

Social Issues in the Management of Labour Migration in Asia and the Pacific

Labour migration is a fast growing phenomenon which is likely to gain force in the future because of widening income disparities, declining work forces in the more developed regions, and changing values and attitudes to work.

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Any discussion of the mobility of labour across borders in a region as huge and complex as Asia is bound to do no more than provide a sketch of a few idiosyncrasies and peculiarities. With a combined population of 3.6 billion, the Asian and Pacific region accounts for almost three fifths of the world's total population. The region's land mass and innumerable islands have been partitioned into over 50 independent States, dividing people usually along lines of ethnicity, common language, religion and shared recent history. Each one is pursuing independent national policies for political and economic development with varying

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success, creating in the process differentials in standards of living within and between States that often drive people to move. Those differentials have been magnified by the forces of globalization which have spurred the economies of the region, but favouring the open and politically-stable countries more than others.

This paper focuses on one aspect of this large phenomenon by reviewing the approaches adopted by States to manage labour migration. Although there remains some significant movements of asylum-seekers and refugees in parts of Asia, it is the growing mobility of people responding to differences in economic opportunities that has been the dominant theme of contemporary debate on migration in the region. This paper looks particularly at how Asian States have fared in their efforts to regulate migration flows, the consequences of their policies on the treatment of migrant workers, and the issues modernizing States face in seeking to build a sustainable and mutually beneficial migration regime in the region.

Dimensions of labour migration in Asia

Over the past two decades the gross emigration of labour rose at an annual rate of 6 per cent for the Asian region as a whole. This would make the migration growth over two times faster, on the average, than the growth of the labour force of the origin countries. Asia itself absorbed a large and increasing proportion of the 2.6 million Asian workers estimated to have left their homes annually between 1995 and 2000. Some 1.4 million migrant workers headed for Japan; Taiwan Province of China; the Republic of Korea; Hong Kong, China; Singapore; and Malaysia. Thailand's long land frontiers became more active migration fronts, so that by the end of 1998, there were an estimated 897,000 Burmese, Laotians and Cambodians in an irregular status in the country (Huguet and Punpuing, 2005).

The ILO estimated that by around 2000 there were some 22.1 million migrant workers in Asia plus another 2.9 million in Oceania.¹ Although they represent a tiny fraction of the total work force in the region, migrant workers are a very significant percentage in certain countries. In Singapore, foreign workers represent about 30 per cent of the labour force (OECD, 2001). In Kuwait, there were four times more foreign workers than native workers and in Bahrain there were almost three foreign workers for every two native workers (United Nations, 2003).

Towards the end of the 1980s, over 800,000 workers from South and East Asia found their way each year to Saudi Arabia, Kuwait and the other Gulf States (Abella, 1995). By 1990 there were some 5.5 to 6 million foreign workers in that region, some 3 million of whom came from Asian countries.

In East Asia, migrant workers represented only about 4.2 per cent of the aggregate labour force of the subregion but migration appears to have become a structural feature of those economies. The migrant worker population in each country rose rapidly during a period of rapid economic growth and only fell slightly and briefly during the unprecedented financial crisis. In Malaysia, the number of registered foreign workers more than doubled in five years from 532,000 in 1993 to 1.1 million in 1998 (Ruppert, 1999; OECD, 2001).

The growth of labour outflows reported by some countries of origin has been remarkable. In Indonesia annual labour outflows in the early 1980s were estimated at a mere 36,000 annually. By 2002 this had risen to 480,400 a year, three out of every four of whom were women recruited to domestic service work in the Gulf States; in Hong Kong, China; and in neighbouring Malaysia and Singapore (Kassim, 2000; Pang, 1992). Labour migration from India to the Gulf States were thought to have peaked at 234,000 a year in the early 1980s, but after a decline it picked up again and averaged 360,000 a year between 1991 and 2001 (Srivastava and Sasikumar, 2003). Labour emigration from Bangladesh almost quadrupled from 103,000 in 1990 to a peak of 381,000 in 1997, although it has been declining ever since (Siddiqui, 2004).

Main features of labour migration in Asia and the Pacific

In comparison with cross-border movements in other regions, what stands out in contemporary Asian experience are three distinct features. The first is the dominant role played by contract labour migration. It is the official policy of countries importing foreign labour that workers, especially the low-skilled, be allowed only temporary periods of stay and be covered by job or employment contracts. The second distinct feature is the fact that recruitment and placement have been left largely in the hands of commercially – motivated recruitment agencies because few labour – importing States in the region have shown any interest in organizing labour migration through government to government agreements.

A third distinct feature of labour migration in Asia is, in a sense, a corollary to the previous one. The governments of almost all countries of origin are actively involved in regulating labour emigration, and in many cases in promoting it. One finds in Asia well developed legislation on recruitment and the necessary governmental structures to oversee the operation of private recruitment agencies.

Issues in the management of labour migration in Asia and the Pacific

In identifying the key issues for managing migration in the region one can draw on at least four important sources of information. One is the periodic survey conducted by the United Nations Population Division on governments' views regarding the levels of immigration and emigration, the latest one of which was for the year 2000. A second is the report on the regional consultations or "hearings" conducted by the *Global Commission on International Migration* in 2004. The third is the ILO Migration Survey of 2003 which provides the most updated compilation of policies, laws, regulations and implementing structures on labour migration. And finally, there have been a number of regional meetings in Asia where migration management was the main agenda item, including the ILO tripartite meeting on challenges to labour migration policy and management in Asia-Pacific in July 2003, and the IOM-sponsored Ministerial Consultations for Countries of Origin in Asia, the first one of which took place in Colombo in April 2003 and the second in Manila in September 2004.

Addressing problems of irregular migration

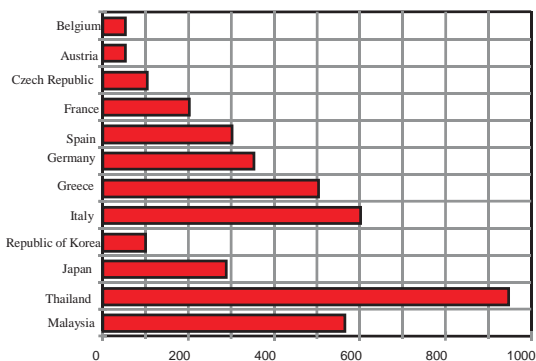
The growing populations of migrants in an irregular status are a major preoccupation and concern for governments in the region and elsewhere. Many are asylum-seekers fleeing from persecution in Myanmar and from violent conflict in Central Asia, Afghanistan, Nepal, Sri Lanka and southern Philippines, but the large majority are people seeking better employment and greater economic security for their families. The size of populations in an irregular status is understandably difficult to estimate but regularization campaigns in several Asian countries provide some rough dimensions. There were 420,000 undocumented workers registered by their employers in Thailand in March 2002 out of over 900,000 estimated migrants in an irregular status (Chalamwong, 2003). In Malaysia, the number of irregular migrants was estimated at 560,000 out of 1.7 million foreign workers. Japan's Bureau of Immigration reported that the number of "overstaying foreign residents" had been brought down to 283,000 at the end of 1997. There were some 95,000 foreign workers in an irregular status in the Republic of Korea before the 1997 crisis but only 3,160 in Singapore (OECD, 2000).

The simple reality is that there are far more people seeking to emigrate than there are destination States willing to accommodate them. The dynamism of some economies of the region have further widened income differentials with others, accentuating further the impact of "pull" and "push" pressures on cross-border movements. Moreover, social networks which reduce the cost of migration quickly

develop as earlier cohorts of migrants find a way of establishing themselves in their countries of employment, legally or illegally. In Malaysia, the number of foreigners in an irregular status, estimated at some 800,000 in 1997, kept on creeping up in spite of several mass expulsions and almost yearly regularization campaigns. In the Republic of Korea, an amnesty was declared in June 2001 when some 216,000 foreigners were estimated to be in the country illegally. Despite large return flows the numbers kept increasing so that in April 2003 the population of foreigners in an irregular status was estimated at 289,500.

The so-called “Bangkok Declaration on Irregular Migration” adopted at a ministerial conference of 18 Asian and Pacific countries in 1999 drew attention to the complex nature of irregular migration and called for a deeper analysis of its causes, for adopting appropriate domestic laws and regulations, and for assisting victims and criminalizing perpetrators of trafficking. It considered very important efforts to ensure timely return, to raise public awareness and enhance inter-country cooperation.² The central message is for States to go beyond migration controls. However, the Declaration is stated too broadly to allow one to draw out the implications for migration management.

Illegal foreign workers



There are a few examples of agreements to deal explicitly with irregular migration. Cooperation to deal with the problems after people have moved is exemplified by the agreement between Malaysia and Indonesia. When Malaysia decided to expel irregular migrants, the Government entered into what amounted to a repatriation agreement with Indonesia, enabling the Malaysian authorities to work with their counterparts in Jakarta to establish the identities of the Indonesian

migrants, arrange for their orderly repatriation, and re-hiring of some through regular channels.

In the absence of more cooperative arrangements for managing migration it is understandable why States resort to a variety of unilateral measures to discourage irregular migration. The choice of measures may in some instances be dictated by geography as some countries have more difficult frontiers to protect than others. Where the cost of tightening controls on borders become almost prohibitive because of long land borders, countries tend to rely more heavily on internal measures. Those include greater police monitoring of migrants' activities which can be very effective as in Hong Kong, China, but it can also lead in some instances, not to reducing irregular migration, but to providing unscrupulous elements of the local police opportunities for extortion.

Most of the Asian countries have adopted stiff sanctions against perpetrators of clandestine immigration, illegal employment of undocumented workers, and against the undocumented workers themselves. Less use is made of measures like withdrawal of business licenses, in the case of repeated offences; exclusion of offenders from bidding for public contracts; and offering various tax rebates or exemptions from social charges when employers hire only documented foreign workers in certain industries or occupations. In Japan, the 1990 amendment of the *Immigration Control Act* introduced a system of penalties against employers and brokers, with imprisonment of up to three years and fines of up to 2 million yen (1 US\$ = 121 JPY). The earlier sanctions were provided for in Act. No. 125 of 1952 on the registration of foreigners, which required the controversial finger-printing and penalized only the irregular worker. In the Republic of Korea, the *Exit and Entry Control Act* imposes the same penalty on the employer of clandestine migrants and the clandestine migrant himself – imprisonment of up to one year and a fine of 5 million won (1 US\$ = 1,047 KRW). The penalty has recently been stiffened to up to three years, together with a fine of up to 10 million won, for anyone who facilitates or permits the employment of a foreigner who is not in possession of a work permit (Art. 94.6). In Thailand, which has the most difficulty controlling its borders, the sanctions against employers of irregular workers were stiffened in 1998 to three years in jail (and up to five years for those who provide a home for irregular migrants).³

Singapore, the law provides corporal punishment against illegal immigrants and over-stayers in addition to jail terms. Those who overstay more than 90 days are punishable with no less than three strokes of the cane⁴ and fines not exceeding 6,000 SGD (1 US\$ = 1.69 SGD). Employers are also liable to caning if it is proven in court that they have knowingly employed more than five immigration offenders.

Fines may amount from 24 up to 48 months equivalent of the applicable foreign worker levy, and up to one year imprisonment (Mui, 2004).

Employer sanctions raise the potential cost of hiring such workers in two ways: first, they cause a loss in production time if the undocumented workers are discovered and second, the employer must pay financial penalties if they are found guilty of violating the law. Such possible loss and sanctions may discourage employers from hiring undocumented alien workers unless the benefits of hiring them in terms of lower wages outweigh the risks. The latter may be significant where employers escape penalties because of lengthy litigation or through bribery. Some unscrupulous employers have been known to get away not paying wages by reporting their illegal workers to the authorities who promptly deport them without ensuring that they have received their back wages. The most effective deterrent against employment of illegal workers has proven to be not employers' sanctions but the threat of exclusion from government contracts.

According to the ILO 2003 Survey, 13 of the 22 responding Asian countries have procedures for regularizing the status of migrants. Over the past decade, several Asian countries, notably the Republic of Korea, Malaysia and Thailand, have declared amnesties for migrants working illegally in their country. In order to encourage workers to declare themselves the possibility of becoming "regularized" was offered. Malaysia offered the Indonesian workers a chance to become regular but only if they first return to Indonesia and go through regular channels. In her recent regularization programme, the Republic of Korea allowed some workers to remain and work using as a criterion the amount of time already spent gainfully in the country. Those who have already been employed gainfully beyond a certain length of time were not offered temporary work permits, but may apply again some time after returning to their home countries. In some instances as in Thailand the national authorities put the onus of registering and applying for a work permit, not on the workers but on their employers. This proved ineffective, especially since the employers were required to pay fees for each registered worker to whom they must now pay wages no lower than the legal minimum. The measure was subsequently revised to allow either to register.

Clandestine foreign workers are stuck in the underground or shadow economy where wages are low and work conditions unregulated or unprotected.⁵ Regularization should open the way for them to find better-paying jobs and occupations and to have access to social security. The impact however does not always become immediately apparent. In the United States of America, most regularized workers have tended to stay for some time in their pre-legalization jobs, receiving the same wages as before. Research in that country shows that

occupational mobility depends more on language skills and experience than on legal status. Even the undocumented can be occupationally mobile if they have skills needed in the market (see Kassoudji and Cobb-Clark, 2002).

Amnesties and regularizations inevitably send an undesired message: that it is easier to enter a country clandestinely and then get regularized, than to let the official application procedures take their normal course. Illegal immigrants are rewarded, while those waiting patiently outside are not. For this reason, some countries have avoided using or repeating amnesties and regularization programmes. Experience shows that countries that cannot effectively control their borders would be better off opening legal avenues for employment of foreign workers and entering into agreements with source country governments for their efficient recruitment.

Making temporary worker programmes work

As noted earlier, only Australia and New Zealand offer foreign workers the possibility of immigration. All other countries needing foreign workers bring them in through temporary or guest worker schemes. Such schemes may be a sound way to meet labour requirements for “time-bound” work such as for construction projects or seasonal farming, but they raise a variety of problems when used for jobs of the more regular kind. The main reason is because it is in the interest of migrant workers to remain longer in better paying jobs and in the interest of employers to keep their trained workers. Unfortunately having a temporary admission status puts workers in a vulnerable position. They can easily be pressured not to join unions otherwise they risk not being extended or re-hired. Few would dare complain of discriminatory treatment in wages or other working conditions for the same reason. As temporary migrants, only those with high salaries are allowed to bring their families with them.

The region has seen the use of strong measures, some bordering on violation of basic human and worker rights, to ensure that workers do not acquire rights to settle permanently. In one instance the validity of a work visa of a female domestic is made conditional on the woman not being pregnant, and not marrying a national.⁶ Most temporary migrant workers cannot bring or be united with their families, cannot freely change employers and are excluded from membership in social security. While most countries have laws allowing mobility of foreign workers in the labour market, in practice the situation is often quite different.⁷

It is unlikely that labour-short countries of the region will be changing their temporary or “guest worker” policies in the foreseeable future, except in the case of highly-skilled workers. There are no pressures on governments to change their

present policies, and indeed as the 2000 United Nations' Report shows, the popular sentiment is for maintaining current immigration levels.⁸ The events that followed the Asian financial crisis do suggest that public opinion can change very quickly. In Thailand and Malaysia one of the coping strategies seen by the respective governments as essential to protecting nationals was to send home migrant workers.

Reducing the risks and cost of migration

In countries of origin the main concern of governments is still centred around the need to reduce the "risks" faced in migration. Some risks are inherent in taking up employment in foreign countries because of lack of information, and others are due to the uncertainties in finding remedies when employment contracts fail. Workers are less aware than they are at home of what jobs are available, how their skills match those jobs, and how to access the jobs in foreign countries. This deficiency in information explains for the most part the existence of employment intermediaries or recruitment agents. Job-seekers try to reduce those risks by "buying" information from job-brokers, and the information they need to buy tends to be greater the less familiar or the more distant is the country of employment. One must add to the risks, however, the fact that information may sometimes be deliberately falsified for purposes of trafficking or to commit fraud. The latter has been a significant problem in many countries of origin in Asia where the challenge to migration management is, in the first instance, to establish a credible and efficient private recruitment system. Governments seek to minimize the problem through licensing and close regulation of the operations of recruitment agents.

The second type of risks is much more difficult for origin countries to address, and reducing them does require the assistance and cooperation of authorities in countries of employment. Employment contracts may fail for a number of reasons including a poor matching of the worker to the job, bankruptcy of the employer, worker-employer disputes, maltreatment of the worker including physical abuse, or work-related injuries or accidents. The risks lie in the uncertainties on what happens when those contingencies or problems occur. Workers have access to various remedies when the same contingencies happen at home, but not to the same extent when abroad. Where the risks can be insured against like accidents and injuries, the countries of origin have sought to provide the workers with group or social insurance; but many of the risks are not covered.

Studies in different countries have repeatedly revealed that migrant workers are paid much less than native workers (often only half of the latter's) for doing the same job, not to mention their exclusion from social security protection and other

worker benefits and entitlements (Abella, Park and Bohning, 1995). The availability of migrant labour at very low wages has had the unintended consequence of creating incentives for investments in labour-intensive industries and building interests and stakes in expanding the admission of foreign workers.

Today the concerns are more heavily focused on the abuses suffered by women migrant workers whose participation in migration has climbed steeply with rising demand for domestic helpers, entertainers, caregivers, and other service occupations (ILO, 2003). There is likewise a growing phenomenon of “trafficking” in young women for purposes of prostitution (Boonpala, 2002). The dimensions of the problems are difficult to establish with any confidence but most observers take it for granted that reported cases represent no more than a fraction of actual cases of abuse or exploitation. In the case of sexual harassment women victims are often reluctant to make their problems known.

Although much more serious research on the subject is needed, anecdotal evidence from the news media suggests that the cost of migration tends to fall relatively more heavily on those with less skills or education than others. Medical doctors and nurses, petroleum engineers and IT workers, deck officers for ships and similar other professionals who are courted by foreign employers invest relatively little for migration and by and large face few problems with working conditions. By contrast, those with few skills are known to pay recruitment agents relatively large proportions of their expected earnings abroad, to suffer more from wage discrimination, and are more likely to fall victims of fraud as well as harassment at work. They have more “risks” they should insure against, but are the ones least able to afford the means to ensure against those risks.

Limits to unilateral approaches to managing migration

The region has seen the widespread commercialization of migration processes, with all its advantages as well as risks. Profit-motivated private individuals or companies were very effective in increasing employment abroad, but only at the cost of reducing wages. Lacking the authority to enforce their policies and standards beyond their borders, governments of source countries had to devise new ways with which to influence migration processes such as requiring all migrant workers wishing to work abroad to register their contracts to ascertain compliance with minimum standards. This is of course only effective if it is recognized by the authorities or the courts in foreign countries as the legal basis for resolving disputes with employers. Also, it is not uncommon for contracts signed before authorities in source countries to be replaced by inferior ones upon arrival in countries of employment (ILO, 1997; Srivastava and Sasikumar, 2003).

Authorities in the countries of employment approve applications from employers to bring in foreign workers usually after determining that no national workers can do the same job and that the employer is promising to pay foreign workers wages no less than those paid to nationals with equivalent qualifications. Those conditions are however difficult to establish and thus seldom complied with in practice.

Controls over the fees charged for recruitment are likewise difficult to achieve in the absence of bilateral arrangements. Since recruitment fees can be exacted from the workers when they are already at work in a foreign country, a legal ceiling placed by authorities in origin countries can easily be circumvented. Deduction from migrants' wages is a widespread problem which is difficult to address. Unless there are strong labour institutions the market forces will prevail and standards will fall as there are ready supplies of labour willing to work for lower wages. Moreover complaints are rarely raised by workers eager to have their contracts renewed or extended.

Safeguarding the rights of migrant workers

According to the *1998 Declaration of Fundamental Principles and Rights at Work and its Follow-Up*, all ILO member States have an obligation to respect, promote and realize four categories of principles and rights at work regardless of whether or not they have ratified the relevant Conventions:

- freedom of association and the recognition of the right to collective bargaining;
- elimination of all forms of forced or compulsory labour;
- effective abolition of child labour; and
- elimination of discrimination in respect of employment and occupation.

The *ILO 2003 Survey*⁹ sought information from member States on whether under their laws migrant workers in their territory enjoyed equal treatment with their nationals with respect to the above-mentioned fundamental rights and other labour rights provided for in a number of ILO Conventions, including especially the two ILO instruments on migrant workers, *Convention 97* and *Convention 143* and their accompanying *Recommendations, Nos. 86 and 151*.¹⁰ The Survey refers specifically to treatment of *temporary* migrant workers in a *regular* status with respect to the following rights and entitlements:

- right to form or join workers' organizations;
- right to bargain collectively;

- protection against forced labour;
- protection against discrimination at work;
- minimum age of employment;
- equal treatment with national workers in respect of wages;
- equal treatment with national workers in respect of minimum wages;
- equal access to training;
- equal access to free public medical/health services;
- protection against sexual harassment;
- right to be accompanied by family members;
- protection against ethnic and racial harassment;
- access to legal proceedings in a language they understand;
- free housing (e.g. for agricultural workers);
- public schooling for their children;
- vote in local/national elections.

Right to organize and bargain collectively

Of the 19 countries from the region which responded to the ILO Survey, only nine affirmed their respect for the right of temporary migrant workers to organize or join trade unions. Australia, Japan, New Zealand, Singapore and Thailand were among the important countries of employment which affirmed such rights. Other countries of employment, however, did not respond to the question. On the right of temporary migrant workers to bargain collectively, it is noteworthy that 11 of the 19 countries did not respond. They included Bahrain, the Republic of Korea, Kuwait, Malaysia, Myanmar, Oman, the Philippines, Saudi Arabia, Singapore, Sri Lanka and the United Arab Emirates.

While most countries allow foreign workers to join trade unions, a few prohibit them from organizing their own unions and in some instances there are restrictions to their assuming positions of responsibility. Undocumented foreign workers cannot join trade unions in Japan, the Republic of Korea, and Thailand. In the Republic of Korea, foreign trainees do not have the status of workers and are not accepted as members by the Korean trade unions, but it is believed that they benefit from the gains in collective bargaining. With respect to trade union organization, Hong Kong, China is perhaps unique in that there exists a union of

Asian migrant workers. This is particularly remarkable because it is a union of household helpers.

Restrictions on the right to organize based on nationality exist in varying degrees in the legislation of several countries. Some countries, for example, make citizenship a precondition for the establishment of trade unions, such as Thailand: section 88 of the Labour Relations Act, 1975 stipulate that a certain proportion of the members must be nationals.¹¹ In others, trade union affiliation of non-nationals is subject to conditions of residence, as in Kuwait: non-Kuwaiti workers must have resided five years in Kuwait to be able to join a trade union (section 72 of the Labour Code - Ordinance No. 38 of 1964). Reciprocity is another condition that may be set such as in the case of the Philippines where foreign workers holding valid permits issued by the Ministry of Labour and Employment may establish and join organizations of their own choosing on condition that the same rights are accorded to Philippine workers in the country of origin of the foreign worker.

Protection against forced labour

On the protection against forced labour, the ILO Survey revealed that a majority of countries affirmed their adherence to the principle but there was no response from Bahrain, Kuwait, Oman, the Philippines, Singapore and Sri Lanka. It should be noted that there have been agreements among many countries to act decisively and cooperatively against trafficking which involves forced labour.¹²

Equality of treatment

The main principle behind international conventions on migrant workers is non-discriminatory treatment. All member States ratifying *ILO Convention 97* are asked to make it their national policy to “apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of remuneration, hours of work, overtime, holidays with pay, minimum age, membership of trade unions and enjoyment of the benefits of collective bargaining, accommodation, social security (subject to certain limitations), employment taxes, and legal proceedings”. Except for New Zealand; Hong Kong, China; and the State of Sabah (Malaysia), none of the Asian countries have ratified Convention 97. The principle of non-discriminatory treatment is nonetheless recognized in respect of certain conditions by some States that have not ratified the Convention. Indeed, most of the Asian labour-importing States have labour legislation providing for equal treatment and non-discrimination especially in the matter of remuneration. In Japan, the Labour Standards Law stipulates that an employer shall not engage in discriminatory treatment with respect to wages,

working hours, or other working conditions by reason of nationality, creed or social status of any worker. Migrants are guaranteed the same minimum wage as national workers (Y 250,000 per month) (1 US\$ = 121 JPY). In Taiwan Province of China and in the Republic of Korea foreign workers with employment visas have the same rights as national workers.

The ILO Survey confirms this observation. There seems to be widespread adherence to the principle of equality of treatment as provided for in ILO *Convention No. 111*, but five countries offered no response including Bahrain, Kuwait, Oman, Singapore and Sri Lanka. Except for the Republic of Korea, Kuwait, Oman and Singapore, all the respondent countries in the ILO Survey claimed that their laws provide for equality of treatment for temporary migrant workers in the matter of wages.

In Singapore, the State does not intervene in wage setting but wages set through collective bargaining are supposed to be applied without distinction to both national and foreign workers. In the Republic of Korea, Art. 5 of the Labour Standards Act specifically bans discrimination on the grounds of nationality.

The problem lies frequently not in the absence of appropriate laws but in the failure of implementation. Notwithstanding legal prohibitions against discrimination, significant differences have been observed in wages of migrant and native workers in many countries. In Taiwan Province of China, for example, the average monthly wages in 1997 for foreign workers in manufacturing were only 86.8 per cent of the average for nationals (TWD 16,167 versus 18,614) (1 US\$ = 33.5 TWD), and in construction only 65 per cent (TWD 15,710 versus 24,169). In the Republic of Korea, foreign workers illegally employed received 40 per cent lower wages than nationals doing the same job. Trainees in fact received only about 35 per cent of the average basic wage of Korean workers in manufacturing. Wage differentials may be expected on account of differences in skill and productivity, and by the fact that most foreigners are employed in small firms (which generally pay lower wages than big companies), but those are unlikely to fully explain the wide differences.

Other entitlements

According to the ILO Survey, 11 out of the 19 Asian countries which responded claimed that they allow rights to family reunification even for temporary migrant workers. This is a notable finding since in fact most Asian workers are not accompanied by family members. The right is there but it can only be enjoyed by those earning above certain wages or salaries. One may note parenthetically that the right to family reunification has not been a major issue in Asia since low-wage

unskilled workers usually cannot afford to maintain their families in their countries of employment. The exception is Australia where family members may be authorized to accompany the temporary foreign worker and also be entitled to work.¹³

There is much less commitment to equality of treatment for temporary migrant workers when it comes to medical services, housing and education for children. The Republic of Korea and Malaysia clearly said they did not guarantee medical services, and many did not respond to the question including Australia and New Zealand, China, Kuwait, Oman, the Philippines, Sri Lanka and Thailand. Only five countries claimed that they treated temporary migrant workers equally as nationals in the provision of free housing for workers as, for example, in agricultural plantations. Those countries are Fiji, Malaysia, Qatar, Saudi Arabia, and the United Arab Emirates. Finally, on the matter of giving temporary migrant workers access to public schooling for their children, eight of the countries (Australia, Bahrain, Fiji, Japan, Kazakhstan, New Zealand, Qatar and Saudi Arabia) claimed that they did.

Equal treatment in social security

Many migrant workers, including those admitted into countries only temporarily as guest workers, spend a considerable part of their working lives outside their countries. Unless there are arrangements through social security treaties for their entitlement to old-age benefits, many risk not having any social protection when they reach retirement ages.¹⁴ The ILO 2003 Survey enquired into the treatment accorded to migrant workers in the social protection legislation of member States. The Survey sought clarification into the entitlement of migrant workers for the following benefits:

- Medical care
- Sickness benefits
- Unemployment benefits
- Old-age benefits
- Family benefits
- Maternity benefits
- Invalidity
- Survivors

The Survey revealed a wide range of situations facing migrant workers in different countries of the region. In Japan, migrant workers appear to be comprehensively protected because of entitlement to all the benefits either under contributory social insurance or under social assistance schemes,¹⁵ and in the case of employment injuries, under employer-financed schemes. However, in Bahrain migrant workers are totally excluded and in Kuwait they are only entitled to medical care benefits.¹⁶

Social security is an area where the discrepancy between law and practice appears to be very wide. It is generally known that most unskilled migrant workers from the region do not enjoy the benefits to which they may be entitled to under the laws of the countries of employment. The Survey, for example, shows that Saudi Arabia gives equal treatment to migrant workers in all benefits except for invalidity and survivor's benefits. However the country has no arrangements with Asian countries of origin for payment of old-age benefits. Unlike in Europe or the United States of America, important sending and receiving countries in Asia are still without any kind of conventions or agreements. From the Survey one finds that only the Philippines, Pakistan and China have entered into bilateral agreements to cover their migrant workers with some social security protection. Ratification of the *Equality of Treatment (Social Security) Convention*, 1962 (No. 118) and the *Maintenance of Social Security Rights Convention*, 1982 (No. 157) has given the Philippines some advantage in concluding treaties on social security with receiving countries.¹⁷

Access to employment

While the differences are probably less than would appear from a reading of formal policies, the Asian countries of employment have stricter limits to foreigners' access to employment than countries in other regions. Most States specify the occupations open to foreign workers, regulate the circumstances in which they may change jobs, and establish priorities for employment in favour of national workers. Treatment however varies according to skill. Singapore, for example, grants permanent residence and therefore free access to any employment for skilled foreign workers, while no such rights are given to the unskilled (with a small concession to domestic helpers who can opt to change employers).¹⁸

Rights of migrant workers in an irregular status

All migrants, regardless of immigration status, have human rights which must be protected and respected. Those rights have been elaborated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights which have been ratified by most States Members of the

United Nations. Those rights are all contained in the 1990 United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families which has been ratified by some Asian countries of origin. However, in spite of those international principles and instruments, undocumented migrants working illegally or without appropriate documents are always at risk of having their basic rights violated. While legal status alone will not guarantee protection against discrimination and exploitative treatment, the absence of legal status is almost universally what undermines the position of foreign workers in employment relationships.

Because of the dangers of exploitation and abuse, ILO *Convention 143* asks member States to take measures to stop clandestine migration and the illegal employment of undocumented foreign workers. The Convention equates illegal migration with “migration under abusive conditions” precisely because of the difficulties of using national and international law to protect undocumented workers against employment-related maltreatment and exploitation. The Convention requires ratifying States to:

“...systematically seek to determine whether there are illegally employed migrant workers on its territory and whether there depart from, pass through or arrive in its territory any movements of migrants for employment in which the migrants are subjected during their journey, on arrival or during their period of residence and employment to conditions contravening relevant international multilateral or bilateral instruments or agreements or national laws or regulations”.

Moreover, it requires them to

“...adopt all necessary and appropriate measures, both within its jurisdiction and in collaboration with other Members- (a) to suppress clandestine movements of migrants for employment and illegal employment of migrants, and (b) against the organizers of illicit or clandestine movements of migrants for employment departing from, passing through, or arriving in its territory, and against those who employ workers who have immigrated in illegal conditions, in order to prevent and to eliminate the abuses referred to...”.

Although the ILO Conventions recognize the right of States to deny foreign nationals admission into their territories, and by implication to deny them the opportunity to work in their territories, they nevertheless provide for equal treatment of workers in an irregular status “...in respect of rights arising out of past employment as regards remuneration, social security and other benefits”. (Part I

Art.9 of C. 143). Moreover, in the event of expulsion of the worker and his or her family, the cost must not be borne by them.

Where immigration measures fail to stop foreign workers from working in a country illegally, the negative consequences tend to fall on the less skilled native workers. It is very tempting for employers to replace native workers with undocumented foreign workers because they accept lower wages, will not join trade unions, and can be made to work under conditions which fall below minimum standards for safety and hygiene.

The consequences on governance should also be of concern. While there may be advantages to certain employers, the presence of irregular foreign workers poses severe dilemmas for the authorities (Battistella and Asis, 2003; Kunieda,1996). There is an ever present concern that giving them regular status will compromise immigration policies since violators are in effect eventually rewarded. However, not to give them regular status would lead to putting them at risk of exploitation, making firms employing them more competitive than law-abiding ones, and bringing down wages even for nationals in the same occupations. Several mass expulsions of irregular migrants have in fact taken place in the region, some conducted without due process and hence in violation of international principles. In some cases irregular migrants have been kept in detention camps for long periods and conditions were such that they contributed to premature deaths.

Emerging social issues in labour migration

There is little doubt that labour migration is having a profound social impact on countries of employment and countries of origin. In countries where temporary worker migration has taken on historic dimensions, such as for example in the Gulf States, people's lifestyles have been completely transformed. Command over cheap labour from outside has changed consumption patterns, people's work values and attitude to certain occupations, sense of national security (or insecurity), modes of bringing up children, and even food preferences. In countries of origin social structures have been upset by the changes in relative incomes of different classes, by the greater capacity of migrants' families to invest in children's education, by the socialization of children during long absences of their mothers, and by the changed role of some women in the family as they become the principal breadwinners. The economic impact of migration has no doubt been more favourable to some groups than to others, in some regions more than in others, bringing in its train important redistribution of income which still may not be easily reflected in official statistics.

Of the many social issues emerging as a result of migration, the following appear to warrant closer attention since they have profound long-term implications for both societies of employment and origin:

- Emergence of a new social underclass with few rights and most being excluded from social protection;
- Segmentation of the labour market because certain occupations/sectors are stigmatized by association with cheap, exploited foreign labour;
- Growing xenophobia, and in some instances, racism;
- Increased internal migration in origin countries;
- Redirection of educational investments in favour of meeting external demand.

In Asia and the Pacific, the larger part of migrant labour admissions, through both legal and illegal doors, is to fill up shortages for “unwanted” jobs, otherwise known as 3-D jobs (dirty, dangerous, and demeaning). It is thus hardly surprising that wages in those jobs have stagnated, with the consequence that national workers in the same occupations tend to leave for better options. Native workers without other employable skills are left further behind, particularly as more foreign workers are admitted who are willing to accept limitations of their rights and exclusion from social protection. Whether it be the deep-sea fishing in Thailand or Taiwan Province of China, domestic services in Malaysia or construction in Japan or the Republic of Korea, the same trend of native workers leaving certain 3-D occupations en masse is observed.

The phenomenon has another consequence, which is to add to the segmentation of the labour market. In Thailand at the height of the financial crisis, the Government’s policy of sending home foreign workers in order to create spaces in the labour market for unemployed Thais did not work. It has become much harder to convince unemployed Thais to accept certain jobs which became associated with cheap foreign labour. It is hard to say if this behaviour would have been sustained had the economic situation worsened further, but at least for some time most Thai workers appeared to have managed to ride out the crisis without stepping down to a lower status job. Hence a situation arose where certain industries remained short of labour in spite of high unemployment in the country (Martin, 2004).

As in other parts of the world, the growth of minority populations in Asia has led to xenophobia and in some places to racism. The public discourse on migration policy, for example, is full of references to the difference between natives and

foreigners. The latter are supposed to have greater proclivity to get involved with criminal activities, to carry communicable diseases, to have poor personal hygiene, to commit petty theft, and to have unruly behaviour. It has led civic-spirited groups in places like Japan and the Republic of Korea to launch campaigns against racism and xenophobia. In Thailand, ancient security concerns vis-à-vis Burma tend to get resurrected when there are calls for expulsion of undocumented Burmese workers.

The assumption that it is a transitory phenomenon, one that will pass away after a labour-short country has successfully made certain structural adjustments, underlies the common official attitude to labour migration. This attitude is reflected in the absence of any discussion about opening doors for permanent settlement or about measures to promote the social integration of foreign workers in major countries of employment. There is instead much more discussion of measures necessary to reduce dependence on foreign labour, a subject that is today very much on the policy agenda of many countries, whether in East Asia or in the Gulf. Everyone appears to recognize that a certain degree of dependence on foreign labour develops over time but the authorities continue to hold the belief that with the right set of policies such dependence can be reduced or even stopped (Huguet and Punpuing, 2005; Hui, 2001; Lee, 2004; NESDB, 1993).

Since infrastructures for linking with foreign countries are in metropolitan centres, one would expect that external migration would stimulate internal population movements. Many studies have already documented the step-wise character of most migratory movements, from villages to towns, from smaller to bigger towns and cities, from cities to metropolitan centres, and then to destinations outside the country. It has also been widely observed that the majority of returning migrant workers tend to stay in the major centres, rather than going back to their towns and villages. Evidence of the incremental impact of external migration on urbanization still needs to be assessed, however. Urbanization has been rising significantly even before the upsurge in external labour migration and it is difficult to isolate the separate impact of the latter from those of other propelling forces.

Finally, the adjustments of origin country labour markets to the growth of labour migration raise another set of social issues. On development grounds, most countries give greater priority to primary, rather than to tertiary, levels in financing education. However, the demand abroad for skilled labour (i.e. IT specialists, medical doctors, teachers) has in some countries been so great that substantial shifts are occurring in the direction of resource flows, from both public and private sources, in favour of the latter. One face of the issue is the question of equity – should origin societies pay more for training and education of those going to work

in foreign countries? Is there justification for increasing subsidies to higher, as opposed to lower or secondary education?

Bilateral and multilateral agreements

While cooperation is clearly vital to managing migration, only an insignificant part of labour migration from and within the region is covered by bilateral labour agreements. Among the countries of employment Malaysia is among the very few that has bilateral agreements on recruiting foreign workers.¹⁹ From the ILO 2003 Survey we learn that most bilateral agreements entered into by countries of Asia and the Pacific are on social security and are largely accounted for by only two countries, Australia and New Zealand (22 out of the 33 bilateral agreements, all of them with other OECD countries). Apart from social security, 11 countries reported having bilateral agreements. Seven of those countries are countries of net emigration. What is striking is that most Asian countries of origin have bilateral agreements with only one or at most three other countries even if their workers are employed in many parts of the world. Arguing that agreements would be inconsistent with their policies not to intervene in the labour market, labour-importing countries have generally refused to entertain proposals for bilateral agreements.²⁰ Origin countries rarely have the market power to overcome their disadvantage and must trade-off better conditions for more jobs. For example, when the Government of the Philippines adopted minimum standards for job contracts in Singapore and Hong Kong, China for domestics, Filipinos started to be displaced by workers from other countries.

Among the few exceptions were those entered into by the Korean Federation of Small Business on behalf of the Government of Korea for the recruitment and admission of so-called “trainees”. Those were concluded with a number of source countries including China, Mongolia, Thailand, Viet Nam, Indonesia, and the Philippines. They included numerical targets and established procedures for orderly migration processes involving public bodies on both sides. Another is that between Taiwan Province of China and the Philippines which allowed for direct hiring by employers in order to counteract the abusive practices of Taiwanese recruitment agencies.

There are some hopeful signs that at least in some parts of the region national authorities are now convinced that inter-state cooperation is necessary for the effective management of migration. The Government of Malaysia concluded not long ago a memoranda of understanding with Bangladesh, China, Sri Lanka, Thailand, Pakistan, Viet Nam and Indonesia to regulate recruitment processes and procedures. In order to put more order in the movements of workers from its

neighbouring countries, Thailand has recently signed a memoranda of understanding with the Lao People's Democratic Republic (October 2002), Cambodia (May 2003) and Myanmar (June 2003) which required the active participation by governments of both sides (Huguet and Punpuing, 2005). The employment of workers requires prior permission of the authorized agencies of the respective countries, the submission by one country of a list of available jobs and by the other of a list of selected applicants for those jobs, and supervision by both sides to insure that appropriate visas and work permits are issued, that workers comply with requirements for health insurance, contributions to a savings' fund, taxes and employment contract.

Conclusions

This paper has reviewed the main trends in labour migration in Asia and the Pacific and the social issues that have arisen in efforts by countries to manage the recruitment and employment of migrant workers. Labour migration is a fast growing phenomenon which is likely to gain force in the future because of widening income disparities, declining work forces in the more developed regions, and changing values and attitudes to work. Policies have so far been anchored on the assumption that the need for migration is transitory and that it is a variable that can easily be manipulated at will, if the right kind of strategies and measures are adopted. Those policies have been compared with international standards, especially those contained in the ILO Conventions, and with trends and practices in other regions. This paper suggests that this is an emerging major social issue on both sides of the migration chain. To ensure that migrants do not settle, migrant workers are admitted mainly through temporary migration programmes which in many instances mean a limitation of the rights of migrant workers. Many of the concerns of receiving States could have been addressed through closer cooperation with origin countries, but unfortunately they have not in the past shown readiness to limit their sovereign rights to manage migration.

Migration is likely to increase as migrant workers and their employers become dependent on each other. Migration is changing patterns and habits of consumption in receiving countries, segmenting labour markets, and marginalizing certain groups especially the old and the unskilled. It is also causing xenophobia and racism. In origin countries it is worsening urbanization pressures, affecting income distribution and social structures, and influencing occupational choices. In brief, external migration of labour has been having profound effects on societies of the region, posing challenges for governments and other sectors to come up with ways to make migration a force for long-term growth and development, rather than a source of social conflict and discord.

Endnotes

1. See ILO, *Towards a fair deal for migrant workers in the global economy Report VI* for the 92nd Session of the International Labour Conference, Geneva, 2004.
2. *The Bangkok Declaration on Irregular Migration* was issued by the participants to the International Symposium on Migration, *Towards Regional Cooperation on Irregular/Undocumented Migration*, 21-23 April 1999, Bangkok convened by the Government of Thailand with support from IOM.
3. See also Sontisakyothin (2000) and Chitayananda, Risser and Chantavanich (1997).
4. Caning is not allowed for males aged below 16 and over 50, and females of all ages.
5. Irregular migration to the Republic of Korea is largely blamed on the country's own policies. Many of the foreign workers employed there illegally actually were admitted as "trainees" under a scheme administered by the Korea Small Business Federation. Foreign trainees, who were doing regular work but receiving "trainee allowances", quickly enough found it advantageous to leave their employers and work for higher wages elsewhere, albeit illegally.
6. For a good discussion of the issues facing women domestic helpers in Singapore, see Wong (1996).
7. See table 3. Fifteen of the responding countries actually claimed that they allowed mobility in the labour market, in some cases after completing a certain period of employment with the original employer. In practice however one seldom finds countries allowing unskilled workers to change employers without prior permission by the responsible ministry.
8. Interestingly, Singapore is unique in that its Government favours a rise in immigration.
9. This Survey was undertaken in preparation for the ILO General Discussion on Migrant Workers at the 92nd Session of the International Labour Conference, June 2004.
10. Referring to *Migration for Employment Convention (Revised)*, 1949 (No.97) and the supplementing *Migration for Employment Recommendation (Revised)*, 1949, (No. 86); *Migrant Workers (Supplementary Provisions) Convention*, 1975 (No. 143) and the *Migrant Workers Recommendation*, 1975 (No. 151).
11. This is also found in other regions, for example, Colombia: two thirds of the membership, Panama three fourths of the membership.
12. See "Bangkok Declaration" below.
13. In the United States, family reunification is possible for certain categories of work visa holders, but family members are not allowed to work. In the United Kingdom family reunification is allowed if the conditions regarding resources and accommodation are met. In France, temporary workers are not entitled to family reunification but there are exceptions for high-level staff. In Switzerland and in Germany, family reunification is not possible for foreigners holding short-term residence permits.
14. Unfortunately exclusion in social security and other entitlements is often considered a necessary component of strategies to insure rotation among migrants and discourage settlement even if there is no

evidence that such exclusion actually makes any difference to length of stay. Indeed, positive measures like end-of-service bonus which increase with migrants' contributions to social security are likely to have more impact on motivating return and making it a real and durable option for migrants.

15. Benefits for low-income groups that are financed from taxes.

16. Foreign professionals employed in the public sector do receive fairly similar benefits to those given to citizens.

17. One hopeful sign is the fact that at the last Asian Regional Conference there was a call from some ASEAN countries for establishing such arrangements among its member States. In response to an earlier request the ILO in 1989 drafted a multilateral treaty on social security protection for migrant workers for the ASEAN countries. Unfortunately, in spite of considerable progress made and three technical meetings held among the countries, reservations by one member State prevented the conclusion of the treaty.

18. In France and The Netherlands, restrictions on occupational and geographical mobility can be removed after three years and in Italy, after two years. Belgium, Denmark, Germany, Luxembourg, and Spain allow free choice of employment to foreign nationals after being employed for five years. In Switzerland, the qualifying period extends to up to ten years.

19. Malaysia recently concluded a Memorandum of Agreement with Pakistan on the recruitment of Pakistani workers through a public employment agency.

20. There is nevertheless much evidence of interventions in the labour market. In the Gulf States wages and salaries in the public sector are many times higher than in the private sector because of policy. In Singapore the use of the foreign worker levy is a form of intervention in the market.

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