



**10<sup>th</sup> ASEM Conference of the Directors-General of  
Immigration and Management of Migratory Flows**  
5 – 7 September 2011, Ulan Bator, Mongolia



**Encouraging Skilled Migration and Preventing Irregular Employment: Role for Immigration Agencies**

Labour migration is a regional and global phenomenon that makes a significant contribution to the shaping of national economies and development processes around the world. While it cannot be viewed as a solution to poverty, regulating labour migration through targeted policies and strategies can be of high value to governments. Destination countries can fill labor shortages with migrant workers, while in countries of origin, labour migration can open up opportunities for nationals to find employment abroad and thus alleviate unemployment in certain sectors. Linked to the global search for skilled migration, in recent years, there has been increasing focus on the contribution of diaspora communities and returning migrants to their country of origin through the transfer of human, financial, social or cultural capital.

**Labour Migration and Diaspora Engagement as a Means of Development**

The concepts of ‘brain gain’ and ‘brain circulation’ have been put forward by international agencies and academia to demonstrate that migration flows of particularly highly skilled migrants are not one-directional and do not only have negative effects on the country of origin. A number of policies can be adopted in order to enhance the positive and mitigate the negative impacts of labour migration. Most of the time, coordination between countries of origin and of destination is required to meet this end. Policy options can include those aimed at promoting return and circular migration of highly skilled migrants; policies aimed at replenishing skills; modes of financing higher education; and ethical recruitment codes.

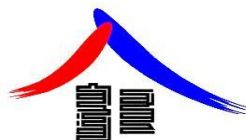
Remittances by labour migrants have attracted the most interest in the global debate on how migration can have a positive impact on national development processes of countries of origin. As remittances are private funds, it depends on how they are used to determine whether they enhance or impede national, communal or household development. The major policy options that States can adopt include: reducing the transfer costs of remittances; increasing the flow of remittances through legal channels; and channeling remittances into productive use (rather than entirely into consumption). Needless to say that a sound legal and policy environment promotes capital flows including remittances.

Diasporas, or multiple diaspora communities, can play an important role in the development processes of their home country. Diasporas are defined as individuals, irrespective of their citizenship or nationality, originating from one country but living outside that country, who, individually or collectively, are or could be willing to contribute to the development of their country of origin. There are many non-financial ways that diasporas can contribute to their countries of origin: through the transfer of skills, knowledge and technology; through the promotion of trade and market linkages between the origin and the destination countries; and through the development of civil society institutions and advocacy in destination countries. States can reach out to diaspora communities to encourage their active participation and contribution in their home country, including by structuring immigration, nationality, and tax laws to encourage skilled members of the diaspora to return.

Outreach activities require a concerted effort on the part of the government across a range of departments. Accordingly, many States have created governmental departments or line ministries who focus on diaspora engagement and have the mandate to reach out to and create linkages with diaspora communities. Along the lines of such institutional structures, many States have also adopted specific diaspora policies that formulate the rights and obligations of diasporas vis-à-vis their country of origin, addressing their specific interests such as opportunities for investment, property rights etc.

**Prevention of Irregular Labour Migration and Illegal Work of Third Country Nationals**

Irregular migration has to be viewed by governmental agencies from a protection as well as from a prevention angle. There is a continuing trend for States to design immigration policies to attract highly skilled migrants whilst restricting flows of low-skilled labor migration. However, many low-skilled migrants, who would not otherwise qualify, choose to forsake regular migration channels and enter the country through smuggling routes



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or on false pretenses such as student or tourist visas with the intention to work. To counter this, in many States there is a strong tendency to tighten regulatory measures and enforce policing of the irregular employment of migrants. The human rights of these irregular migrants, and the economic factors and labor market conditions encouraging irregular migration, both need to be addressed as they pose challenges to policy makers from both source and destination countries.

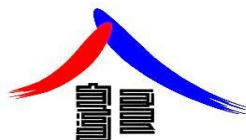
While States regulate migration for economic and social reasons, migrant workers also greatly benefit from regular status. Regular migrants are less likely to become vulnerable to or victims of discrimination, hostility, exploitation or other human rights violations at the hands of the employers or the general public. A lot can be done to prevent irregular migration, particularly before potential migrants leave their countries of origin. Information dissemination is the most effective tool in the prevention of irregular economic migration and protection of migrant workers' rights. In this regard, it is highly important to use the right information as well as the appropriate communication channels. Often information dissemination programmes intervene too late in the process of migration.

Even before migrant workers have secured a contract abroad, targeted information can empower them through knowledge about legal migration channels, their rights as a migrant worker, and the consequences of irregular migration. Pre-employment orientation seminars, such as the ones conducted in the Philippines, present a good practice example of early information dissemination as a preventative tool. The Pre-Employment Orientation Seminar in the Philippines aims to prepare individuals who are considering the prospect of working overseas by giving them an overview of the overseas employment programme, the benefits and risks of working abroad, and of the numerous steps and documents required for the application. Potential migrants are also informed about licensed recruitment agencies as well as of the operating procedures of illegal recruiters. Finally, potential migrants learn about the various government services and programmes at their disposal. As an example, the International Organization for Migration (IOM) has been supporting governments all over the world in the establishment of so- called Migrant Resource Centres (MRCs) that offer pre-employment and pre-departure orientation.

Another important measure in the prevention of irregular migration and the protection of migrant workers' rights is the regulation of private recruitment agencies. Recruitment agencies can play an important function in matching the need of employers with interested and qualified labour who are ready and willing to migrate abroad for employment purposes. Recruitment agencies can be private or public entities. In an increasingly globalized world, the role of private recruiters is generally rising while the role of public employment service agencies is generally on the decline. Regulating recruitment agencies can go a long way in both preventing irregular migration, as well as promoting the employment of national migrant workers abroad and third country nationals in their destination countries. However, there are numerous recruitment agencies that engage in fraudulent practices such as offering non-existing jobs or jobs without contracts, which invariably leads to migrants of irregular status in their destination countries who are vulnerable to abuse and exploitation.

Given the forces of demand and supply at play, State policing of abusive recruitment practices alone will not suffice in ensuring the responsible and ethical behavior of recruitment agencies. Alongside government regulation and control activities, self-regulation by private agencies should be welcomed and encouraged by States. One good example of a self-regulating code of conduct is the Covenant of Ethical Conduct and Good Practices of Overseas Employment Service Providers, which deals specifically with female migrant workers. It is currently signed by associations from Bangladesh, Cambodia, Indonesia, Jordan, Lao PDR, Nepal, The Philippines and Sri Lanka.

However, all efforts to regulate foreign recruitment, and thus prevent irregular migration, have to be communicated to potential migrant communities. Potential migrant workers should be equipped with knowledge on legal channels for migration at their skill level, as well as information on private recruitment companies including those that have been blacklisted.



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**Questions:**

**Encouraging Skilled Migration:**

- What policies does your country have to encourage skilled migration to your country?
- Has your country recently enacted any immigration policies to encourage more skilled migrants?
- Does your country have any policies to encourage your country's skilled nationals to return home?
- Does your country actively promote skilled labour migration of your nationals abroad?
- Does your country have any bilateral agreements with other countries (i.e. on recruitment, portability of social insurance, taxation etc.) to encourage the flow of skilled labour?

**Preventing Irregular Employment:**

- Does your country conduct information campaigns to warn potential migrants about the risks of irregular labour migration abroad?
- Does your country have immigration penalties for the irregular employment of foreign nationals? If so, what are they?
- What are the non-immigration related penalties (criminal, labour etc.) in your country for employers employing irregular foreign workers?
- Does your country allow recruitment agencies to send labour abroad? If so, what policies do you have in place to supervise and regulate these agencies?
- Which agency in your country is in charge of supervising the employment conditions of foreign workers? Are there coordination mechanisms between this supervising agency and the immigration agency?