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Nexus in South Asia**

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Labour migration policies and practice in South Asia

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By
Piyasiri Wickramasekara
Senior Migration Specialist
International Labour Office
Geneva

Email: wickramasekara@ilo.org
ILO International Migration Programme website: <http://www.ilo.org/migrant>

Structure of the presentation

- Key messages
- Terminology
- Objectives of migration policy
- Challenges for migration policy
- Migration policies: Comparative analysis
- Way forward.

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Key Messages

- Most developing countries in South Asia face a dilemma between promotion of overseas employment and protection of their workers abroad.
- Most focus on emigration policies with little attention to immigration policies.
- Protection levels especially for low skilled immigrant workers need considerable improvement in line with international standards.
- There is limited integration of migration issues in development planning or poverty alleviation policies.
- Protection of migrant rights cannot be separated from maximising development benefits of migration.

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Let us get the terms right

- ILO dictum: **Labour is a not a commodity**; thus, labour exports-imports or exporting/importing are inappropriate; **Human resources**, not Manpower.
- Sending countries and receiving countries- more neutral are: **countries of origin or source countries**; **countries of destination or host countries**
- **Labour migration- migrant workers, migrant labour** correct terms. Avoid economic migrants; labour migrants; temporary contractual labour
- Every worker including migrants has a skill- there are **no unskilled migrant workers**. Only low skilled or semi skilled.
- International community prefers to use **irregular migration and migrant workers in irregular status** – not illegal, clandestine, undocumented.

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Global distribution of migrants by region: 2005

(millions)	Migrants in:									
	Latin America & Caribbean	East Asia & Pacific	South Asia	Europe & Central Asia	Middle East & North Africa	Sub-Saharan Africa	High-income OECD	High-income non-OECD	Total	South-North as percent of total
<i>Migrants from:</i>										
Latin America & Caribbean	3.40	0.01	0.00	0.01	0.00	0.00	22.3	0.2	25.9	86.8
East Asia & Pacific	0.06	2.54	0.11	0.04	0.01	0.02	9.7	5.3	17.7	84.4
South Asia	0.01	0.29	7.60	0.02	2.11	0.09	4.5	5.6	20.2	49.9
Europe & Central Asia	0.07	0.01	0.00	27.81	0.01	0.00	13.7	1.9	43.6	35.9
Middle East & North Africa	0.06	0.00	0.00	0.08	2.12	0.08	6.7	2.8	11.8	80.3
Sub-Saharan Africa	0.01	0.00	0.01	0.01	0.01	10.02	4.0	0.5	14.5	30.7
High-income countries	1.84	0.32	0.05	1.03	0.64	0.27	28.7	1.1	34.0	0.0
Total	5.5	3.2	7.8	29.0	4.9	10.5	89.6	17.3	167.7	

Source: Ratha and Shaw, 2007.

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South Asia: Key features

Population (mn) 2006	1,493
Surface area (Sq. km.) 2006	5,140
Population growth rate - annual average % (1997-2006)	1.7
GNI per capita US \$ 2006	766
Labour force (million)	597
Poverty headcount ratio 2004 %	30.8
Stock of emigrants	22.1 million (1.5% of population)
Stock of immigrants	11.2 million (0.8% of population)
Emigration rate of tertiary educated - Sri Lanka	Sri Lanka- 27.5%; Afghanistan (13.2%), Pakistan (9.2%); Bangladesh (4.7%); India (4.2%).
Inward remittance flows US\$ billion 2006	39.8 (3.5 % of GDP in 2006)
Top 5 remittance recipients in 2007:	India (\$27.0 bn), Bangladesh (\$6.4 bn), Pakistan (\$6.1 bn), Sri Lanka (\$2.7 bn), Nepal (\$1.6 bn).
Top 5 remittance recipients in 2006 (percentage of GDP):	Nepal (18.0%), Bangladesh (8.8%), Sri Lanka (8.7%), Pakistan (4.0%), India (2.8%).

Source: All data from World Bank, Migration and Remittances Factbook 2008

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Main features of South Asian labour migration

- Temporary labour migration on short-term contracts, especially to the Gulf.
- Recruitment and hiring processes dominated by private sector in both source and destination.
- High share of low skilled migration.
- High concentration of flows to the Gulf and ME countries
- High incidence of irregular migration and trafficking.
- High share of female migration only in Sri Lanka.

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Migration profile – South Asia

Country (1)	Outflow (annual (2).	Stock inside (3) 2005	Stock abroad (4) 2005	% share of women (5)	Remittances US\$ billions 2007 (6)
Bangladesh	875,055 (2008)	1,031,850	4,885,704	1.9	6.4
India	809,453 (2008)	5,700,147	9,987,129	NA	27.0
Nepal	200,000	818,582	733,662	<1	1.6
Pakistan	287,033 (2007)	3,254,112	3,415,952	NA	6.1
Sri Lanka	217,306 (2007)	368,228	1,000,000 (SLBFE)	52.3	2.7

(Cols. 2-4: no of migrants: cols. 3, 4 and 6 from World Bank Fact Book on migration and remittances)

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Objectives of labour migration policy

- Migration in conditions of freedom, dignity, equity and security – migration by choice, not by need (GCIM). Much more than safe or orderly or humane migration
- Three basic objectives of migration policy
 - Good governance
 - Protection and empowerment of migrant workers
 - Promoting development benefits of migration.

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Criteria of good migration policies

- Policy coherence
- Transparency
- Normative base
- Gender sensitivity
- Social dialogue
- Evidence based

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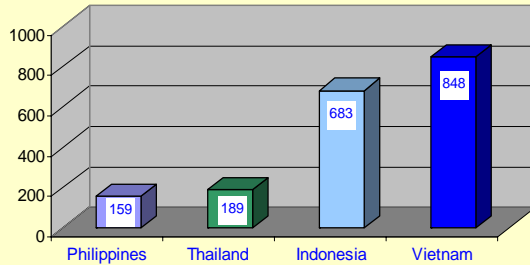
Governance challenges in South Asia

- Institutional capacity for administration of migration for foreign employment.
- Formulation and implementation of transparent policies.
- Regulation of private recruitment agencies
- Reducing costs of migration
- Policy coherence among different ministries/agencies dealing with migration
- Involving social partners and other stakeholders
- Cooperation with destination countries through bilateral or regional agreements and MOUs

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Cost of migration to Korea under Employment Permit System: A governance issue (ILO Survey)

No. of Days Potential Migrant Worker must Work at Home at Minimum Wage to Pay for Cost of getting job in Korea, 2007



Protection challenges in South Asia

- Eliminating abusive migration practices : retention of identity documents, sending workers in irregular status
- Protecting female domestic migrant workers: Sri Lankan maids in Gulf.
- Addressing trafficking and smuggling for sexual and labour exploitation:
 - from Nepal and Bangladesh to India and Pakistan and beyond.
- Protecting abuse and exploitation in destination countries: Consular facilities
- Welfare of families left behind – esp. children.

Protection measures

- Bilateral MOUs between origin and destination countries.
- Joint liability provisions: local recruiter liable for contract violations by foreign employers (Philippines)
- High level missions to and consultations with host countries to look into welfare of migrant workers
- Establishment of standard model employment contracts (Sri Lanka for domestic workers, Jordan for domestic workers, Philippines)
- Selective bans to countries violating worker rights
- Strict regulation of private recruitment companies.
- Unilateral imposition of minimum wages: Philippines and Indonesia – wages of domestic workers; India; Sri Lanka.

Migration-development challenges

- Integrating migration in national planning, PRSPs and poverty alleviation programmes
- Coordination and coherence between development, trade, finance, employment and migration policies
- Optimum utilisation of remittances
- Return migration and reintegration; Using Human, financial and social capital of returnees.
- Promoting labour mobility and freer circulation within SAARC
- Addressing brain drain and human capital development
- Engaging the diaspora.

South Asia – migration-Development priorities

	Bangladesh	India	Nepal	Pakistan	Sri Lanka
Remittances	X	X	X	X	X
Brain drain	X		X	X	X
Brain circulation		X			
Diaspora	X	X			
Return		X			X
Migrant rights	X		X		X
Gender			X		X

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Migration policy or foreign employment policy?

- Migration policy has two aspects: emigration policy and immigration policy.
- Most Asian developing countries give priority prominence to foreign / overseas employment policies, and related institutions: remittances, employment
- Responsible ministries cover only foreign employment or diaspora communities.
 - E.g. Sri Lanka Ministry of Foreign Employment Promotion and Welfare; Bangladesh Ministry of Expatriate Labour Welfare & Overseas Employment; Ministry of Overseas Indian Affairs; Pakistan Bureau of Emigration and Overseas Employment; Philippine Overseas Employment Administration.

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South Asian countries – policy ranking (tentative)

Country/Objective	Governance	Protection	Development
Afghanistan	Low	Low	Low
Bangladesh	Medium	Medium	Low
India	Low	Medium	High
Nepal	Low	Low	Medium
Pakistan	Medium	Medium	Low
Sri Lanka	High	High	Low

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Emigration policy – institutional and legislative framework

Emigration (based on ILO sources)		
Country (1)	Responsible agency (2)	Relevant legislation/Regulations (3)
Afghanistan	Ministry of Labour, Social Affairs, Martyrs and Disabled (MoLSAMD)	Labour Code of Afghanistan; Regulation for sending Afghan workers to abroad (Directorate of rights and labour law, 2005)
Bangladesh	Ministry of expatriate welfare & Overseas Employment	Emigration Ordinance, 1982 (No. 29 of 1982)
India	Protectorate of Emigrants: Ministry of Indians Overseas	The Emigration Act, 1983.
Nepal	Ministry of Labour and Transport Management	Foreign Employment Act, 2007 (Act No. 26 of the year 2042)
Pakistan	Bureau of Emigration & Overseas Employment	Emigration Ordinance, No. 18 of 1979 (updated 2004)
Sri Lanka	Ministry of Foreign Employment Promotion & Welfare; Sri Lanka Bureau of Foreign Employment	Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985 (amended 1994)

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Main features of emigration policy

- Most policies and legislation triggered by the middle east oil boom in the 70s and related migration.
- Trend towards dedicated ministries. Bangladesh, India, Sri Lanka.
- Focus on protecting low skilled and vulnerable groups:
- Services to families left behind
- Emphasis on expansion of overseas employment, especially skilled workers: Bangladesh, Sri Lanka, India
- Trafficking and gender concerns also high on the agenda.
- State role and interstate cooperation limited.

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Immigration policy– Institutional and legislative framework

Country (1)	Responsible agency (2)	Legislation/Regulations (3) (ILO sources)
Bangladesh	Immigration, Bangladesh Police; Board of Investment (work visas)	Foreigners' Act 1946
India	Ministry of Home Affairs, Bureau of Immigration	Foreigners' Act 1946 ; The Passports (Entry into India) Act, 1967
Nepal	Department of Immigration, Ministry of Home	Immigration Act, 1992; Immigration Rules 1994; - Immigration (First Amendment) Act, 2001
Pakistan	Directorate General of Immigration & Passport, Ministry of Interior Board of Investment for work/business visas	Registration of Foreigners Rules, 1966
Sri Lanka	Controller of Immigration and Emigration Board of Investment	Immigrants and Emigrants Act, 1980

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Main features of immigration policies

- No clearly defined or coherent policies; several agencies decide on policies with limited coordination.
- Immigration – responsibility may range from Ministries of Home Affairs/Foreign Affairs/ Justice/Interior/Immigration Bureaus and Depts.
- Admission policies for employment – 3 objectives
 - Regulate and control the inflow of low skilled/semi-skilled workers & protect national workers in the local labour market
 - Regulate and attract skilled workers, often as part of foreign direct investment programmes
 - Prevent irregular migration and combatting trafficking.
- Foreigners need work permits for employment: Ministries of Labour/Board of Investment may be involved in work permit issues: Labour Laws and investment promotion laws supplement immigration laws in some cases.

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Irregular migration - South Asia

- No proper estimates of incidence: Ranges from simple border crossings to organised trafficking and smuggling.
 - High incidence in India and Pakistan; trafficking of women and children across the border from Bangladesh and Nepal; Movements from Afghanistan to Pakistan.
 - Migrants in irregular status from Bangladesh in India: contentious issue.
 - High incidence of South Asian workers in irregular status in the Gulf and Malaysia: amnesties in UAE, Bahrain, etc.
 - Irregular migration of youth to the West.
- Problems: protection, governance, security, conflict.
- Responses: Controls & sanctions; amnesties and regularisations; return policy and deportations; awareness creation on risks, etc.
- Workers in irregular status also have rights:
 - UN Convention and ILO C.143: accrued wages and social security. Basic human and core labour rights; return in conditions of dignity.

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International normative framework for migrant workers

- **ILO Conventions**

- the Migration for Employment Convention (Revised), 1949 (No. 97) – 49 ratifications;
- the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) – 23 ratifications

- **United Nations**

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their families, 1990 – 40 ratifications. (in force since mid-2003)

- **ILO multilateral framework on labour migration.**

- <http://www.ilo.org/migrant/areas/multilateral.htm>

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Ratification of International Migrant Worker Conventions in Asia and the Pacific

Member state	ILO C.97 – Migration for Employment, 1949	ILO C.143 – Migrant Workers (Supplementary Provisions), 1975	International (UN) Convention on protection of the rights of all migrant workers and their families 1990.
Hong Kong SAR	1951 (UK ratification applies).		
New Zealand	1950		
Malaysia (Sabah State)	1964		
Philippines	2009	2006	1995
Sri Lanka (South Asia)			1996
Timor Leste			2004

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ILO Multilateral Framework on Labour Migration 2006: Features

- **Objectives**

- *More effective labour migration management and its governance*
- *Improved protection for migrant workers*
- *Promoting migration-development linkages.*
- *Reinforcing international cooperation & multilateral processes*

- A framework of non-binding principles, guidelines and good practices

- A tool kit for guiding migration policies & practices in all countries.
- Provides a checklist to assess current policies & practices
- Presents a wide menu of policy options to constituents

- Recognizes state sovereignty over migration policy.

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Highlights of MFLM relevant to Asia

- Guideline 4.5. ensuring that labour migration policies are gender-sensitive and address the problems and particular abuses women often face in the migration process;
- Principle 5: Expanding avenues for regular labour migration should be considered, taking into account labour market needs and demographic trends.
- Principle 6: Social dialogue
- Principle 11: prevent abusive practices, migrant smuggling and trafficking in persons; preventing irregular labour migration.
 - prohibiting the retention of the identity documents of migrant workers;
- Principle 12- Migration process
- Principle 13: licensing and supervising recruitment and placement services for migrant workers
- Principle 15: Migration and development

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Labour immigration policies in Gulf Cooperation Council countries

- Private sector led; Sponsorship or Kafala system of recruitment.
- Major restrictions on migrant rights: strictly temporary contract migration; retention of identity documents; tied to one employer; poor working conditions; no family unification.
- High share of non-national workforce, and also Asian workforce.
- Localization policies for reducing dependence on migrant workers: Saudization, Bahrainization, Emiratisation, etc.
- Reducing the size and growth of “irregular migrant labour market.”

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Nationals and non-nationals in Gulf Labour force

Country	Year	Total Labour Force	Nationals		Non-nationals	
			Number	Per cent	Number	Per Cent
United Arab Emirates	2005	3,315,000	577,000	17.7	2,738,000	82.3
Kingdom of Bahrain	2005	522,000	216,000	41.4	306,000	58.6
Kingdom of Saudi Arabia	2005	7,579,000	2,685,000	35.4	4,894,000	64.6
Sultanate of Oman	2005	914,000	309,000	33.9	605,000	66.1
State of Qatar	2005	555,714	240,680	43.3	315,034	56.7
State of Kuwait	2005	1,594,603	291,812	18.3	1,302,791	81.7
Total		14,480,317	4,319,492	29.7	10,160,825	70.3

Source: M.E. Dito, GCC labour Migration governance (table based on Arab Labour Organization data).

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Ongoing dialogue with the Gulf countries and migrant rights

- Abu Dhabi Dialogue and Declaration
 - (former Colombo Process (led by IOM): January 2008
- Gulf Forum on Labour Migration (ILO-UAE) – January 2008.
- UAE initiative on contractual labour mobility:
 - to develop a pilot scheme on labour migration with India and the Philippines: ongoing.
- **Asian and Arab trade union cooperation: 2008**
Amman model Trade Union Agreement for protection of migrant workers: Sri Lanka workshop, 6-7 May 2009

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ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers – A model for SAARC?

- Emphasis on protection and promotion of migrant rights.
- Recognises obligations on sending states, receiving states and ASEAN
- Recognises the contributions of migrant workers to the society and economy of both receiving states and sending states
- Urges intensifying efforts to protect the fundamental human rights, promote the welfare and uphold human dignity of migrant workers;
- ASEAN obligation: Promote decent, humane, productive, dignified and remunerative employment for migrant workers;
- Proposes developing an ASEAN instrument on the protection and promotion of the rights of migrant workers. ILO MFLM can be a model.

<http://www.aseansec.org/19265.htm>

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Conclusions

- Credible migration policies still away.
- Need to ratify instruments, modify national law and enforce legislation.
- More dialogue and follow up with destination countries needed: concept of shared responsibility GFMD 2008
- SAARC level action needed.
 - About half of South Asian international migrants within the SAARC region
 - Some common approaches needed in dealing with labour mobility within SAARC and with destination countries.
 - Need for ASEAN type Declaration.

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SAARC level action

- Task force proposed (SACEPS/FES seminar 2007).
- Proposed South Asian Commission on Migration
 - Need more information – concept note & dissemination
 - Need to address governance, protection, development, cooperation and data issues
 - More scope for promoting freer circulation and labour mobility and ensuring protection within SAARC region: Move towards a regional labour market?
 - Has to move beyond a research network with SAARC member state endorsement to ensure state commitment and follow up.
 - WTO has very limited role in international migration: deals only with temporary movement of natural persons as service providers (Mode 4); no protection mandate.

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Way forward for labour migration policies

- Address governance, protection and development objectives.
- Based on interstate cooperation and dialogue; Involving all stakeholders – social partners and civil society.
- Transparent policies with full respect for rights and equal treatment of both national and foreign workers in line with international norms (ILO Multilateral Framework on Labour Migration);
- With due consideration to gender specific concerns;
- Based on proper assessment of short term and long term labour market demand for migrant workers;
- Using regional integration frameworks for promoting freer mobility of persons & labour;
 - Within SAARC
- Based on decent work opportunities at home, and facilitating migration by choice, and not by need (GCIM)
- Improving migration data and information to facilitate evidence based policies.

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