has been the basis of its campaign to pressure the national authorities to enforce the weekly rest days for domestic workers.

Box 2. Wages and working conditions for migrant domestic workers in Penang and the Klang Valley

MTUC Survey on Wages and Working Conditions for Migrant Domestic Workers in Penang and the Klang Valley.

Throughout 2012 MTUC carried out a survey to determine the status of wages and working conditions amongst domestic workers in the country. The survey involving 510 workers, mainly Indonesians and Filipinos revealed that there was a slight improvement compared with 2011. The survey concentrated on 14 issues which are detailed in the full report.

- **Wages**
A significant rise compared with 2011 where 57% of the workers were paid less than RM 550.00, in 2011 69% were paid between RM 600 – RM 750.00. This was mainly due to Indonesian Government's policy and efforts. Filipino domestic workers' wages range from RM 1000 – RM 1400. Cambodian domestic workers receive RM 550.00 and Sri Lankan domestic workers receive RM 650.00 – 700.00 per month.
- **Payment of wages** - **69.6%** their monthly wages paid into their bank account with their name as account holder.
- **Unpaid wages**:
30.4% - Unpaid wages for several months. An **increase by 4%** compared to 2010 and 2011.
Wage Deductions
- 58% deductions for 6 months.
- 11.6% deductions for 5 months.
- **Abuse – physical and verbal: 15.8%** - **higher than in 2011 (7.8%)**
- A very low number of sexually abused cases at the Shelters. (Out of the 98 girls at that time at the Shelter, 3 cases were reported of being sexually abused by the employer)
- **No rest day: 78.5% - were not given a weekly day off**
- 8.2% - one paid day off a week and allowed to go out on their off day.
- 10% - two paid days off in a month and allowed to go out.
- **"Run Away" cases at Embassy – 23.5%** (Shelter had 98 dws on 30.12.12)
- Accused of stealing; cheating, lying, badly treated, sexually and physically abused, food deprivation, humiliation.
    - **Condition of domestic workers when they arrive at the shelter :**
    - Deprived of sleep - 24% do not get any sufficient rest during the day.
    - Suffer from lack of sleep and rest resulting in poor health.
    - Not allowed communication with their family members and friends.
    - Not paid wages for several months
- Abused, demoralized (as stated above. Working hours – 51.8%
- An alarmingly **high number** work more than 14 hours a day.
- 17% work in two places and more. (with less than 6 hours of sleep)
- **Food and Accommodation – 89.3%** were getting 3-4 nutritious meals a day and 81% were given proper accommodation with good ventilation in their rooms.
- **Religious obligations** – There was a significant increase in the number of families giving due respect to domestic workers' religious obligations.
- 91% were allowed to pray and fast during the Ramadan month.

Reported by:
Parimala N. . Project Officer:
MTUC/FNV Mobilising Action on the Protection of Migrant Domestic Workers

Source: Malaysian Trades Union Congress (2013).

2. Wage information on migrants in Malaysia

Few countries collect, and fewer still report, information on wages earned by migrant workers, especially in comparison with those of citizens. One exception is Malaysia, where the Department of Statistics published

a report on salaries and wages in 2012 that revealed a wide gap in wages between citizen and non-citizen workers (see Table 1; Malaysia Department of Statistics, 2012). Citizens, on average, earned wages that were 66 per cent higher than those of non-citizens in 2010. Wages for all groups declined between 2010 and 2012 but the gap was sustained.

Table 1. Mean and median monthly salaries and wages by citizenship and ethnic group, Malaysia, 2010–2012

(RM)

Ethnic group	2010		2011		2012	
	Mean	**Median**	**Mean**	**Median**	**Mean**	**Median**
Total	**1,772**	**1,265**	**1,775**	**1,300**	**1,881**	**1,400**
Citizens	1,887	1,480	1,921	1,500	2,017	1,500
Malay	1,893	1,447	1,877	1,500	1,990	1,500
Other Bumiputera	1,450	1,000	1,485	1,000	1,503	1,000
Chinese	2,130	1,700	2,235	1,800	2,331	1,900
Indians	1,725	1,200	1,812	1,260	1,903	1,400
Others	1,163	850	1,202	843	1,371	900
Non-citizens	1,134	783	926	729	1,075	800

Source: Department of Statistics, Malaysia (2013), Laporan Penyiasatan Gaji and Upah (Salaries and Wages Survey Report 2012)

Regulating Working Conditions through Labour Inspection

Labour inspection plays an important role in state efforts to enforce labour standards as it involves trained inspectors visiting workplaces and interviewing workers and employers about wages, hours of work, safety measures and procedures, and other conditions of employment. Factory inspections are not only meant to uncover violations of standards but also to advise owners of establishments on how to improve conditions and prevent or avoid injuries and accidents. However, the objectives of labour or factory inspections may not be achieved where migrant workers employed do not cooperate because of their irregular status. In order to prevent labour exploitation labour inspectors must not be used simultaneously as "immigration police" to conduct immigration enforcement activities, otherwise workers in an irregular situation will be intimidated.

At the ILO a handbook for labour inspectors on forced labour and human trafficking was developed (Andrees, 2008) in order to help them recognise such cases. Poland has integrated this handbook into its training curricula for labour inspectors (Dottridge, 2011: 22).

Tripartite Agreements for an Inclusive Society — Social Partner Pacts in Ireland

Governments that see a need to close the gap between migrant and native workers can act unilaterally, although mobilising the resources of the social partners and other civil society agents can help to minimise resistance to the government's plans. It can also improve the outcome. The Irish example we provide below, shows that this depends on the skill and experience the social partners and the government bring to the task.

In the Republic of Ireland, the government negotiated formal social partnerships or pacts involving trade unions and employer organisations in a concerted and constructive effort to overcome the deep and protracted crisis Ireland was undergoing in the mid-1980s. Five three-year pacts have concluded, and since 1997 this featured the "community and voluntary pillar". The pact concluded in 2003 (Programme for Prosperity and Fairness) explicitly included migration and intercultural relations as one of 10 priorities that needed to be achieved urgently.

The Irish government and its social partners agreed on a comprehensive policy framework on migration. In January 2005, the government published its National Action Plan Against Racism "Planning for Diversity" (NPAR) which set out for the first time an intercultural framework approach to integration in Ireland (see Annex 5 for details). It identifies issues that the government will need to consult with the social partners — specifically, economic migration and the labour market, integration issues, racism and interculturalism, and issues affecting immigrants. Further, with the recommendations of the National Action Plan on Anti-Racism, an anti-racism intercultural programme will be implemented throughout the education system. This builds on existing initiatives and focuses on curriculum, training and support issues. Adult minority groups will also receive expanded resources for literacy and language training (Department of the Taoiseach, 2003: 26).

Denmark's Comprehensive Integration Scheme

Denmark's society is unusually tight-knit and the country is famous for its relatively generous levels of social support. Over the past 20 years, this has resulted in concern that immigrants might become locked into social welfare without sufficiently contributing to the system. Couched in often harsh language and accompanied by measures to curb immigration, especially that of successive family members, an integration scheme was devised to mobilise all the society's and the immigrants' resources in order to make new arrivals fit for productive employment. While many countries — though not all of the major migrant receiving countries — have, more or less, well coordinated integration plans, Denmark's appears to be the most comprehensive. Here, we describe most of its dimensions, referencing largely the evaluative OECD report on the labour market integration of immigrants in Denmark.

1. Giving access to welfare without creating disincentives to work

Denmark has introduced many changes in its immigration and integration policies over the years. Before 2002, migrants in Denmark were eligible for the same levels of welfare as Danes but this was seen to reduce incentives to actively seek work. In 2002, the government limited this access to 50 to 70 per cent of welfare for the first seven years in Denmark (Liebig, 2007: 20), still one of the highest levels of benefits among the OECD countries to its natives as well as immigrants. However this change may have increased the risk of poverty for those who did not find employment (Liebig, 2007).

2. Personalised action plans for each migrant

In 2004, participation in the integration programme was changed from being voluntary to obligatory through formal signed contracts between the state or municipalities and the migrant, with personalised action plans for each migrant. Non-participation in this programme is linked with reduction in monetary benefits or even threat of denial of a permanent residence permit. The reason for this transformation is the argument that immigrants would otherwise have inadequate acquisition of host country skills. Liebig (2007) argued that due to the length of the programme it could lead to a "lock-in" effect and work against integration in the local society and local labour market in the sense that immigrants will mostly or only be committed to successfully completing the integration programme and therefore they will have little or no time and interest in partaking in other activities that will contribute to their integration in the host community. Furthermore, the mandatory nature of the integration programme suggests to the domestic population that, if left to themselves, immigrants will not choose to integrate, which could lead to sustained discrimination of the immigrant groups by the local population.

3. Helping migrants acquire language proficiency

In Denmark, knowing the dominant language is generally viewed as one of the most important pillars in joining Danish society, and great importance is placed on the language competency of the applicant when securing permanent residency. A permanent residence permit can only be acquired by a migrant who has lived in Denmark for at least seven years; has completed the introduction programmes; and has passed a Danish

language competency test corresponding to his or her introduction programme. Generally, the knowledge of the local language is viewed as a key to labour market integration. The Danish language courses are scheduled flexibly within the three-year integration period and must correspond to 1.2 years of full time study, which is roughly 2,000 hours of lessons. The language courses are also presented in three different tracks in order to place migrants in a level that suits them best.

4. Internet portal for training and employment

Denmark's annual intake of refugees is distributed across the country via a quota system for the duration of three years. The aim is to improve integration and avoid overburdening certain municipalities, especially in places where there is not much demand for labour. Being moved around in this manner may however prevent immigrant workers from using their own social networks to find employment. In Denmark, a large number of small and medium-sized enterprises (SMEs) exist although immigrants do not have extended networks to access them for employment. To this end, the government has established an internet-based portal for training places as well as a mentorship programme.

5. Encouraging businesses to provide apprenticeship opportunities

In Denmark, targeted job training for persons experiencing long unemployment is available through partnerships between companies and the state or municipalities. Training for immigrants in basic skills such as numeracy and IT is really important but is more successful when such offers are adapted to specific needs of immigrants, for example, providing evening courses or childcare facilities. Subsidies are available to companies that provide additional apprenticeship places since many immigrants do not get such opportunities. To ensure that immigrants also acquire the desired work experience, there is a possibility for students who do not have a training contract to get in-school vocational training. However, the government of Denmark has recently taken measures to restrict this possibility to avoid stigmatisation and overcrowding.

6. Assessing migrants' skills and qualification

There may be unintended consequences to offering financial incentives to municipalities to achieve rapid labour market integration of immigrants. Municipalities may only be interested in getting the immigrants into employment, however temporary, even when they may be overqualified for the jobs. To address the problem, extra job advisers have been employed in the municipalities who guide job seekers, facilitate skill matching and prevent to some degree the employment of immigrants in areas that do not match their skills or qualifications. All persons with formal foreign qualifications are entitled to have their qualifications assessed by CIRIUS, an agency under the Ministry of Education. The services are free but a person may incur charges for translation. Five centres have been established in Denmark to assist employers and municipalities in the general assessment of immigrant skills (practical competences) and to systemise and diffuse methods of assessment. At the end of the assessment, immigrants are issued "competence cards" as proof of their skills (Liebig, 2007).

Participation of Migrant Workers in the Community

Migrants, even if their presence is believed to be temporary, form part of the community, and as such need to be able to participate in the life of the community and in shaping its evolution. This is not possible without a certain level of formal rights and of substantive freedoms. Neglecting or denying the role of migrants in the community leads to division, conflict, insecurity and poorer quality of life for everybody. The monetary and political costs of rectifying the situation later on can be enormous.

Rights Enhancement

Most countries recognise that immigrants should have the same individual rights and duties as non-immigrants, but there is less agreement on "whether cultural and religious minorities should have special rights or exemptions from existing regulations, and whether the state has the obligation to support their organisations and institutions. Some of these rights are based on pre-existing arrangements for native minorities, for example, the right to found religious schools; others are meant to compensate immigrant minorities for cultural biases in existing institutions and legislation. Included in this category are rights related to language, the accommodation of religious dress and customs, recognition of separate institutions in areas such as education and the media, and representation and consultation rights for ethnic and religious associations" (Koopmans et al., 2012: 1210). There have been various efforts at measuring the legal obstacles to migration, settlement and inclusion with broadly similar results (Hofinger and Waldrauch 1997; Waldrauch, 2001; Koopmans et al., 2012; Bauböck et al., 2006a, 2006b). For instance, 10 countries were reviewed regarding their laws on citizenship acquisition, expulsion, marriage migration, access to public service employment, anti-discrimination, political rights, educational rights, and other cultural and religious rights, based on 41 indicators (Koopmans et al., 2012: 1212–1214). The 10 countries were Austria, Belgium, Switzerland, Germany, Denmark, France, Norway, the Netherlands, Sweden, and the UK. The results show that scores in 1980 were fairly unfavourable, least so in Sweden, the UK, Norway and Denmark. By 2008, scores generally tended to be more favourable except in Denmark which had the least favourable scores, roughly on a par with Austria, while the UK and Sweden continued to have the best scores among the 10 countries, now followed by Belgium. The 1990s was a decade of the greatest improvements, while the period between 2002 and 2008 saw a degree of backtracking. In spite of eight of the 10 countries being members of the EU and the other two subscribing to EFTA regulations, their implementation did not become more uniform.

Facilitating Acquisition of Citizenship

The possibility of acquiring citizenship at birth as well as through naturalisation is critical to the successful integration of immigrants. Among the 10 European countries covered by the same study (Koopmans et al., 2012), citizenship acquisition for the children of foreign citizens has become easier for four of the 10, while in three it has become more difficult and in another three it remained unchanged. Particularly positive was the change in Germany in the 1990s that made acquisition at birth automatic if the parents fulfilled the residence requirement. This is similar to France and the UK. In the UK, however, the regulation had been more liberal until the 1980s when there was no parental residence requirement, while in France it had been essentially unchanged since before 1980. The greatest negative changes occurred in Denmark, Norway and Austria; the greatest positive ones in Belgium, Germany, the Netherlands and in Switzerland.

Family Reunification

1. Family reunification legislation in Portugal

With a view to protecting the family unit and facilitating the integration of third-country nationals in the states where they reside, the European Council issued Directive 2003/86/EC (Council of Europe, 2003) on the right to family reunification. The directive established common rules for enabling third-country nationals legally residing in the European Union to be joined by their families. All EU member states except for Ireland, Denmark and the UK adopted this directive (European Commission, 2011b) but with varying degrees of restriction. For example, many of the member states require long-term residency, high incomes, high scores on integration tests, knowledge of the language; and this was limited only to traditional nuclear families.

Portugal is one of the very few European countries, which has adopted this directive and consciously made favourable conditions for the family of third-country residents to join them in Portugal. It did not adopt any of the limitations provided in the optional clauses because they were against its own constitution and the European Convention of Human rights (Oliveira et al. 2012). Portugal went further by not asking for a minimum duration of residency before the application of family members to join a resident in Portugal. Family reunification can be requested for both family members who live abroad or in Portugal and married before or after the resident entered Portugal. Family reunification in Portugal is assured for spouses or partners (including same-sex couples); dependent ascendants (parents, provided that they are dependent on the applicant); and dependent descendants (children and adopted children of the resident both under and over the age of 18). Like in the original EU Directive, polygamist families are not recognised. The Immigrant and Border Service (SEF) of Portugal has a maximum of six months to examine applications of family reunification after which the application is automatically approved (Oliveira, et al., 2012).

The basic requirements for family reunification in Portugal include: evidence of the family relationship, proof of income, adequate housing facilities, title of residency and criminal registry. Depending on the circumstances, more documents can be requested. Particularly noteworthy, are Portuguese requirements with regard to proof of income. As compared to the requirements of income in other countries like Austria where the minimum requirement is higher than the minimum income, in Portugal the requirements are relatively low. The sponsor is required to have 100% of the minimum income which is currently about €485 and 50% for each additional adult and or 30% for each additional child. Oliveira, et al., 2012 present this in the table below.

Table 2. Required monthly income for family reunification in Portugal

	Monthly Value (gross) in euros (14 months basis [26])	Monthly Value (gross) in euros (12 months basis [27])	Monthly Value (net)[28] in euros	Net value as % of median equivalised net income (EU-SILC)
Family reunification with one adult	727.50	848.75	647.03	89.5
Family reunification with one adult and one child	873.00	1018.50	711.50	98.4
Family reunification with one adult and two children	1018.50	1188.25	804.22	111.2

Source: Ordinance N.1563/2007 (Oliveira, et al., 2012:12).

In 2009, as a result of the crisis and the accompanying economic difficulties, the Portuguese government considered the effects of the economic crisis on family reunification. It concluded that the crisis did not justify keeping families apart. As a consequence, it issued a new ordinance (No.760/2009) that required applicants who were in "an involuntary employment situation that prevented him/her from reaching the minimum means of subsistence underlined in the 2007 ordinance" (Oliveira et al., 2012: 13) to temporarily prove lower levels of basic subsistence. The applicant was then required to meet only 50 per cent of the minimum income and for each family member, child or adult, an additional 30 per cent of the minimum income, as presented in the table below (Oliveira, et al., 2012: 13).

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[26]   As per Portuguese law, annual salary is calculated on a 14 month basis. For details see Oliviera et al. 2012
[27]   The column converts from monthly income from 14 month to a 12 month basis. For details see Oliviera et al. 2012
[28]   Net income after taxes and social security contributions deducted (based on 2012 rates). For details see Oliviera et al. 2012

Table 3. Post Crisis required monthly income for family reunification in Portugal

	Monthly Value (gross) in euros (14 months basis)[29]	Monthly Value (gross) in euros (12 months basis)[30]	Value (net)[31] In euros	Net value as % of median equivalised net income
Family reunification with one adult	388.00	452.67	345.32	47.8
Family reunification with one adult and one child	533.50	622.42	474.37	65.6
Family reunification with one adult and two children	679.00	792.17	566.96	78.4

Source: Ordinance N.760/2009.

Note: Applicable only if sponsor is involuntarily unemployed (Oliveira, et al., 2012: 12).

After admission, reunified family members share th same rights as other legally residing migrants. The 2007 Immigration act also introduced a "single permit", which simplified the administrative process for immigrants and underlined the rights that "all immigrants obtain immediately upon receiving a residence permit: education, work, training or access to other qualifications, health and justice." It states further, "immigrants have the same rights as natives in respect to social security, fiscal benefits, membership in trade union, diploma recognition" (Oliveira, et al., 2012: 14). This applies to all reunified relatives except ascendants of the applicant (parents) because they receive a residence permit on the basis that they are dependent on the applicant.

Anti-Migrant Sentiments

One of the key obstacles hindering migrants' integration and equal access to basic social rights in host societies is persistent anti-migrant sentiments and discriminatory practices. Such sentiments and practices are often reinforced by legislation, regulations and policies to restrict migratory flows. The global economic crisis and rising unemployment have further aggravated these trends. Several studies like the project on "group-focused enmity" by the Volkswagen Stiftung[32] show a close link of "negative attitudes and prejudices towards groups identified as 'other', 'different' or 'abnormal' and assigned inferior social status". These animosities occur in forms like anti-immigrant attitudes, racism, anti-Semitism, anti-Muslim attitudes, sexism, homophobia and other prejudices.

In everyday life, animosity appears in various forms ranging from discriminatory statements, difficulties in finding accommodation or a job, residential segregation and can even result physical violence. Addressing negative perceptions of migrants within host communities is therefore a key element of promoting their integration and enhancing their contribution to development.

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[29]   See footnote number 26 above.
[30]   See footnote 27 above.
[31]   See footnote 28 above.
[32]   See Heitmeyer's Long-Term Study of Group-Focused Enmity (2001–2011). http://www.freudenbergstiftung.de/en/activities-a-z/democratic-culture/long-term-study-of-group-focused-enmity-from-professor-heitmeyer-2001—2011.html.

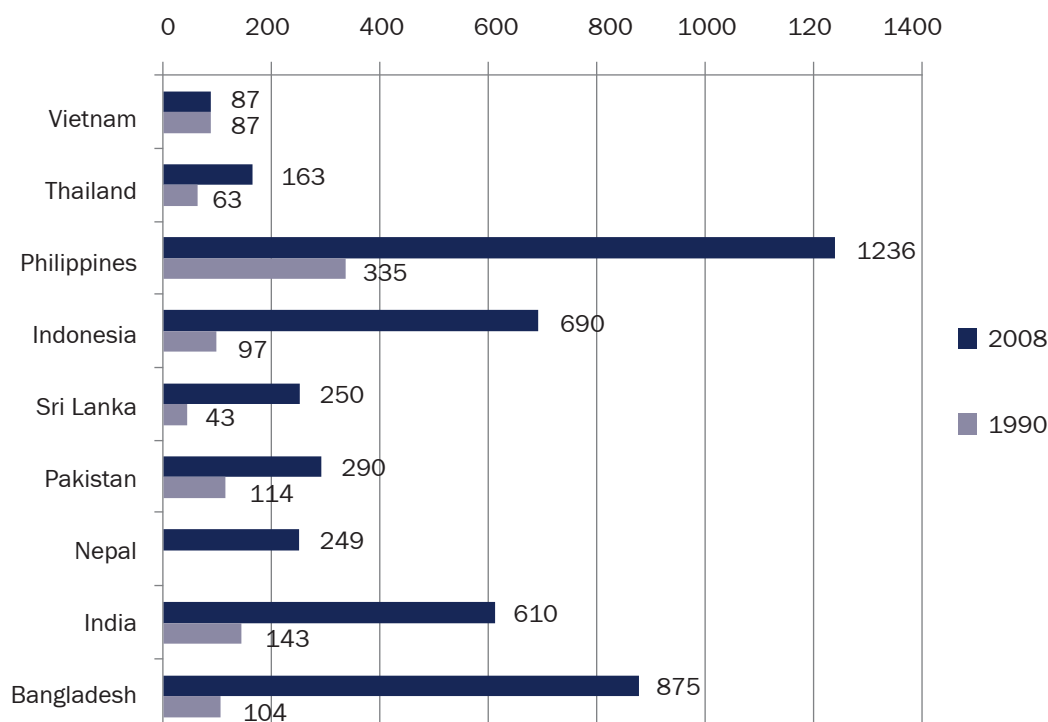# III. Practices in Origin Countries

Introduction

Asia, the home of over 60 per cent of the world's population, is a major source and destination of migrants. According to the United Nations Population Division, the region received 1.7 million migrants each year during the first decade of the 21st century (UN DESA, 2013), recording the largest increase in the number of international migrants compared to other regions. From 2000 to 2013, Asia gained 20 million international migrants, a 41 per cent increase over the previous 14 years. Over two-thirds of the growth occurred in West Asia[33] where international migrants increased in number from 19 to more than 33 million. A sharp increase was also recorded in Southeast Asia, in particular in Malaysia, Singapore and Thailand. As many as 26.3 million migrants in OECD countries originated from Asia, many of them coming from China (3.8m), India (3.4m), the Philippines (2.8m), Vietnam (1.9m), Korea (1.4m), and Pakistan (1m). Over 46 per cent of Asian migrants in OECD, especially those coming from India (about 60 per cent), are highly educated (OECD, 2013b).

According to the EUROSTAT online database (Eurostat, 2013), the foreign population (non-EU citizenship) in the 27 member-states of the EU numbered 20.7 million at the beginning of 2012. This represented 4.1 per cent of the EU population (Eurostat, 2013). The largest numbers of non-EU foreigners were in Germany (6.4m), Spain (3.2m), Italy (3.3m), the UK (2.4m) and France (2.5m). About 22 per cent of the foreign population were Asian citizens, many coming from southern and eastern Asia, in particular from India and China. In 2010, South Asians numbered over 570,000 in the UK and about 300,000 in Italy. In terms of annual flow, the UK remained the main destination as about 38,395 South Asians and about 56,419 East Asians migrated there in 2013 alone (UN DESA, 2013).

Emigration from East Asian and the Pacific countries to destinations within and outside the region has risen rapidly over the past 14 years such that the emigrant population is estimated to have reached 35 million in 2013. Intra-regional mobility has been rising on account of wide income gaps, bulging young workforces in some countries while rapidly ageing in others, increasing connectedness among countries with modern transport and communications, and profound social changes taking place in part due to education. Asians are moving increasingly to destinations within the region especially to Southeast Asia. The dominant part of migration that has occurred from and within Asia over the past three decades was in response to demand for labour particularly in agriculture, construction, household services and similar manual occupations. These positions were filled by workers from less developed neighbours, who were willing to accept conditions slightly better than what they find at home.

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[33] West Asia refers to the area west of the Indian sub-continent, including countries in the Persian Gulf otherwise referred to as GCC countries.

Box 3. Growth of reported annual labour emigration from Asian countries, 1990–2008 (in '000s)

Notes: Figures based on administrative sources in origin countries and therefore do not include those who leave their countries without registering. Data for India only refers to those required to secure emigration clearance.

The region has also seen rapid growth of labour immigration over the past two decades (see Box 3). Two forces have combined to produce labour shortages in some of the Asia-Pacific economies. On the supply side, it is the rapid decline in fertility rates which has caused the working age populations to decline. Increasing life expectancy, however, has not been sufficient in many cases to make up for the shrinking of the young population cohorts joining the labour force. On the demand side, very rapid economic growth has quickly absorbed existing labour reserves in agriculture. While labour force participation rates have remained higher in Asia than in most other parts of the world, particularly for women and older age cohorts, the increasing number of years spent by youth in schools, as family incomes have risen, has further squeezed the size of new young cohorts joining the labour force (Ducanes and Abella, 2008). Japan has seen the decline of its working age population (15–64) from 87.2 million in 1995 to 79 million in 2014. While the population of Korea is not projected to decline until 2025, its working age population will start falling by 2016.

The countries of the region have responded to the problem of labour shortage in different ways. In Japan and Korea, having fairly homogeneous populations has made policymakers concerned about the consequences of opening doors to immigration, especially of the low-skilled. Instead of opening her doors to foreign labour, Japan used policy measures to pressure Japanese industries to re-structure, adopt labour-saving production methods, and relocate their labour-intensive operations offshore.

In Korea, the labour shortages were at first remedied by opening a "side-door" to foreign workers who were admitted as "trainees", but this policy also led to a growing population of irregular workers.[34] A survey of small industries by the Korean Labour Institute in 1993 examined the reported difficulties of small enterprises in finding enough workers (Abella and Park, 1993). More than a third of the surveyed employers (36.5 per cent) claimed that their difficulty was due to the fact that Korean workers were no longer willing to do physically demanding jobs. Low wages was cited as a key factor by only 16 per cent of the employers in subsequent surveys (Abella and Park 1996; Abella and Park 2000; Park, 2008) and by only 13.4 per cent in a 2003 survey (Yoo and Lee, 2001). These companies lobbied through the powerful Korean Federation of Small Business for the admission of foreign workers as "trainees" and later for the extension of their stay as "guest workers".

On the other hand, Singapore, Malaysia and Hong Kong SAR, China, have historically been cultural melting pots and are thus more open to immigration. The same is true for Thailand, which, throughout her history, has seen continuous inflows and outflows of people, especially from China and neighbouring states.

One of the most remarkable success stories in economic development is that of Singapore whose per capita income rose from US$4,071 in 1979 to US$50,123 in 2011. Much of its success is owed to deliberate efforts to become a technologically advanced society with a sustainable supply of indigenous scientists and engineers. Education took up no less than 23 per cent of the national budget for most of the 1960s (Goh and Gopinathan, 2006). The results were impressive. Between 1980 and 1985, the output of science and engineering graduates totalled 5,600. Between 1986 and 1989 this rose by about 60 per cent to 9,100. At the same time Singapore brought in large numbers of manual labour from neighbouring countries in order to modernise its infrastructure, staff its factories, and attend to traditionally female chores which Singaporean women left behind as they entered the labour market. Today, migrant workers constitute of over a third of Singapore's total workforce — a huge increase from just about 7 per cent in 1980.

Having virtually no origin country policies in the EU, the examples in this chapter all hail from Asia. In the past, Italian political parties, especially the more conservative ones, organised citizens living abroad, especially in Germany, and Yugoslavia, when it still existed, intervened in the recruitment of workers abroad and took intermittent protective measures for workers abroad, and similarly Turkey, but none of this amounted to much. The responsibility for migrant workers was generally considered to rest with the receiving country's institutions, and this remains so today. For the most part, there is relatively little cause to intervene within the EU, including intervention on behalf of migrants from Asian origin countries such as the Philippines or Korea, since public employment services are fairly large and reasonably efficient, and the social partners are closely involved in their operation and in permit systems and processes. With few exceptions, therefore, the working conditions of migrant workers remained reasonably close to those of native workers, and often better than in origin countries, though the same may not be true about housing conditions. Origin countries remained so inactive that even the duty "to investigate the circumstances of recruitment and departure of an individual who is subsequently shown to have been trafficked" had to be imposed on them by the European Court of Human Rights (ECHR) (Dottridge 2011: 23), and only since 2010, with few important outcomes to date. Countries outside the ambit of the ECHR, i.e. states that are not members of the Council of Europe, will remain entirely unaffected by the ruling. Given the death toll of migrants to Europe[35], there might indeed be substantial cause for origin countries to become more proactive. The EU, however, has mostly been pressuring transit countries into efforts to curb onward migration towards Europe and supporting them financially and logistically in upgrading their policing and sheltering capacity (EC, 2013b). The long-term viability of such measures remains to be seen.

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34   Trainees were only entitled to allowances, prompting many to leave their sponsors to work illegally in the informal market.
35   According to the IOM's Missing Migrants Project, the most recent sinking of migrants' boats off the coast of Italy in September 2014 has taken the death toll off Europe's shores to over 3,000 so far this year. In 2013, the organization's Missing Migrants Project estimated the total for the year to be 700 deaths (IOM 2014).

Labour Emigration Policies and Migration Infrastructure

Prior to the surge of labour migration in the Asian region that was first triggered by the oil boom in the Middle East in the early 1970s, most countries only had rudimentary controls over emigration. The small numbers of workers who left to work for hospitals or construction projects abroad were recruited either directly by employing institutions or, by companies abroad or through public employment offices. The rapid expansion in the demand for workers in the Middle East — initially for construction and the oil industry, and later for a very wide range of jobs in almost every economic sector — quickly overwhelmed the capacities of public job placement agencies and the small bureaus responsible for regulating labour migration in origin countries. The late 1970s saw the beginning of the evolution in almost every country in the region, from Pakistan in the west to Indonesia in the east, of a migration industry characterised by commercial interests of all sizes vying for a share of the growing market of recruitment of migrant workers, their training, transport to countries of employment, money transfer and allied services. This period also saw the progressive commercialisation of migration with most governments yielding to the rapid domination of the industry by private interests that proved more adept than state agencies at locating employment opportunities and matching them with workers. This commercialisation took shape not only in the region's capitalist economies but also in some form even in communist China and Vietnam.

A parallel development was the emergence of what may be called a 'new migration infrastructure', as governments tried to cope with the problems that emerged as ever increasing numbers of workers sought employment abroad. In major countries of origin, new laws were passed creating new state bodies to regulate the recruitment industry, establish and enforce standards for work contracts, find new job markets, and provide assistance to migrants and the families they leave behind. New rules and regulations governing emigration of workers created new and elaborate panoply of state controls over foreign employment contracting, which did not apply to the domestic job market. Most countries required that individual job contracts first be approved by a responsible state body before workers are allowed to take up the employment; that foreign employers must go through licensed local recruitment agencies to engage workers; that workers must buy insurance to provide their families some benefits in case of death; and that recruited workers must undergo some pre-departure briefing before they are allowed to leave their countries. This "infrastructure" had to be extended beyond their borders through various means, including bilateral labour agreements and assignment abroad of diplomatic personnel to attend to labour migration issues. Labour attachés were posted overseas to monitor labour market developments, check the job offers being made by foreign employers, represent workers' interests before national authorities in host countries, and assist workers who run into problems with their employers or with the police. Annex 6 lists the many government agencies that are involved with one or more aspects of managing labour migration in Indonesia.

Examples of Best Practice in Asia

In the following sections, we review examples of best practice in policies and programmes adopted by Asian countries in their efforts to influence if not manage the external migration of workers. We have mapped these policies and programmes as shown in Table 4 in terms of the main issues or problems they were meant to address for countries of origin, the strategies, policies and programmes that origin countries developed, and what may be considered as examples of best practice. These include:

- Increasing employment through migration

- Preventing fraud in recruitment and trafficking;

- Establishing and enforcing minimum standards; and

- Protecting nationals working abroad.

Increase Employment through Migration

With the virtual explosion of construction activities in the oil-rich Gulf states in the late 1970s and 1980s, development authorities in Asia woke up to the possibilities of reducing their unemployment problems by exploiting external labour market opportunities. The Korean government was among the first to realise these possibilities, followed by Pakistan, the Philippines, India and Thailand. Indonesia, Sri Lanka, Bangladesh, Vietnam and Nepal later followed. Labour migration started featuring in the employment strategies of all these countries, accompanied by efforts to project themselves as good sources of skilled and dependable workers. The last three decades have seen the growth of labour migration from these countries, with flows largely dominated by low-skilled manual workers.

In the following sections, we review a few of the interesting experiences that exemplify how some countries have tried to influence the outcomes by designing better ways of organising labour migration and by increasing their capacities to equip workers with skills and thereby capture the better "bargains" in the expanding foreign labour markets.

Four interesting examples come to mind when considering how Asian states have proactively sought to shape the skill composition of workers they send abroad.

1. Korea's project-type labour migration

One of the earliest success stories that became a model emulated by other countries is the way Korea organised the employment of Korean workers abroad. When the Middle East countries opened up the market for construction, the Korean government quickly developed a scheme for sending thousands of Korean workers abroad under the "employ of Korean contractors" scheme. This model of labour migration became known as "project-type labour migration". Korea ran a well-organised system for employing workers abroad without losing control of the terms of employment because the Korean government was able to impose Korean labour standards and make Korean employers fully accountable. From a modest start in 1965 when Hyundai Engineering and Construction built the Pattani-Narathiwat Highway in Thailand, Korea emerged as a powerhouse in the field of overseas contracting with over US$500 billion worth of contracts by 2012 (Choi 2012). Although Korean overseas projects employ only a small number of Korean workers today, mostly engineers and supervisors, they started out by bringing large numbers of Korean construction workers who possessed all the skills necessary to execute large-scale construction projects to their projects abroad.

2. The Philippines: carving a niche in global market for qualified nurses and seafarers

The second example is how the Philippines was able to carve a niche in the market for foreign nurses, particularly in the OECD countries, and in the global market for seafarers. In 2000, there were 110,774 Filipino nurses in OECD countries or about 15 per cent of all foreign-born nurses employed in the OECD countries (OECD, 2007c: 163) making the Philippines the largest source of foreign nurses. Between 2004 and 2010, some 77,000 Filipino nurses found employment abroad including in new destinations like the Middle East, Europe, and East Asia (POEA, 2010). Although in the early years, the migration of nurses was not due to any public policy or programme but due to exogenous factors (i.e. nursing shortages in the US), the 1980s saw a shift as the government became actively involved in negotiating with ministries of health in other countries to fill vacancies and meet professional accreditation requirements; provide foreign employers facilities for recruitment; and encourage licensed private recruiters that offered specialised "know-how" in the field of health personnel. The number of nursing schools in the Philippines mushroomed from 40 in 1970 to 350 by 2005. For instance, between 2000 and 2004, the Philippines trained 33,370 nurses even as 50,000 Filipino nurses migrated abroad (Matsuno, 2009: 4; Yamada, 2006).

In the case of seafarers, public policy played a large role from the very beginning in the promotion of their employment by the world's biggest shipping companies. In 1974, the Philippine government created the Maritime

Industry Development Authority (MARINA), which had the triple function of promoting the modernisation of the Philippine merchant fleet, the development of ship-building and ship-repair capabilities, and developing a reservoir of trained manpower. MARINA promoted the establishment of training centres all over the country, especially with capacities for training in all the functions required to operate modern ships, from navigation to electronic engineering. Financial assistance, equipment and technical support were received from Japan and important maritime countries in Europe like Norway, the UK, the Netherlands and Italy whose nationals were no longer attracted to this occupation. The number of training schools, most of which are privately owned and run, rose from 47 in 1985 to 121 in 2000, although some failed to meet International Maritime Organization's standards (STCW95)[36] and were forced to close. As of 2013, there are 104 training institutes and schools that provide a variety of officially accredited courses and testing services (Mejia 2013).

In 1974, the government established the National Seamen Board with the intention of making it the sole channel for recruiting Filipino seafarers by foreign employers, but it subsequently gave up the idea. It has since licensed over 400 private recruitment companies (known as crewing agencies) and encouraged them to develop programmes for the protection of the welfare of seafarers in collaboration with the employing shipping companies. Today, these include the safe and cheap transfer of earnings from the employing companies to the seafarers' families and coverage of seafarers under social security. From 23,500 in 1975, the number of Filipino seafarers employed in foreign ships rose nearly 15 times to 347,150 by 2010. The Philippines has become the largest supplier of seafarers in the world, accounting for about 28 per cent of all seafarers on-board ships, according to a 2003 Seafarers International Research Centre (SIRC) survey (Amante, 2003). From the same survey, 9 per cent of Filipinos were employed as senior officers, 19 per cent were employed as junior officers, and 72 per cent worked as ratings (SIRC, 2012). The seafarers have also organised their own unions, one of which operates a well-equipped general hospital in Manila; another, a modern maritime training school; and another that run a housing scheme for their members.

3. IT software engineers from India

The third example is how Indians have come to dominate the market for foreign software engineers in the US, the UK, Germany and other countries. Ever since the US opened its doors to foreign-skilled workers under the H-1B visas for "specialty occupations" (computer systems designers and programmers, engineers, physicians, accountants, etc.), Indian nationals have accounted for nearly half of all admissions, which fluctuated around 300,000 before the global financial crisis in 2007-2008.[37] The number of Indian H-1B visa holders grew five-fold between 1989 and 1999 and peaked in 2001 with 160,000 visas issued (Naujoks, 2009). Of these, 85 per cent were for computer related skills. Indians also dominated the admissions of IT workers to the UK and Germany. This development has largely been attributed to the work of the Indian institutes of technology, autonomous educational institutions established with large government subsidies in many Indian states. By 2005, some 170,000 students had graduated with advanced engineering degrees from these institutes. The earliest batches of Indian workers successfully established a significant presence in Silicon Valley in California paving the way for the admission of more Indians in later years (ibid). A virtuous cycle of migration and return developed as successful Indian IT pioneers went back to India and founded companies often in joint ventures with their former US employers. Today, many Indians who are being admitted to the US under H-1B visas are actually recruits of Indian companies like Infosys, which have become so big that they now have branch operations in the US and other countries.

4. A "think tank" on migration

The Ministry of Overseas Indian Affairs (MOIA), in 2008, established the India Centre for Migration (ICM) formerly known as Indian Council of Overseas Employment (ICOE) to serve as a think tank on all matters relating to international migration. The ICM contributes to policies by documenting good practices in other countries, and assists in capacity building of stakeholders at the sub-national level. According to its website the mandate of the Council is: "to devise and execute medium to long term strategies to enable Indian emigrant workers and

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36   Standards of Training, Certification and Watchkeeping Convention (STCW95).
37   The US Congress capped H1B admissions at 65,000 in 2011.

professionals to move up the value chain and to position India as a preferred source of qualified, skilled and trained human resources across a wide gamut of sectors" (Ministry of Overseas Indian Affairs, 2009).

To enhance capacities and pilot good practices in international migration and its governance, ICM is building partnerships with research institutes in India, Europe, South Africa, and the US (Ministry of Overseas Indian Affairs, 2014). Among its projects are:

- a partnership with the European University Institute (EUI) near Florence, Italy, to start a constructive dialogue between the EU and India on migration;

- an assessment of labour market in six European countries to identify opportunities in various sectors;

- a study of the movement of Indian capital, goods and labour in Africa;

- a study of the health of migrant workers in the Gulf coming from Kerala, Andhra, Pradesh, and Punjab in collaboration with WHO and IOM; and

- the development of skills of potential migrants from the North-Eastern States of India.

Although the bulk of demand for migrant workers is still in low-skilled occupations, practically all origin governments in the region have formulated policies to reduce the low-skill component and increase the high-skill component of their migrant workforces. While this may not be justified on economic grounds because sending the less educated entails less investments for sending countries, the migration of low-skilled workers who find themselves in low-productivity jobs, often in the informal economy, generate more problems with labour exploitation as well as high costs and fraud in recruitment.

The next section looks at examples of how Asian countries have addressed the challenge of irregular or illegal movements and the protection migrants against fraud in recruitment.

Preventing Fraud in Recruitment and Trafficking

The main components of the migration infrastructure described earlier are results of the elaborate regulations developed by the Asian countries of origin to prevent fraud and abusive practices in recruitment. These problems have become ubiquitous despite government efforts to curb them because regulations are difficult to enforce outside one's territory, and because prosecution of those who violate regulations has proven very difficult. Complainants or victims of fraud rarely go through litigious, time-consuming processes for courts or administrative bodies to establish guilt. Regulating recruitment fees is a typical example of what all origin countries in the region attempt to do, but with little evidence of success. In Bangladesh, the Ministry of Expatriates' Welfare and Overseas Employment (MoEWOE) has fixed the maximum fees that recruiters may charge low-skilled male migrants at BDT84,000 (US$1,027) and for female workers at BDT20,000 (US$245). However, migrants interviewed in a number of studies report paying brokers an average of BDT200,000 (US$2,445), an amount equivalent to no less than a whole year's earnings in their countries of employment (Agunias, 2012). In Pakistan, the Bureau of Emigration and Overseas Employment has set a limit on what recruiters may charge the workers at PKR4,500 (US$72) but an ILO study revealed that recruiters charge on average PKR7,150 (US$115) (Arif, 2009).

In order to protect workers against abuses and fraud in recruitment and against entering into very disadvantageous employment contracts, authorities in origin countries have tried out a large number of measures to regulate migration processes. Over the past three decades these entailed the passage of legislation arming the governments with more powers and enabling them to set up new bodies to manage migration processes. Measures typically taken are described in Table 4 below.

Table 4. Measures to regulate migration processes

A. Regulation of recruitment	B. Regulation of employment	C. Assistance to migrants
- Restrictions on direct hiring by foreign employers; - Licensing requirement to engage in recruitment, with conditions on nationality of ownership, capitalisation, posting guarantees;[38] - Ceiling on fees and penalties for violations; - Prior approval of job offers and their advertisement; - Power of attorney to act on behalf of foreign employer; - Inspections and reporting requirements for recruiters; - Holding recruitment agency equally responsible for claims and damages as the foreign employer (the Philippines)	- Agreements negotiated with countries of employment/ employers; - Standards for employment contracts, wages, hours of work, overtime pay, rest periods, board and lodging, transport, etc. - Confirmation of job offers by consular offices abroad; - Screening and registration of foreign employers; - Registration/prior approval of job contracts; - Minimum age of workers especially female workers; - Ban on deployment to certain countries (i.e. war-torn countries); - Ban on accepting employment in certain occupations (i.e. sex work); - Pre-departure briefing of workers; - Sickness and health insurance; - Ban on employment in specified occupations	"One-stop" migrant processing centres (contract approval, passport, police clearance, social security, banking, etc.); - Guarantees for bank loans to finance migration; - Consular support services (labour attachés); - Community welfare centres abroad; - E-cards ID with multiple functions.[39]

Except for the few studies based on surveys of migrants that have been commissioned by international organisations like the ILO and IOM, there is only anecdotal evidence of the impact and effectiveness of such measures. There is nevertheless some consensus among policymakers and outside observers on what measures work and what do not. For instance, the legal ceiling on recruitment fees that workers may be charged is almost universally violated, especially when put at unrealistically low levels. The number of reported violations is a mere fraction of its widely known incidence, and those complaints that reach the courts rarely lead to prosecution and cancellation of licenses since most plaintiffs withdraw their complaints upon receiving offers of compensation by the agents. Enforcing limits on recruitment fees has run up against this and a number of other practical obstacles, such as:

- excess supply, i.e. willingness of job seekers to pay what the market will bear

- unwillingness of workers already in paid employment abroad to file complaints

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[38] These are typically bonds issued to guarantee performance or cover claims.
[39] See for example, the 'smart identity cards' issued by the Hong Kong authorities issued to immigrants, http://www.gov.hk/en/residents/immigration/idcard/hkic/faq_hkic.htm

- informal payments that do not leave a "paper trail"

- having hundreds of agencies in many countries that recruit through informal networks of autonomous sub-agents in far-flung areas, making control especially difficult

Based on practice in many countries, the most reasonable level of fees would appear to be one that is no higher than the equivalent of one month's pay.

Some policies have, from the beginning, questionable relation to the effective regulation of recruitment. The nationality of ownership requirement, for instance, is a protectionist measure that local agencies have managed to pressure governments to adopt despite lack of evidence that the participation of foreign-owned and controlled recruitment agencies endangers workers' interests. It is more likely that a policy of allowing reputable foreign companies to operate in a country will raise standards in the industry. The policy of not allowing direct hiring by foreign employers is another example of a protectionist measure that simply raises the cost of migration for the workers. Large foreign employers have to go through local recruitment agencies and incur additional transaction costs when they can very easily use their own human resource officers to look for, test and select qualified workers. In Europe, direct hiring has been the norm except for an emerging trend among large employers, some with special skill needs, to outsource all hiring regardless of whether migrant or native workers are concerned.

There are nonetheless some policies and programmes that are generally seen to help protect migrants and to foster more orderly movement of workers. These include the policy pioneered by the Philippines of holding recruitment agents of employers abroad jointly and severally liable in lieu of the employers they represent, if the latter are found to have violated employment contracts. When the matter involves restitution of unpaid wages, for example, the workers are usually awarded the claims out of the financial bonds deposited in escrow with a bank to meet the conditions for obtaining a recruitment license. Recruiters have complained of the unfairness of this regulation since they argue that they have no control over the actions of the employers they represent, but the policy has been defended as the best way of compelling them to exercise due diligence in selecting clients. It should be added that the Philippine government supports the policy with complementary regulations, such as requiring employers abroad to show evidence to the nearest diplomatic mission of their qualification to employ foreign workers and to be registered.[40] The policy has received wide attention and been cited as a model that a few other countries have also adopted.[41]

Establish and Enforce Minimum Standards

Most states leave the matter of local employment contracting to the individual worker and employer, except where the work involved is prohibited by law. However, they tend to make an exception in the case of employment in another country on the grounds that workers should be protected against lack of sufficient knowledge and information about foreign countries to make sound decisions. The 1983 Emigration Act of India, for example, empowered the Protector of Emigrants to prevent the emigration of a worker if it is of the view that the terms of worker's employment are discriminatory or exploitative; if the worker is taking up employment in an occupation that is unlawful in India or one likely to violate norms of human dignity; if the worker is going to work or live in sub-standard conditions; or if the worker is going to an undesirable destination.

Today, all the origin countries of the region require that workers who are contracted to work in a foreign country must first show the national authorities that their contracts conform to the minimum requirements set by law or by regulation. Otherwise, they may be prevented by immigration authorities from leaving the country. While there are anecdotal accounts casting doubt on the effectiveness of such policies, it is now widely acknowledged that intervention in this sphere is useful and can make a real difference to the conditions of the migrants if properly designed and implemented. In the following, we cite a few examples of best practice.

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[40]   Some 52,000 employers in 190 countries have been registered by the Philippine Overseas Employment Administration (Agunias, 2008).
[41]   The policy also applies to joint liability of recruiters for acts of employers of domestic helpers.

1. Efficient system for contract evaluation

Unless an efficient system can be established for checking that job offers are real and of acceptable quality, and that the workers understand and agree to the terms and conditions of employment being offered, restricting exit or departure of workers on grounds of protecting their interest will not mean very much. Governments must ensure that procedures are simple and transparent, efficient and expeditious, and low-cost; otherwise, workers and their recruiters will seek ways to evade or go around the regulations and thus provide opportunities for graft and corruption. In India, the law allows the Protector of Emigrants to determine who does and does not require a clearance to emigrate, thus saving the concerned authorities unnecessary time and resources. Those exempted are workers going to countries where protective laws and conditions of employment are considered generally adequate[42], and those going to other countries if they are sufficiently educated or experienced to protect themselves.

2. Emigration administration through "e-governance"

The Ministry of Overseas Indian Affairs has also made it a top priority to develop what it calls "e-governance on emigration", with the support of the National Institute for Smart Government (NISG) in Hyderabad. According to the ministry's website:

> *The project is aimed at achieving greater user convenience and effective protection and welfare of the emigrant. The subsidiary benefits would include greater levels of efficiency, transparency and accountability in the emigration system, facilitation of legal emigration and prevention of illegal emigration. The scheme is expected to automate emigration clearance, computerise registration of RAs [Recruiting Agents] and employers' permits, dispense with discretion, mitigate harassment of emigrants and remove corruption. It would also provide useful tools and data for policy analysis, information dissemination and speedy grievance redress.*[43]

The scheme involves computerisation of the functions of the Protector of Emigrant offices and interlinking with recruiting agents, employers, immigration counters, Indian foreign missions, insurance companies and state governments. Once in operation, the system should make enable:

- Real-time capture and update of data

- Quick access to reliable emigrant data

- Customised management information system to support decision making

- Computerised management of recruiting agent system

- Performance rating of recruiting agents and employers

- Effective monitoring of emigration offences

- Interlinking of stakeholders and online validation of information across stakeholders

The need for computerising operations is self-evident. Between 1965 and 1985 the average annual flow of international migrants from India to all destinations was about 1.5 million, but over the next 20 years (1985 to 2005) the flow had trebled (Sasikumar and Hussain, 2008). Majority of these flows comprised contract labour going to the Gulf states, with rising yearly numbers from a flow of about 140,000 in 1990 to about 809,500 in 2007.

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42   Those going to OECD countries are exempted from getting an Emigration Clearance, but those going to Malaysia or to any of the GCC countries, and to Africa are required to obtain one.
43   For full details, see http://moia.gov.in/services.aspx?id1=85&id=m2&idp=85&mainid=73.

3. Rationalising regulatory requirements

The Philippine Overseas Employment Administration (POEA) processes nearly 1.5 million work contracts in a year, or about 6,800 contracts each official working day. In order to cope with this volume of contract processing, the agency had to find ways of simplifying its procedures, computerising most operations, and linking its database with those of other agencies of government. An innovative and important feature of POEA's approach in coping with the volume of contract processing is to give automatic clearance to those submitted by agencies that have earned high standing because of past performance. Every year, POEA selects those considered to have met its stringent criteria and awards the winners with special privileges; the most important of which is facilitated processing of their submissions.[44] This is a much-coveted award that reduces costs to the winning recruiters while promoting their business, and serves as a powerful incentive to raise the standards in the industry. Sri Lanka has followed suit and set up a similar programme of grading licensed agencies and giving awards every year.

4. Promoting ethical practices among recruiters

The regulation of recruitment has become a huge challenge for all origin countries because of:

- a large excess of labourers wishing to work abroad compared to demand;

- low capital requirements that make entry into the recruitment industry very hard to control; there is a large informal part of the industry comprising private individuals who engage in recruitment as agents or sub-agents who have no licenses and are not registered anywhere; and

- growth of migration outstripping budgetary support for administration.

With many more people competing for each job on offer, it becomes very difficult for origin country authorities to enforce wage standards — and all the more so because of lack of knowledge about cost of living in destination countries. Violating government regulations is considered a "victim-less crime" and seldom gets reported, and even fewer are prosecuted. The POEA, for example, reported only 5,786 cases of illegal recruitment in 2011, or about 1.3 per cent of the nearly 438,000 migrant workers hired that year, for the first time. In that year, only eight illegal recruiters were convicted in the courts. The same has been observed in all the other countries of origin.

5. Industry associations and code of ethics

Governments have sought cooperation from various parts of the industry to organise and promote better practices in recruitment. They have encouraged the formation of industry associations and the adoption of codes of conduct or of ethical practice. The response of the private sector in most countries has been positive. Industry associations like the Bangladesh Association of International Recruitment Agencies (BAIRA), the Association of Licensed Foreign Employment Agencies (ALFEA) in Sri Lanka, the Philippine Association of Service Exporters, the Thai Overseas Manpower Association, the Indonesian Employment Agencies Association, and the Vietnam Association of Manpower Suppliers have all adopted a code of good conduct or practice.[45] It is difficult to say how much self-policing actually takes place since recruitment fees are still very high in most of the countries. It is clear that the promotion of ethical recruitment practices needs to be supported with incentives, such as those that POEA has used (described earlier), as well as stiff penalties.

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[44] Every year, the POEA gives awards to the best-performing agencies and the best foreign employers in ceremonies often attended by the Philippine President.

[45] In 2008 the International Organisation for Migration organised in Manila, as part of the Colombo Process, a conference of national associations of recruitment agencies in Asia for the explicit purpose of promoting the adoption of codes of conduct (IOM, 2008).

6. "One-stop processing centres"

In the Philippines, POEA was a pioneer in setting up "one-stop processing centres" (in Manila and in 14 key cities all over the country) where prospective migrant workers can access the services of several government agencies involved in migration processes, including applications for passports, social security memberships, police clearances, and getting multiple-use machine-readable ID cards. A few banks have branch offices in these centres for workers wishing to open banking accounts. The advantages are self-evident, especially after the various government offices were linked up with computers. Previously, workers had to go through in each government agency involved and would hire "fixers" to help expedite the process. The one-stop centres facilitate the simplification of procedures, reducing opportunities for "fixers" to intervene as well as saving time and money for applicants.

Protect Nationals Working Abroad

1. Information for departing workers

Protection starts by arming workers with information about important government regulations that they need to observe to be able to emigrate, their rights and obligations as migrant workers, the history and culture of the countries they plan to go to, and what to do in case they encounter difficulties. Most Asian countries of origin now require recruited workers to undergo short briefings prior to departure to provide such information, but the timing and adequacy of these briefings have been questioned. A briefing given when the worker is just about to leave their families and is preoccupied with last-minute errands is far from ideal. In the Philippines, POEA has published briefing kits for departing migrants and started a programme to reach potential migrants long before they consider migrating by involving schools in spreading information about international migration and its risks. In India, the Ministry of Overseas Indian Affairs (MOIA) has developed country manuals for workers going to key destination countries: UAE, Bahrain, Oman, Kuwait, Qatar, Kingdom of Saudi Arabia, Lebanon, Jordan, Sudan and Malaysia. These manuals contain "dos" and "don'ts" in going abroad for employment, and introduce each destination country with briefs on its history, culture, religion and customs. They contain addresses and contact telephone numbers of Indian missions abroad and local government offices that can provide help (see Ministry of Overseas Indian Affairs, n.d.b)

2. Centres to assist workers overseas

Aside from posting labour officers in their diplomatic missions abroad, some Asian countries have established centres that provide a variety of services for their nationals abroad. The Philippine government, for instance, has 34 such centres (known by the acronym POLOs, which stands for Philippine Overseas Labour Offices). There are 14 in the Middle East and North Africa, 11 in East Asia and Pacific, six in Europe, and the rest in the US and Canada. Each POLO is staffed by a labour attaché and four welfare officers, carrying out several functions including the verification of job offers and registering those judged to be bona fide employers, registering newly arrived workers, counselling workers, assisting workers in resolving disputes with employers, and hiring lawyers in litigation cases, and in most places also serving as a temporary shelter for those who leave their employers and are in financial distress.[46] There has been no evaluation of their effectiveness but they evidently meet a critical need, and other countries like India have followed suit and set up similar workers' centres to serve their nationals abroad.

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[46] The Philippine centre in Kuala Lumpur has set up, with the support of various donors, a training school where low-skilled migrant workers, during their days off, can receive basic instructions in the use of computers with the help of volunteers.

3. Funding the work of protecting migrants

State agencies tasked with the implementing migration policies and regulations have not received budgetary allocations that increase in tandem with the growth of their responsibilities. In 2000, for example, Bangladesh had only two labour attachés and a few ancillary staff in Saudi Arabia to attend to the needs of some 200,000 Bangladeshi workers in that country. The annual budget of the Bureau of Manpower, Employment and Training (BMET), the office that regulates recruitment and looks over each contract of recruited migrant workers (some 103,000 in 2000), was only BDT10 million (or less than US$200,000), coming up to about 0.01 per cent of the national budget (RMMRU, 2002). The situation is a bit better in other countries but not significantly so. The budget of POEA was PHP349 million in 2011 (about US$7.7 million) when it had to process contracts of some 1.3 million new hires and re-hired workers (Migrante International 2011).

In view of the evident inadequacy of personnel and financial resources, national authorities had to develop strategies and complementary measures to meet their responsibilities. One of the most important strategies involved the establishment of "welfare funds" (Ruiz and Agunias, 2008). Pakistan and the Philippines were the first countries in Asia to require migrants to contribute to a fund that would support welfare programmes and services for migrants and the families they leave behind. This practice has been adopted by Thailand, Sri Lanka and Bangladesh. In 1979, the Pakistan parliament passed a law creating the Overseas Pakistanis Foundation (OPF) under the Ministry of Manpower and Overseas Pakistanis, requiring all migrant workers registering to go abroad to each pay PKR2,000 for membership in a welfare fund, which the OPF was to administer. Some 4.9 million workers have so far contributed to the fund, thus building it up to about US$92 million. OPF has developed housing schemes for migrant workers in several provinces, built or contributed to equipping health centres all over the country, operates mobile eye clinics, provides scholarships for migrants' children, and provides emergency repatriation assistance, among others.

4. Providing insurance against contingencies and support services

The Philippine government established the Overseas Workers Welfare Administration (OWWA) in 1979. All Filipino migrant workers are required to become members of OWWA for a fee of US$25 which entitles him or her to health and accident insurance benefits, legal assistance and emergency repatriation in case of need or emergencies, and participation in OWWA programmes including pre-departure loans, livelihood loans for families left behind, college scholarship for his or her children, and more. Between 2003 and 2006, the OWWA generated an average income of US$38 million each year, out of which it spent an average of US$17 million to fund its programmes and operations including the operation of overseas centres (POLOs mentioned earlier).

India is establishing what the Ministry of Overseas Indian Affairs calls the Indian Community Welfare Fund (ICWF) in its diplomatic missions all over the world. It will provide support, on a means-tested basis, for boarding and lodging for distressed overseas Indian domestic service workers and unskilled labourers; emergency medical care; air passage to those stranded overseas; initial legal assistance; airlifting the mortal remains to India or local cremation burial of the deceased; penalties for illegal stay in the host country where the worker is not at fault; penalties for the release of Indian nationals in detention centres; and for the establishment of Overseas Indian Community Centres in countries that have population of overseas Indians exceeding 100,000. ICWF is to be funded from fees collected by the missions for various consular services, fees charged for attestation and other contributions (Ministry of Overseas Indian Affairs, 2013).

5. Monitoring migrants' conditions and problems

Information to assess how migrants are faring in their countries of employment may be collected by responsible administrative bodies, but only a few countries make them available to the public. A good example of one is Sri Lanka's Bureau of Foreign Employment (SLBFE), which reports on its website the incidence of various types of complaints received from migrant workers (see Sri Lanka Bureau of Foreign Employment [2013]). From these statistics, one can see that the incidence of complaints is related to level of skill (especially high for domestic

helpers), sex and country of employment. Breach of contract, especially non-payment or delayed payment of wages and physical harassment (including sexual harassment) featured prominently as problems for women workers, based on the documented complaints. It is thus understandable why the Sri Lankan government has been one of the most active advocates of an international convention to protect domestic workers.

As the different practices that have been highlighted in this chapter indicate, many origin countries have begun to become more proactive in their efforts to ensure the safety and protection of their nationals abroad. Overall, from setting standards in-country (for contracts, recruitment fees) to offering assistance overseas (diplomatic assistance, labour attachés), many of the measures that were introduced by few of the larger sending countries (such as India and the Philippines) have been adopted, because of their usefulness to curtailing abuse, by other sending countries as well. Another development that has been a positive step forward has been the willingness of governments to engage– not only with other governments in receiving countries – but also with the private sector (forming industry associations and codes of ethics) and with emigrants (training and briefing sessions; setting up mandatory contributions to welfare funds) themselves.

However, challenges do remain in achieving maximum efficacy of such policies, particularly when it comes to enforcement of regulations and their implementation. Furthermore, because migrants generally move from less affluent to more affluent countries, origin countries face funding limitations and limited human resources to deal with such issues. However, this does not mean that origin countries have limited policy options; they will need to be more innovative in their response to migrant welfare.

IV. Cooperation between Origin and Receiving Countries

Bilateral Agreements

Problems in migration policymaking often remain difficult to solve adequately without cooperation between origin and receiving countries. We therefore provide a number of bilateral and multilateral examples of such cooperation, and start with a brief review of the experience with bilateral agreements in Southeast Asia.

1. Cooperation formalised through bilateral agreements

National sovereignty poses strict limitations on the capacity of origin states to protect their citizens employed in another country. Since migrants tend to move from less to more affluent countries, this limitation does not necessarily pose a problem especially where the latter's laws on labour protection apply equally to local and foreign workers. The problem arises when the protection of labour rights is not assured, particularly in the case of migrants in an irregular situation. Irregular situations unfortunately have been a widespread phenomenon, where some countries like Bangladesh and India, Nepal and India, Thailand and Myanmar, China and Vietnam, Indonesia and Malaysia share long, porous borders aside from strong ethnic propinquity or kinship ties.

In recent years, there have been efforts of some origin and destination states in Southeast Asia to resolve outstanding migration issues through bilateral labour agreements. Thailand, for example, negotiated agreements with Laos, Cambodia and Myanmar in order to "regularise the status" of some 2 million undocumented migrants in Thailand and channel future cross-border movements through legal doors. The agreements, all of which took the form of a "Memorandum of Understanding" (MOU), provided for the identification of the nationality of the migrants with the assistance of origin country governments; amnesty and granting of temporary work permits by the Thai government; return of the migrants later to their countries of origin; and re-migration via legal channels (Chantavanich 2007). While the objectives of the MOUs have so far not been as fully realised as originally envisaged, there has been progress in giving some kind of legal status to those who availed themselves of several rounds of amnesties. The experience has been instructive for all sides and work is continuing on incorporating more realistic standards and procedures, such as targeting to bring down the cost of going through the formal legal migration process, and giving the migrants entitlement to basic social protection.[47]

There is not enough information available to indicate what should be considered as best practice in bilateral agreements negotiated by Asian countries. Since many existing agreements are in the form of MOUs, they contain only general provisions about providing protection of the migrant workers and respecting employment contracts. Judging from just the number of agreements signed, the Philippines appear to have been the most pro-active among the countries. It has so far signed 82 bilateral labour agreements (BLAs) involving 59 countries, of which 20 are in Europe. The most agreements are with Canada (7), Jordan (3), Korea (3), Switzerland (3) and the UK (3). More than half of these agreements concern seafarers (44 agreements are about the recognition of Seafarer's Certificates) while the rest fall into two categories: 10 on social security and 14 on cooperation on employment, welfare, and general labour issues. The bilateral agreements on Seafarer's Certificates essentially allow Filipino seafarers to board ships of the signatory state. Social security agreements provide Filipino workers with pensions, disability or retirement coverage. Employment, welfare and general labour cooperation agreements are more detailed and usually cover a wider range of protection issues. India has bilateral labour agreements with most of the Gulf Cooperation Council States, and with Malaysia and Jordan (Ministry of Overseas Indian Affairs, 2013).

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[47]   It became clear, for instance, that the system will not work when the recruitment and migration procedures adopted by some origin country authorities for those wishing to exit and work in Thailand entail costs 10 times more than the cost of going through the border illegally. A major reason of the higher cost is the securing official documents (i.e. passports) and the requirement that migrants go through licensed intermediaries (Pracha, 2010).

Employment Promotion

For intra-European labour migration, after 1945 migration was a given that it would be regulated on a government-to-government basis and that social partners together with public employment services would have a strong hand in recruitment. Private agencies therefore played a minimal role in international recruitment, if any, although they did eventually become important for labour recruitment nationally. The idea of having a public employment service was eventually extended to the EU, and we describe some of its key features here.

Facilitating Job Search before Migration

EURES, the European Employment Service, established in 1993, is a co-operation network between the European Commission and the Public Employment Services of the EU and EFTA member countries and other partner organisations. On the one hand, it acts like a job mobility portal with job-matching services for the benefit of workers and employers, as well as any citizen wishing to benefit from the principle of the free movement of persons in the participating states. On the other hand, EURES has a human network of more than 850 advisers that are in contact with jobseekers and employers across Europe. They provide information, and they help to solve all sorts of problems related to cross-border commuting that workers and employers may experience (EURES, n.d.).

The main objectives of EURES are:

* to inform, guide and provide advice to potentially mobile workers on job opportunities as well as living and working conditions in the European Economic Area;

* to assist employers wishing to recruit workers from other countries; and

* to provide advice and guidance to workers and employers in cross-border regions

1. Bilateral Agreement "Triple Win" on Health Professionals

In March 2013, the Philippines and Germany entered into an open-ended agreement on the employment of Filipino health professionals in Germany, more specifically between the Philippine Overseas Employment Administration (POEA) and the German Federal Employment Agency. It covers mutual responsibilities, working conditions, social security and accommodation, essentially stipulating the equality of Filipino health professionals to German ones. The agreement also includes the possibility to exclude employers that violate the terms, as well as cooperation on improving practices over time and jointly studying labour issues. Health professionals for employment in Germany are to be selected exclusively by POEA based on a detailed job description. Job interviews by the German partner and preparation for the recognition of the nursing certificate by the German authorities are to take place before departure. If through no fault of the Filipino health professional the employment contract is prematurely terminated, the German authorities are obliged to try and find a new position for them. The agreement explicitly states that administrative costs are to be borne by the organisations making the agreement, not by workers. However, a processing fee of US$155 is due to POEA, and German employers pay €3,700 to the German Federal Employment Agency and US$50 to POEA. A "standard bilingual labour employment contract" is to be issued to each worker. In addition, the two organisations "will explore projects to sustain and promote HRD [human resource development] in the Philippines" (Department of Labour and Employment, 2013). A joint committee led by senior officials from either side will be formed to oversee the programme.[48]

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[48]   For more information, see the remarks made by Secretary Imelda Nicolas "Promoting and Protecting the Rights and Welfare of Overseas Filipino Workers: The Philippine Experience", delivered at Enhancing the Socio Economic Welfare of Labour Migrants: Good Practices from Asia and Europe, a side event during the 26th Session of the Human Rights Council, 10 June 2014, Geneva, Switzerland.

Recognition of Skills and Qualifications

1. Recognition of academic degrees

Valid university diplomas are key to the right to conduct certain occupations, and are often required by employers. With the rise in international migration of university graduates, the handling of their degrees and certificates by employers and authorities in destination countries has become a growing concern. We present examples of how this is so far being dealt with by state groupings of varying degrees of cohesion.

1.1 The Lisbon Convention and ENIC

To implement the Lisbon Recognition Convention and, in general, to develop policy and practice for the recognition of qualifications, the Council of Europe and UNESCO have established the ENIC-NARIC network (European Network of Information Centres in the European Region-National Academic Recognition Information Centres in the European Union) on academic recognition and mobility. The Lisbon Recognition Convention, officially the "Convention on the Recognition of Qualifications concerning Higher Education in the European Region"[49], is an international convention signed by the Council of Europe and UNESCO, in 1997, and officially came into force on 1 February 1999. It aims to ensure that qualifications from one Council of Europe member state are recognised in another member state. All 47 member states of the Council of Europe except Greece, San Marino and Monaco have ratified the convention. Australia, Belarus, the Holy See, Israel, Kazakhstan, Kyrgyzstan and New Zealand, who are not members of the Council of Europe, have also ratified the convention (Council of Europe, 2013).

The ENIC network is made up of the national information centres of the states party to the European Cultural Convention[50] or the UNESCO Europe Region. An ENIC is a body set up by the national authorities (ENIC-NARIC, 2013). While the size and specific competence of an ENIC may vary, they will generally provide information on:

- the recognition of foreign diplomas, degrees and other qualifications;

- education systems in both foreign countries and the ENIC's own country;

- opportunities for studying abroad, including information on loans and scholarships, as well as advice on practical questions related to mobility and equivalence (ENIC-NARIC, 2013).

1.2 Promotion of mobility through a network of national centres

The NARIC network is an initiative of the European Commission created in 1984. The network aims to improve academic recognition of diplomas and periods of study in the EU, EFTA member states, and Turkey. All member countries have designated national centres that assist in promoting the mobility of students, teachers and researchers by providing authoritative advice and information concerning the academic recognition of diplomas and periods of study undertaken in other States. ENIC-NARIC helps migrants prove their qualifications for jobs in another country, which may be difficult in the absence of networks and knowledge about the job market. Services offered by this network provide a very useful starting point and are freely accessible to immigrants.

1.3 ASEAN agreements to facilitate mobility of the highly skilled

In anticipation of the creation of a single ASEAN market by 2015, the member states have entered into an Agreement on the Movement of Natural Persons (2012) to facilitate the temporary movement of intra-company transferees paid in the country in which they work, and business visitors and contractual service suppliers paid

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49   The full text of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region is available at http://conventions. coe.int/Treaty/Commun/QueVoulezVous.asp?NT=165&CM=8&DF=10/17/2007&CL=ENG.
50   Adopted on 19 December 1954, the Cultural Convention is the foundation for European co-operation in the fields of culture, education, youth and sport (Council of Europe, 2012). The convention is available at http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=018&CL=ENG.

from the home country.[51] Significant legal and institutional barriers still remain in some professions where training and accreditation are obtained in another country, but the member states have shown a willingness to remove these obstacles and have committed to developing Mutual Recognition Agreements (MRAs). Such agreements would allow, say, an engineer in one member state to be automatically considered an engineer in another member state, by both licensing organisations and employers. By the beginning of 2012, MRAs for seven professions had been signed — an engineering MRA was signed on 9 December 2005; a nursing MRA on 8 December 2006; MRAs for architects and surveyors on 19 November 2007; and MRAs for doctors, dentists and accountants[52] on 26 February 2009.[53] There remain considerable hurdles to implementing these MRAs. Some are still waiting for the creation of an ASEAN-level secretariat to oversee their implementation. While some nationality restrictions may be relaxed on grounds of reciprocity, practising a profession may be allowed only for a limited period or subject to stringent conditions.

Decent Work

Addressing the working conditions in the destination country is often considered as being out of bounds for origin countries. This is changing. Increasingly, origin countries are confronted with complaints by their citizens abroad, while receiving countries are experiencing international outrage. In a growing number of instances, both sides have therefore seen fit to seek bilateral and multilateral solutions to pressing inequities and injustices. We present a number of examples covering various aspects of working conditions, various forms of cooperation, and various stakeholders.

1. ASEAN Declaration on the Protection of Migrant Workers

In 2007, meeting of heads of states of ASEAN in Cebu, the Philippines, adopted a Declaration on the Protection and Promotion of the Rights of Migrant Workers that obliges member states to draw up charters to ensure decent working conditions, protection from all forms of abuse, and a minimum wage to intra-ASEAN migrant workers. The Declaration calls on member states to protect the fundamental rights of migrants and their families, cooperate with each other to deal with irregular workers, and promote the full potential and dignity of migrants. The Declaration is considered a milestone for the regional association that had previously eschewed any agreement on labour migration. The Declaration is, however, not a treaty that binds the member states to uphold the principles contained within. Concrete steps towards this were taken in 2008 when the ASEAN Foreign Ministers met in Singapore and created a Committee on the implementation of the ASEAN Declaration (ACMW). They charged it with the task of developing an ASEAN Framework Instrument on the Protection and Promotion of the Rights of Migrant Workers. Five years on, the Committee has yet to come out with a draft instrument, reflecting that differences among the member states still remain.

2. Combating Forced Labour

In January 2009, the Bulgarian labour inspectorate and the UK Gangmasters Licensing Authority (GLA)[54] signed a cooperation agreement on regulating and monitoring contractors that provide Bulgarian seasonal workers for the UK, to prevent cases of illegal employment, provide good and fair living and working conditions, and guarantee fair pay. This agreement follows complaints from Bulgarian agricultural workers in the UK who experienced exploitative employment conditions in the UK.[55]

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51 The agreement is at http://asean.fta.govt.nz/chapter-9-movement-of-natural-persons/ and summarised at: http://aseanec.blogspot.com/2012/09/summary-of-asean-movement-of-natural.html.
52 Accounting and actuarial sciences are considered the most standardised occupations around the world, largely because of the requirements imposed on firms to list and sell stock. There is discussion of standardising training and requirements for healthcare workers.
53 For examples of MRAs in other regions, see the EU Professional Qualifications Directive 2005/36/EC which aims to expedite the local licensing of professionals who move from one EU member state to another by requiring national authorities to issue required local licenses if the migrant has a similar license from her country of origin. There is some national discretion in granting licenses to intra-EU migrants, as when the licensing authority deems the training and licensing system in the migrant's home country sufficiently different and imposes testing or experience requirements on migrants (see http://ec.europa.eu/internal_market/qualifications/policy_developments/legislation/index_en.htm).
54 See "Role of Employment Agencies" in earlier chapter on Practices in Receiving Countries.
55 Roger Plant, the head of the Special Action Programme to combat forced labour at the International Labour Organisation, highlighted the impact of this cooperation: "Forced labour, often a result of human trafficking from poorer to richer countries, is a cancer on labour markets worldwide. Combating it requires close cooperation between sender and destination countries, with labour inspectors playing a key role in both prevention and law enforcement, and organisations like the GLA leading the way through innovative practices. The UK-Bulgaria cooperation should be highly commended, as a model for other countries committed to stamping out modern forced labour" (Gangmasters Licensing Authority, 2009).

3. Cooperation between Trade Unions

In 2001, the Trade Union Congress (TUC) of the UK and the CGTP-IN trade union confederation of Portugal signed a deal to put measures into place to encourage Portuguese workers in the UK to join TUC-affiliated trade unions. TUC would engage Portuguese workers in the UK through training, awareness-raising campaigns, and education materials so that they may learn about their rights as workers in the UK. In this way, TUC would be better able to protect them against exploitation and violation in the workplace (ILO, 2013e). These workers would be provided with information about their rights, in both English and Portuguese, as well as information on the TUC-affiliated trade unions in the UK they could join. The majority of Portuguese working in the UK do not belong to trade unions, according to the TUC, and because of problems with language and the temporary nature of much of the work, they are often unaware of their rights and suffer abuse (TUC, 2001).

In Germany, the Trade Union for Building, Forestry, Agriculture and the Environment (Industriegewerkschaft Bauen-Agrar-Umwelt, IG BAU) and the Polish trade union representing employees in agriculture (Związek Zawodowy Pracowników Rolnictwa w Rzeczypospolitej Polskiej (ZZPR) jointly produced a bilingual booklet informing Polish seasonal workers in Germany's agricultural sector of their labour rights and how trade unions both in Germany and at home can assist them in cases of violations of their rights, conflict with the employer, or any other work-related grievances that they may have (ILO, 2013d).

4. ILO Convention on Domestic Workers

More than 53 million people worldwide are employed as domestic workers, 80 per cent of them women (ILO, 2013a). According to the ILO, domestic workers work for long hours and low pay, and lack of knowledge of the local language makes them particularly vulnerable to abusive practices. For a long time, at least in Europe, domestic work was absent from public debate mainly because domestic workers are employed by private individuals in private households. ILO Convention 189, which sets the labour standard for domestic workers, entered into force in September 2013. Up to this writing, 14 countries have ratified it worldwide. It is worth noting that the Philippines is the only Asian country and Germany and Italy the only European countries to have ratified the convention so far. Many domestic workers organisations have been campaigning for the ratification of the convention.[56]

Box 4. ILO Domestic Workers Convention 2011 (No.189)

This ILO Convention, which sets the labour standard for domestic workers, entered into force in September 2013. It defines a domestic worker as "any person engaged in domestic work within an employment relationship" and "domestic work" as "work performed in or for a household. Critics of this definition point out that it does not include workers who provide care services in institutions (ILO, 2013h). So far, 14 countries have ratified it. In Bolivia, Italy, Mauritius, Nicaragua, Paraguay, the Philippines and Uruguay, it is already in force. Argentina, Colombia, Costa Rica, Ecuador, Germany, Guyana and South Africa have already ratified the convention but have yet to enter it into force (ILO, 2013g).

Portability of Benefits

While workers in most countries are covered by some form of social security migrant workers, especially temporary ones, these are generally prejudiced because there are still few agreements between origin countries and countries of employment on the portability of social security benefits that they are entitled to. There are only a handful of bilateral agreements on social security among Asian countries, and fewer still between Asian and EU countries. We present a succinct overview of the history of portability in the European Union.

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[56]   The International Domestic Workers Federation (IDWF) has launched a campaign "Domestic workers are workers. Ratify C189 Now!" which aims to remind governments on 16 June, on the anniversary of the convention coming into force, to ratify and implement the convention (IDWF, 2014a). IDWF is made up of 47 trade unions, associations and worker cooperatives from 43 countries and aims to "build a strong, democratic and united domestic/household workers' global organisation to protect and advance domestic/household workers' rights everywhere" (IDWF, 2014b)."

1. The Coordination of Social Security Systems in the EU

Among the EU countries where freedom of movement is one of the Union's foundation principles, the search for an EU-wide solution dates back to 1971 when the European Council adopted the regulation (EEC) 1408/71. It provided that persons residing in the territory of a member state to whom the regulation applies are subject to the same obligations and enjoy the same benefits under the legislation of a member state as the nationals of that State (European Union, 2014). The regulation applied to workers (employed and self-employed) who are nationals of a member state or third country or stateless persons/refugees residing in the territory of a member state to whom the legislation of one or several member states applies; and to the members of their families and their survivors. It also applied to persons who are studying or undergoing vocational training and to the members of their families. In 2004, the European Parliament and the Council of Europe adopted regulation (EC) 883/2004 on the coordination of social security systems to facilitate the freedom of movement of EU citizens. It does not provide a single social security structure that all member states should follow, but rather coordinates the social security system of the different member states. This means that each member state has the freedom of deciding the specifications of their social security system according to their traditions and culture as long as they adhere to the EU's basic principle of equal treatment and non-discrimination. According to the principle of equal treatment, nationals of an EU member state and nationals of other EU member states residing there are equal in terms of the rights and obligations provided for by national legislation. The provisions of this regulation apply to all the traditional branches of social security: sickness, maternity, accidents at work, occupational diseases, invalidity benefits, unemployment benefits, family benefits, retirement and pre-retirement benefits, death grants (European Union, 2013).

This regulation by the European Union has been recognised by the ILO as a good practice (ILO, 2013f). Such a system encourages labour rotation, i.e. workers and their families do not get trapped in the country of employment solely for social security reasons because the workers do not lose out on their benefits.

To summarize our findings, migration policy and processes cannot operate in a unilateral manner; increasingly countries are recognising this. From policies on skills and qualification recognition to those that address the portability of social security benefits to addressing working conditions and the regularisation of undocumented migrant workers, multilateral and bilateral coordination between origin and receiving countries is improving. This cooperation is not only between government-to-government but also at the non-governmental level, as witnessed by the coordination between different trade unions seeking to protect their workers in different countries.

V. Conclusions

The best way to protect the jobs and wages of national workers is to protect migrant workers.

The intent in preparing this report was to underline the unequivocal experience of the past 60 or more years, that the best solutions to the challenges of labour migration invariably involve an equalisation of factual and not merely formal rights of migrant and non-migrant workers, and of citizen and non-citizen workers; and that the best way to protect native workers is to protect migrant workers. Accepting this truth has often proven a lengthy and painful learning process on the part of governments, employers, trade unions, workers, political parties and so on, and the report documents the current state of play mostly by highlighting the practices of advanced learners and in a few instances by pointing to obvious failures of slower learners.

Transparent policies and simple procedures for admission of foreign workers minimise the need for intermediaries and the risk of fraud, reduce the cost of migration, and encourage migrants to go through legal channels.

A number of substantive conclusions and recommendations can be found in the Executive Summary. Many of the examples in the report include the point that it matters not only what is being done but also critically how it is done. A great deal of political and practical skill is required in order to get it right. Trial and failure is the order of the day but consistent reflection is crucial on what worked (or did not work) and why, and is in itself good practice.

Responsiveness of training policies to skills demands in the international labour market is crucial to securing decent jobs abroad and to protection against fraud and exploitation.

The benefits of migration cannot be maximised unless the migrating workers are made fully aware of their rights and conditions of employment.

It is clear from the experience of several Asian countries that state policies and programmes have made a difference to the "outcomes" of the fast-growing cross-border movement of workers. The manner in which migration is organised, as suggested by the Korean example or the enhancement of workers' skills through traing, and as demonstrated by the Philippine and Indian examples, have generated much more favourable outcomes for migrants and the countries of origin and destination. Because of the frequent lack or absence of sufficient information for migrants to make sound decisions, a "hands-off" or laissez-faire policy in countries of origin as well as destination leaves migrants at the mercy of unscrupulous recruiters and traffickers. However, state interventions must take into account conditions in the labour market. Unrealistic standards that are out of proportion to what informed job seekers are willing to accept can easily lead to such standards being violated.

Opportunities for gaining entry into employment may elude immigrants. There is a need for governments to address the problems with holistic programmes involving local communities and enterprises.

Employers should be able to hire workers directly without the need to go through private fee-charging job brokers.

The challenge of managing migration processes obliges governments to try to reduce the costs of migration which often falls heavily not on the employers, but on the workers. Situations of excessive supply of labour lead to costs being passed on to workers in terms of lower wages unless the labour market is well regulated through such means as minimum wage standards and comprehensive labour inspections.[57] Costly or complex entry procedures lead to clandestine migration. Regulations must involve efficient procedures to reduce to a minimum the steps that prospective migrants must go through to observe them. Computerisation and

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[57]   It needs to be highlighted that in many countries, government-set minimum wages fall far short of what many estimate to be a living wage.

establishment of "one-stop" centres can help bring down the costs to the migrants of following regulations.

Effective care for workers abroad requires sensitised and trained personnel in consulates and embassies

Migration is inherently a bilateral, if not a multilateral, issue that requires cooperation between origin and destination states.

Attending to the many services needed by migrants is often a formidable challenge to budget-constrained agencies, especially in migrants' countries of origin. Asian origin countries, for example, have found the need to establish their own migrant support centres in major destination countries, staffed with qualified officers including labour attachés, and to build contingency funds in the event of emergencies such as forced repatriation or simply to pay for lawyers to represent migrants in courts or to pay for expensive hospital treatments. Strategies to raise funds to support expensive operations in destination countries will need to be considered.

There is a need to appreciate that the policies and practices of others cannot be transposed blindly into a different context. They can and should serve as sources of ideas, of motivation, and of confidence that better solutions, i.e. more respectful and more equitable solutions, to current problems are possible and that future problems can be avoided by adequate action in the present. The actual policy and practice, however, needs to be devised locally in a thoughtful way, adequately involving the stakeholders within the country and abroad. International labour migration is part and parcel of globalisation, and needs to be dealt with no less wisely than with its other parts.

Annex 1

Mapping Migration Policies of Asian and European Countries

Issue/Problem being addressed	Country strategy	Typical policies/ programmes	Examples of best practice/ of failures and lessons
Origin country policies issues, strategies, policy tools and best practices			
Addressing unemployment via migration	• Enhance employability through skills training • Seek foreign labour markets or invite foreign employers to recruit • Establish efficient recruitment system • Foster export of services via Mode 1, such as call centres, etc.	• Develop "niche" markets abroad for workers • Expand supply of skilled workers and certify skills • Enable private sector participation in recruitment • Promote corporate export of labour services • Provide free and efficient job placement services • Establish offices abroad or train diplomatic personnel	• The Philippines: Nursing schools and Maritime academies • India: IT engineers • Korea: employing workers abroad thru Korean contractors (KODCO experience)
Recruitment fraud and abuses	• Educate workers about their rights • Regulate recruitment market • Provide free placement services • Seek cooperation of host countries	• Inform public through websites, social media • Engage local officials and police to fight illegal recruiters • Establish competent national authority to establish rules, set standards, regulate recruitment and set ceiling on fees • Legislate stiff penalties against fraud and enforce • Create alternative to private agencies for recruitment • Bilateral agreements which are implemented with help of joint technical committees (e.g., Philippine Agreement with Saudi Arabia)	• See Sri Lanka Bureau of Foreign Employment website: http://www.slbfe.iklarticle.pliplarticle=37 • See role of NGOs in Cambodia http://www.somaly.orgiouNuiproach • See Ministry of Overseas Indian Affairs • Self-regulation through Codes of Practice in the Philippines

Issue/Problem being addressed	Country strategy	Typical policies/ programmes	Examples of best practice/ of failures and lessons
Contract violation/ exploitation of workers by employers	• Control recruitment • Provide nationals working abroad on-site assistance and services • Repatriation of workers	• "Backlisting" of abusive employers or recruiters and high-risk destinations or occupations • Make recruiters jointly liable for contract violation by employers • Set minimum age limit for workers to go abroad • Post labour attachés in key host countries	• ASEAN Declaration on Rights of Migrant Workers • See MOIA "watch list" • See Philippine policy on liability of licensed agencies, and labour attachés
Clandestine emigration	• Control exit • Encourage use of legal channels • Engage destination countries in control • Help orderly repatriation of irregular migrants	• Requiring registration and checking of contracts on departure and simplifying procedures • Sharing information on emigration with destination authorities	
Disputes with employers/ recruiters	• Establish special labour courts • Settle disputes thru arbitration	• Establish complaints and dispute settlement procedures • Provide on-site or labour attaché services • Use model contracts	
Emergencies/ Accidents/ sickness/ deaths	• Insure migrants • Collect information on migrants and their foreign employers • Organise emergency assistance	• Create database on migrants • Establish special fund for emergencies • Establish protocol for handling emergencies and assign and train officers to assist migrants	• Welfare Funds (e.g., OWWA, OPF) • Indian Community Welfare Fund built from fees for various consular services
Problems with re-integration	• Training • Spread information through mass media	• Require migrants to undergo pre-departure training	
Reducing risks	• Only send workers to safe countries • Educate workers on their rights • Insure against illness and accidents		• India's list of 17 countries • Social security protection for migrants

Issue/Problem being addressed	Country strategy	Typical policies/ programmes	Examples of best practice/ of failures and lessons
Receiving country issues, strategies, policy tools and best practices			
Labour shortage	• Off-shore labour intensive industries Facilitate job-search • Enhance labour market flexibility • Market incentives to induce industry re-structuring/ upgrading technology • Curb "social dumping"	• Immigration control • Raise minimum wages • Modernise employment services • Subsidised training services for local workers • Raise retirement age • Induce more women to participate in labour market • Establish regular channels for employment of foreign workers and have consultations on optimal responses to employer requests for migrants at national and industry levels	• Japan: off-shoring labour-intensive industries to other countries; providing cheap crèche facilities for working mothers • Thailand: Hiring foreign workers already in country but without work permit • New Zealand: seasonal worker scheme • Australia: System of priority occupations or preferences
Displacement of native workers	• Manage admissions to meet specific shortages • Equal pay legislation • High minimum pay requirements	• Create labour admission programme: estimate specific shortages/ establish procedures/ criteria for authorising employers to hire foreign workers • Studies on demand/ supply for various skills	• Right balance between top-down labour market data and bottom up employer requests • Australia: skilled occupation list for migrants seeking to move to Australia
Recruitment failure or abuses	• Minimise mismatches • Insure admission of workers in good health • Allow recruitment only through licensed agencies • Prevent brokers charging exorbitant fees	• Systems for recognising skills acquired abroad or determining equivalence/ occupational classification • Impose penalties	• Prohibit trading in visas
Trafficking/ smuggling	• Strengthen border controls • Cooperation with origin country authorities • Penalise employment of undocumented; assist victims	• Bilateral/multilateral agreements	• See the Transnational Referral Mechanism for Victims of Trafficking between Countries of Origin and Destination (TRM-EU) organised by the EC, the International Centre for Migration Policy Development and 8 European country partners.

Issue/Problem being addressed	Country strategy	Typical policies/ programmes	Examples of best practice/ of failures and lessons
Promoting employment of immigrants	• Provide access to skills training • Recognition of skills and qualification • Anti-discrimination in employment laws	• Removing legal obstacles to employment of immigrants in public service	• Council of Europe • Convention EU Bluecard • National Recruitment Federation
Illegal employment of undocumented migrants	• Establish pre-hiring requirements • Conduct labour inspection • Regularise status of undocumented migrants	• Employers' sanctions • Amnesties and regularisation — registration of irregular migrants or verification of nationality • Repatriation of unqualified workers	• Spain regularization programmes • Singapore: application of sanctions • Thailand: regularisation of undocumented workers
Violation of contracts/ exploitation	• Enable migrants to join trade unions • Conduct labour inspection	• Brief migrants on their rights upon arrival "hot-lines" and "Migrants Centres" to facilitate access to labour authorities • "Blacklist" bad employers/impose penalties • Train trade union staff	• Hong Kong: migrants' unions • Korea: Migrants' Centres • Joint sending and receiving country efforts to explain workers' rights in the workplace • Italy: trade union activities
Gaps in social protection	• Fill in gaps in law with administrative measures	• Special schemes to protect rights of women domestic workers • Membership of migrants in social security • Bilateral agreements on "totalisation" of rights under social security	• Singapore • Irish social partnership pacts 2000 and 2003 • Membership in trade unions
Over-staying migrants	• Facilitate or incentivize orderly return Create regularisation options	• Japan, Austria: requirement to carry proof of visa • Regularisation under human rights provisions	• Japan: database on all foreigners admitted • Austria, Germany, Switzerland: database of the entire resident population
Integration of migrants	• Employment • Housing • Contact between migrants and non-migrants • Language tuition	• Give access to job placement services • Upgrade existing education and skills • Access to public housing • Opening of associations, festivals • Provide free language training	• EURES • Tripartite Agreements: Korea • Practices: Irish social partnership pacts 2000 and 2003

Issue/Problem being addressed	Country strategy	Typical policies/ programmes	Examples of best practice/ of failures and lessons
Deskilling of migrants	• Validation of skills • Recognition of educational certificates • Facilitation of adequate employment	• Giving workers freedom to choose work • Providing information on education and training in origin countries • Setting up efficient and credible organisations for skills validation • Build competence in recognition and set up one-stop shop	• Rights: Sweden, Spain • Practices: UK, Switzerland, Sweden, the Netherlands
Education of children of migrants	• Access to education regardless of status • Multilinguality in schools • Bilinguality for school and pre-school children	• Language courses • Adequate staffing of schools • Adequate training and further education for teachers and other education staff • Curricula to reflect and value differing views	• Denmark: Study of Danish language • Rights: Austria, Sweden
Citizenship acquisition	• Citizenship as a means of inclusion • Citizenship policies as a means of exclusion	• Reasonable preconditions, low cost • Allow dual citizenship	• Rights: Belgium, Sweden
Family formation and unification	• Regulation of migration for marriage • Regulation of migration of family members	• Provide reasonable migration options not requiring marriage • Allow re-unification of needy parents with migrated children	• Rights: Sweden, Switzerland
Protection from expulsion	• Legal procedure for expulsion	• Facilitate access to legal support services • Allow time to challenge expulsion orders	• Rights: Belgium
Public sector employment	• Adequate representation of migrants and their children in public sector employment	• Professionalise hiring in the public sector	• Rights: Sweden, UK
Xenophobia	• Foster positive expectations of migration • Create respect for achievements of migrants and their origin groups	• Inform public of migrants' contributions • Promote civil society engagement • Criminalise xenophobic acts	• Irish social partnership pacts 2000 and 2003

Issue/Problem being addressed	Country strategy	Typical policies/ programmes	Examples of best practice/ of failures and lessons
Protection against discrimination	• Outlawing discrimination • Criminalising discrimination • Adequate remedies against discrimination • Testing discrimination	• Legal bans on discrimination • Penalties against discrimination • Monitoring of discrimination • Adequate training of employers, trade unions, public administration, and the judiciary • Organisations to advise and support victims • Inviting and supporting self-help organizations • Cooperate with international monitoring	• Rights: France, Sweden, UK, Ireland, Belgium, Norway • Practices: Irish Equality Authority
Political participation	• Voting rights and rights to stand for election at various state levels • Voting rights and rights to stand for election at various levels of worker representation	• Allow right to vote and to be elected at least at municipal level • Allow right to vote and to be elected at least at establishment level	• Rights: UK
Religious freedom	• State impartiality to religions • Regulation and supervision of religious activities • Integration of religious communities with each other	• Allow at least basic forms of participation, such as visibility of symbols • Make nuisance rules equally applicable to all religious and other organisations • Require coexistence and cooperation among different religious organisations	• Rights: UK
Social and cultural participation	• Policies re dress codes at work and in public • Building and zoning regulations	• Make dress codes in public employment flexible to the needs of employees • Allow at least basic forms of participation, such as architectural visibility of symbols	• Social Partner Pacts (Ireland) • Rights: UK

Annex 2

Anti-discrimination Directives, EU 2000

The purpose of Council Directive 2000/43/EC of 29 June 2000 as stipulated in its Article 1 is to lay "down a general framework for combating discrimination on the grounds of racial or ethnic origin as regards employment and occupation, with a view to putting into effect in the member states the principle of equal treatment" (Council of Europe, 2000a).

In Article 2, it distinguishes between direct and indirect discrimination and prohibits them both:

- "direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation"

- "indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary"

Article 2 further defines the term "harassment" and includes it in the outlawed practices: "Harassment shall be deemed to be a form of discrimination within the meaning of paragraph 1, when unwanted conduct related to racial or ethnic origin takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment."

Article 3 lays down that "this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

(a) conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;

(b) access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;

(c) employment and working conditions, including dismissals and pay;

(d) membership of and involvement in an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations;

(e) social protection, including social security and healthcare;

(f) social advantages;

(g) education;

(h) access to and supply of goods and services which are available to the public, including housing."

Article 3 also makes an important exception: "This Directive *does not cover difference of treatment based on nationality* and is without prejudice to provisions and conditions relating to the entry into and residence of third country nationals and stateless persons on the territory of member states, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned" (emphasis our own).

The expression "nationality" refers to formal citizenship and has to be understood as all EU citizens having the same nationality. The exception therefore provides no basis for discriminating against citizens of other EU member states but it does against citizens of other states. The exception is considerably weakened by citizens of associated states, such as the four EFTA member states, and a number of others, and especially persons with long-term residence rights being brought into the ambit of Articles 1 and 2 by provisions in the relevant treaties or in other Council Directives.

Article 4 describes a further exception in terms of "Genuine and determining occupational requirements … member states may provide that a difference of treatment which is based on a characteristic related to racial or ethnic origin shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate." This leaves scope for the courts to define the legitimacy of objectives and the proportionality of the requirements if and when complaints are brought before them. Religious organisations in particular were keen on this article being inserted.

Article 5 legitimises positive action but not outright positive discrimination: "With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any member state from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin."

Article 6 precludes any lowering of standards in force at the time the Directive was proposed by any member state.

Article 7 obliges member states to provide for sufficient means for the enforcement of obligations under the Directive.

Article 8, to some degree, reverses the burden of proof. If credible allegations of discrimination are being brought forward by the plaintiff it rests with the respondent to prove there has been no discrimination.

Article 9 outlaws the victimisation of complainants consequent upon having made a complaint.

Article 10 obliges member states to inform the public of the provisions of the Directive "by all appropriate means."

Article 11 encourages social partner dialogue on how best to avoid discrimination in each member state and urges social partners to take appropriate steps "including through the monitoring of workplace practices, collective agreements, codes of conduct, research or exchange of experiences and good practices."

Article 12, as does Article 7, promotes the involvement of non-governmental organisations in combating discrimination.

Article 13 obliges member states to set up at least one organisation charged with the effective defence and promotion of equal treatment regardless of racial or ethnic origin.

Under Article 14, member states have to make sure all laws, rules, regulations, procedures whether public or private are compliant with the Directive or shall be null and void. (Further articles oblige member states to lay down sanctions for infringement of rights under the Directive, to transpose the Directive by 19 July 2003, and to report on the implementation to the Commission by 19 July 2005 and every five years thereafter.)

A complementing directive, "Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation", has the parallel purpose of laying "down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the member states the principle of equal treatment", and proceeds in the same manner as Directive 2000/43/EC (Council of Europe, 2000b).

Annex 3

Testing Discrimination Using Anonymous Applications

The results of the 2010 study "More Migrants in the Civil Service — Intercultural Opening of the National Administration" in the German state of North Rhine-Westphalia (**see page 25 above**) are based on 414 responses to a questionnaire mailed to 1,252 applicants for jobs in the public service during a trial phase for new anonymisation procedures to be implemented by the state government that are meant to increase the hiring of women and minorities at all levels of public administration (see the section on EU Antidiscrimination Directives for a definition of the intended beneficiaries). Those who had already received notification of being hired were somewhat more likely to respond than those who had been turned down or had not been notified yet. 90 of the 414 respondents indicated in their responses that at least one parent had been born outside Germany.[58] The question was how much difference in the chances of hiring persisted between these 90 and the remaining 324. As the analysis showed, 21 per cent of the applicants with at least one parent born abroad received an invitation for a job interview, but 28 per cent of the others did. Thus in spite of the anonymisation applicants with at least one parent born abroad did less well at this stage of the process. However, at the job interview, where the anonymity could not be upheld, they did so well, that in the final result 11 per cent got hired against 12 per cent of those with no parent born abroad (Kraska and Ciekanovski, 2012: 32 & 34; own calculations).

According to a separate survey carried out in 2012 only 12.1 per cent of the workers in the public service of the state of North Rhine-Westphalia have at least one parent born abroad. Thus a share of 20.8 per cent of the newly hired workers in the pilot project compares favourably. This suggests that persons with a migration background are able to convince the employers of their worth even more, once the anonymity is lifted (Kraska and Ciekanowski, 2012: 31–35). This confirms that anonymisation of job applications works to reduce the barriers of employment of immigrants and increases their employment chances.

Stage in the process	Total	Sample	At least one parent born abroad	Neither parent born abroad
Applications	1,252	414	90	324
Invited	322	110	19	91
Hired	89	48	10	38
Invitation rate	25.7	26.6%	21.1%	28.1%
Hiring rate	7.1	11.6%	11.1%	11.7%

Source: Kraska and Ciekanovski, 2012: 32 & 34; own calculations.

Another field study in Germany implemented by the German Federal Anti-discrimination Agency, which not only focused on the applicability of anonymous job applications but also their viability, found that both recruiters and applicants do not have any practical problems implementing the anonymous applications. Krause et al. (2012: 4) found that standardised application forms where sensitive information is not included appears to be the most efficient method of anonymising job applications, compared with:

- refinement of existing online information such that sensitive information is disabled

- copying applicant's non-sensitive information into another document

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[58]   The exact definition of what is referred to as "migration background" in Germany is more complex but this abridged version will suffice for the current purposes of this report.

- blackening sensitive information in the original application documents (time-consuming and prone to errors).

With standardised job applications, personnel officers have the possibility of quickly comparing applicants' skills and qualifications, therefore reducing time of the application reviewing process (Krause et al., 2012: 14). The main disadvantage of this method is it does not give creative individuals the opportunity to showcase their credentials at the initial stage.

From the results of this study, Krause et al. (2012) argue that anonymous job applications not only reduces the discrimination of disadvantaged groups in the hiring process — including, among others, people with a migration background as well as women — but also increases diversity of the workplace, enabling recruiters to finding the most productive and qualified workers because the focus shifts towards skills and qualifications. In the case of women, Krause et al. (2012) argue that anonymous job applications not only lead to more women being invited for interviews but also directly result in more women being offered employment. As a result of this project, some German companies voluntarily continue to hire anonymously. Because discrimination is not uniform, so far no country has made anonymous job applications mandatory on a countrywide level.

In Gothenburg, Sweden's second largest city, the evaluation of an anonymisation pilot showed that in those parts of the municipal administration that had participated, both women and immigrants had become more likely to be invited to an interview, but only the women were also more likely to be hired. The likely reason was that the interview broke the anonymity (Åslund and Nordström Skans, 2007).

Annex 4

Impact of Immigration on Provision of Health Services in the UK

The increased likelihood of migrants working in the health and social services public sector in the UK and also in high-ranking positions has been underlined by the international recruitment campaigns of workers in the medical profession, in particular nurses and medical practitioners, in the 1990s and early 2000s. Dustmann and Frattini (2011) have analysed the impact of migrants on the provision of public services in the UK using data obtained from the UK Labour Force Survey (LSF) from 1994 to 2010. In their report, they reveal that the number of immigrants in the UK public service has increased from 7 per cent in 1995 to 13.3 per cent in 2010.

Breaking down the public sector into the different sub-sectors, over the period 2008–2010, the education sector employed about 32 per cent of native public sector workers and 29 per cent of immigrant public sector workers. This compares to 25.6 per cent of natives and 18 per cent of immigrants in public administration, and 27.6 per cent of natives and 40 per cent of immigrants in healthcare and social work.

| | 1994/1996 | | | | | | |
| | Distribution across sectors in public employment | | | | % of public employees who are | | |
	Natives	Immigrants	Non-EEA	EEA	Immigrants	Non-EEA	EEA
Public administration	25.0	17.7	18.4	15.9	5.4	3.9	1.5
Education	26.3	24.9	24.1	26.9	7.1	4.8	2.3
Health and social work	27.3	37.5	36.4	40.1	10.0	6.8	3.2
Other	21.5	19.9	21.1	17.2	7.0	5.2	1.8
Total working age population					8.4	5.9	2.4
	2008/2010						
	Natives	Immigrants	Non-EEA	EEA	Immigrants	Non-EEA	EEA
Public administration	25.6	17.9	18.1	17.4	7.7	5.7	2.0
Education	32.2	29.0	25.9	37.5	9.7	6.4	3.3
Health and social work	27.6	37.9	41.2	29.0	14.1	11.2	2.9
Other	14.6	15.2	14.9	16.1	11.1	8.0	3.1
Total working age population					13.8	9.6	4.3

The left panel of the table reports the distribution of natives and immigrants (overall and distinguishing between EEA and non-EEA immigrants) across sectors in public employment in years 1994/1996 pooled and 2008/2010 pooled. The right panel of the table reports the share of immigrants (overall and distinguishing between EEA and non-EEA immigrants) out of all public employees in different sectors in years 1994/1996 pooled and 2008/2010 pooled. The last row reports the share of Non-EEA and EEA immigrants in total working age population.
Source: UK LFS

Source: Dustmann and Frattini (2011: 66, Table 3.4.1)

These results show that most of the migrants work in higher skilled occupation groups: 63 per cent and 64 per cent of European Economic Area (EEA) and non-EEA immigrants work in the three highest occupation groups, compared to 52 per cent of the natives (Dustmann and Frattini, 2011: 44).

	Public Administration			Education			Health and social work		
	Natives	Non-EEA	EEA	Natives	Non-EEA	EEA	Natives	Non-EEA	EEA
Managers and senior officials	13.6	10.7	11.2	2.9	2.3	2.0	7.6	3.2	5.0
Professional occupations	10.4	14.0	12.8	49.8	54.1	59.8	13.6	27.8	26.0
Associate professional and technical	35.7	34.1	36.9	6.6	6.7	6.5	35.8	40.2	32.1
Administrative and secretarial	29.2	26.2	25.2	7.7	6.6	6.0	14.7	6.2	8.5
Skilled trades occupations	1.8	2.8	0.6	1.2	0.3	0.7	0.9	0.5	1.0
Personal service occupations	2.3	4.3	4.3	22.3	17.1	17.3	21.7	16.6	19.1
Sales and customer service occupations	1.6	1.3	1.6	0.2	0.5	0.1	0.5	0.4	0.4
Process, plant and machine operatives	0.9	0.8	1.2	0.2	0.5	0.4	0.8	0.2	0.5
Elementary occupations	4.5	6.0	6.3	9.1	12.0	7.3	4.4	4.9	7.4

The table reports the occupational distribution of natives, EEA and non-EEA immigrants within different sectors of public employment in years 2008-2010 pooled.
Source: UK LFS

Source: Dustmann and Frattini (2011: 68, Table 3.4.3)

	2001/2003			2008/2010			Average hourly pay
	Natives	Non-EEA	EEA	Natives	Non-EEA	EEA	
Managers and senior officials	6.9	6.5	7.2	8.3	5.5	5.6	16.6
Professional occupations	22.6	30.8	32.9	24.4	31.0	35.8	16.2
Associate professional and technical	22.1	25.4	24.2	23.7	27.5	20.6	12.3
Administrative and secretarial	19.2	14.9	9.9	16.4	11.3	11.8	8.6
Skilled trades occupations	2.9	1.3	2.1	2.2	1.1	1.4	8.8
Personal service occupations	13.8	11.8	12.3	14.6	12.7	14.2	7.5
Sales and customer service occupations	0.7	0.3	0.6	1.0	0.9	0.8	8.0
Process, plant and machine operatives	1.6	1.2	1.0	1.4	0.8	1.2	8.6
Elementary occupations	10.4	7.8	9.8	8.1	9.2	8.6	6.5

The table reports the distribution of natives, EEA and non-EEA immigrants in public employment across major occupation groups (1 digit SOC2000 categories) in years 2001/2003 pooled and 2008/2010 pooled. The lat column reports the average public sector hourly wage by occupation across all years 2001/2010, expressed in 2005-based GBP.
Source: UK LFS

Source: Dustmann and Frattini (2011: 67, Table 3.4.2.)

Annex 5

Irish National Plan Action Against Racism

In January 2005, the Irish government published its National Action Plan Against Racism "Planning for Diversity" (NPAR) which set out for the first time an intercultural framework approach to "integration" in Ireland. The overall aim of the National Action Plan Against Racism (NPAR) is to provide strategic direction to combat racism and to develop a more inclusive and intercultural society in Ireland.

Philip Watt (2006) of the National Consultative Committee on Racism and Interculturalism summarises the action plan below:

> *There are five key themes underpinning the NPAR that seek to translate the concept of interculturalism into a coherent and multifaceted policy framework in the Irish context. This intercultural framework can be summarised as follows:*
>
> *Effective PROTECTION and redress against racism, including a focus on discrimination, threatening behaviour and incitement to hatred;*
>
> *Economic INCLUSION and equality of opportunity, including a focus on employment, the workplace and poverty;*
>
> *Accommodating diversity in service PROVISION, including a focus on common outcomes, education, health, social services and childcare, accommodation and the administration of justice;*
>
> *RECOGNITION and awareness of diversity, including a focus on awareness raising, the media and the arts, sport and tourism; and*
>
> *Full PARTICIPATION in Irish society, including a focus on the political level, the policy level and the community level.*
>
> *Intercultural Policy Initiatives:*
>
> *The adoption of intercultural guidelines for primary schools and consideration of guidelines for second level.*
>
> *The inclusion in Census 2006 of a question on ethnic and cultural background, which will capture data that is not covered by the nationality, place of birth and religious questions that are asked elsewhere in the Census and which will for the first time provide comprehensive data to inform future measures for positive action.*
>
> *The development of a racial and intercultural unit and approach within the Gardaí (i.e. the Irish national police) and a positive action active recruitment programme for Gardaí from minority ethnic backgrounds.*

The commencement of an intercultural health strategy that focuses on issues from managing human resources to service delivery.

Public awareness initiatives including support for "intercultural week" and intercultural strategies in the workplace.

The review of our criminal legislation to ensure that it is effective in addressing "hate crime".

A further contribution to the development of thinking of an intercultural approach to integration is the emerging findings from recent research on how public authorities provide services to minority ethnic groups in Northern Ireland, Republic of Ireland and Scotland (Watt & McGaughey, 2006). In particular, this research advocates a whole system/organisation approach to implementing intercultural policy, which can be summarised as:

Mainstreaming: How existing policy and service provision processes are inclusive of minority ethnic groups.

Targeting: The development of specific policy priorities and service provision strategies tailored to meet the needs of minority ethnic groups.

Benchmarking: Setting and reaching targets within a timescale, including the development of data to measure progress.

Engagement: Participation of key stakeholders in the policy and service provision processes, and in specialised and expert bodies.

Annex 6

Key Indonesian Government Agencies Involved in Migration Management

1. The Ministry of Manpower and Transmigration has the main role in formulating policy on the placement and protection of Indonesian labour migrants, with offices in the provinces and districts. In coordinating its work in the regions, it works with the regent, the mayor or governor and BNP2TKI

2. BNP2TKI is the authority responsible for the placement and protection of Indonesian labour migrants

3. The Ministry of Foreign Affairs

4. The Ministry of Social Affairs — responsible deported or victims of human trafficking

5. The Coordinating Ministry for Economic Affairs — coordinating various agencies responsible for placement and protection reform, as well as improving financial services for labour migrants (Presidential Instruction No. 6/2006)

6. The Coordinating Ministry for People's Welfare — coordinating services for migrants being deported

7. The Coordinating Ministry for Politics, Law and Security — together with the Coordinating Ministry for Economic Affairs, monitors the implementation of Presidential Instruction No. 6/2006

8. The Ministry of Health — pre-departure health exams and health services for those who are ill and victims of violence and human trafficking

9. The Ministry of Communication — safe travel

10. The Ministry of Home Affairs — issuing of government identity documents, especially in the regions down to the sub-district or even the village level

11. The Directorate General of Immigration, within the Ministry of Law and Human Rights — provision of passports

12. The Indonesian National Police

13. The Ministry of State-Owned Enterprises is authorised to provide services including accommodation of migrants at airports

14. The Ministry of Finance on support credit facilities for potential labour migrants

15. The regional government (regent/mayor/governor) — attending to arriving labour migrants with problems, or deported labour migrants

16. The Indonesian Central Bank (Bank Indonesia) — remittances and financial literacy campaigns for Indonesian labour migrants

17. The Ministry for Women's Empowerment and Child Protection coordinating and heading the counter-trafficking task force

Source:
IOM (International Organisation for Migration). (2010). *Labour Migration from Indonesia: An overview of labour migration from Indonesia to selected destinations in Asia an*d the Middle East. Geneva: IOM. Retrieved from http://www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/Final-LM-Report-English.pdf.

Glossary

Debt bondage: Debt Bondage occurs when aspiring migrants without resources borrow the needed funds from their recruiters or employers (in the form of advances) or from informal money lenders at userious rates for costly procedures to secure them their jobs abroad. A person becomes a bonded labourer when his/her work is demanded to repay the loan.

Family reunification: Conditions whereby the family of third-country residents are allowed to join them in a host country where they work.

Forced labour: According to the ILO, forced labour includes a range of exploitative situations, such as debt bondage, trafficking and other forms of modern slavery. The workers are kept at work with clearly illegal tactics and paid little or nothing.

Gangmasters: Used in the UK to refer to labour providers. The Gangmasters Licensing Authority (GLA) operates a licensing scheme for those acting as a "gangmaster", and

protects workers from exploitation in agriculture, shellfish gathering and food and drink processing and packaging.

Group-focused enmity: Negative attitudes and prejudices towards groups identified as 'other', 'different' or 'abnormal' and assigned inferior social status". Examples include anti-immigrant attitudes, racism, anti-Semitism, anti-Muslim attitudes, sexism, homophobia and other prejudices.

Loan-guarantee schemes: In the case of migrant labour, such schemes usually enable migrants to borrow money from selected banks at low interest rates.

Minimum wage: This is the lowest hourly, daily or monthly remuneration that employers may legally pay to workers (see also "living wage").

Living wage: This is an hourly, daily or monthly remuneration that is required by a worker to cover the basic costs of living for himself/herself and his/her family. Distinct from minimum wage.

"One-stop" migrant processing centres: These are service centres that provide contract approval, issuance of passport, police clearance, social security, banking, etc. to migrant workers of the country. The centres could be located in origin or destination countries.

Path dependence: The condition whereby one follows the precedence when making future decisions. In the case of migrant labour flow, this has been seen in how migrant workers secure jobs abroad, i.e. through exorbitant fees paid to employment agents.

Posted workers: Workers that are employed by a company in one country but performing work in another country for the same company and for a limited period of time.

Pre-departure briefing: A briefing on the legal rights and responsibilities, and cultural practices of a foreign country for a potential migrant worker before they leave to work there.

Social dumping: The practice of employers using cheaper labour, than what is usually available in their native workforce, often through employing lowly paid migrant workers.

Social Protection: Social Protection refers to all measures providing cash or in-kind benefits to secure protection from lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment old age. Besides that it refers to the availability of and the access to health care. The term is often used interchangeably with Social Security.

Working age: The minimum age required by law for a person to work in a country or jurisdiction.

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This publication is based on the outcomes of a two year programme that studied migration policies in Asia and Europe to identify those practices that have contributed significantly to the welfare of migrants, their host countries and their countries of origin.

The volume identifies good practices across ASEM countries as well as key migration issues relevant to ASEM countries and their policymakers. It maps out those policies in both regions that are in support of fair and equitable migration systems; reducing migration risks and providing migrants access to protection; and the integration of migrants in sending and receiving countries. In so doing, it draws from actual country experience, some useful lessons on how labour migration can be governed by host and origin states in a way that contributes positively to individual welfare and to socio-economic development.

A Triple Win in Migration: Ensuring Migrant Workers' Rights to Protect All Workers