

Draft



Regional Consultative Process on Labour Migration from South Asia

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CONTENTS

1.	Introduction	1
2.	Good Practices on International Migration	2
3.	The South Asian Context	6
4.	Study Issues	7
5.	Methodology	8
6.	Migration Process: Recruitment and Cost	9
7.	Skill Composition of Workers, Training and Gender Issues	14
8.	Employment Condition in Destination Countries	15
9.	Return and Reintegration	22
10.	Related Areas of Engagement of the Task Force under the Regional Consultative Process	24
11.	Learning from the ASEAN Experience	25

Regional Consultative Process on Labour Migration from South Asia

1. Introduction

In the last five years there has been an enormous growth in interest in the links between migration and development. This has been particularly so as growing evidence emerges that migration makes significant contributions to poverty reduction in developing countries. The United Nations, the World Bank and development partners have begun to recognise major potentials in engaging with migrants and capitalise on the resource they have been able to accumulate in host countries and regions. There is also this acknowledgment that along with beneficial aspects of migration, linked is significant risks and costs. It is in this context careful governance of migration by states can maximise the benefits and minimise the risks of migration for poverty reduction.

The recently released Human Development Report 2009 observes that barriers to mobility are especially high for the people with low skills, despite the demand for their labour in many rich countries. Policies generally favour the admission of the better educated. In this context the Report notes that “governments tend to be far more ambivalent with respect to low-skilled workers, whose status and treatment often leave much to be desired”.¹

Collaboration and partnership between source and destination states are effective ways to eliminate some of the irregularities and exploitative practices that accompany migration of the less and the un-skilled. Such relationship also have the advantage of making migration figures, trends and patterns more predictable bringing in benefits to both sides.

Competition among source countries, particularly with regard to accessing the market of the less skilled labour, can adversely impact on the wages and working conditions of labour migrants. Efforts of individual governments to fix minimum wage for their migrant workers abroad have so far met with little success, as those are easily subverted by competing countries. In order to promote the interest of migrant workers multilateral agreements among the source countries may reduce the vulnerabilities of their workforce abroad.

The UNDP Report 2009 further notes that in facing common challenges while policy makers will design and implement different migration policies in their respective countries, according to national and local circumstances, “(c)ertain good practices nevertheless stand out and can be more widely adopted”.² In the

¹ UNDP Human Development Report 2009: Overcoming Barriers: Human mobility and development (Summary), p. 7.

² Ibid, p. 8.

following section some of the good practices pertaining to governance in international migration are presented.

2. Good Practices on International Migration

Development of a regional migration policy: This is considered to be one of the most effective means for the protecting the migrant workforce abroad. The Organisation of African Union has so far developed a Draft Strategic Framework for a Migration Policy for Africa.³

The Central American and North American Regional Conference on Migration commonly known as the Puebla Process is an initiative aimed at the adoption of a multilateral approach on migration. The process recognizes the interaction of various factors in origin and destination countries and emphasizes the importance of the human rights of all migrants.⁴

There are also regional initiatives on specific issues. In July 2005, representatives of the government, labour and the employers of the seven member Economic Community of West African States (ECOWAS) agreed to improve the exchange of labour migration data and to harmonize national laws with relevant international standards and the ECOWAS protocols.

In the Declaration of Quito the member states of the South American Conference on Migration (Lima Process) agreed to define and coordinate strategies and regional programmes on migration to promote the human rights of migrants and their families, strengthen the management of migration flows within the region and develop national and bi-national regulations.⁵

National Practice: There are a number of good examples of national practice, both in the countries of origin and destination. The Philippines have been particularly successful in protecting rights of its migrant work force. The Philippines Overseas Employment Authority (POEA) formulates emigration policies, campaigns against trafficking, provides pre-departure information, addresses labour rights violations abroad and assists its nationals in destination countries. The POEA provides information on its website on licensed private recruiters, job vacancies abroad and the locations of consulates in destination

³ The framework is designed for developing a coordinated migration policy based on common priorities. It covers a wide number of themes, including labour migration, border management, irregular migration, human rights of migrants, internal migration, migration data collection and data exchange, migration and development (brain drain remittance transfers and Africans in the diaspora), inter-State cooperation and partnerships, migration and poverty, health, environment, trade, gender, children, adolescents and youth.

⁴ The Puebla Process emphasizes migrant protection issues in expert workshops and conference plenaries and incorporates dialogue with civil society organizations in participating countries.

⁵ They also agreed to promote links with national abroad, strengthen networks and identity safer and less expensive means of remittance transfers, promote the integration of migrants, particularly in the workplace , and harmonize and coordinate systems of migration information, administration and legislation.

countries.⁶ In Germany, by law, employers must submit employment contracts to local labour offices, which must include wages and working conditions, including on housing, meals and travel arrangements, if any. Employers pay a fee per worker to the Employment Service, which they may not charge to the worker.

In Mauritius, the Special Migrant Workers Unit in the Ministry of Labour inspects the employment conditions of migrant workers, who have the same rights as nationals. It reviews employment contracts to ensure that they meet certain requirements, including insurance, living conditions, return air ticket and health care. Wages must be paid directly to workers.⁷ In July 2005, the Ministry of Labour of Saudi Arabia announced the formation of a special department to protect the rights of domestic migrant workers and impose sanctions on employers who abuse them. The department is authorized to ban employers from applying for any domestic houseworker for five years.

In many instances violation of rights occur due to inadequate supervision and monitoring of the recruitment system. To address this complex issue multifaceted approaches are necessary. The POEA of the Philippines provides advice and warnings to those intending to migrate regarding unethical recruiters and other practices to avoid when applying for work and during the migration process. A bilateral agreement between Mauritius and China has provisions for actions to be taken by each country to protect Chinese migrant workers. China submits information to Mauritius on unreliable recruiting agents. Mauritius submits employment contracts to the Chinese Embassy to ensure conformity with Chinese law and uniformity in the Chinese and English versions of contracts.

Engaging Civil Society Institutions: Consultation with civil society and migrant associations are likely to lead to better policy outcomes. In Mexico, by bringing together government agencies involved with Mexicans working abroad, the IME ensures coordination and consideration of migrant worker concerns in policymaking and implementation. The IME also commissions research, develops assistance programmes for migrants and transmits information relevant to migrants and their families through the media. In Bangladesh, the government draws on expertise of the Dhaka University based Refugee and Migratory Movements Research Unit (RMMRU) in framing of policies with regard to female workers, long term migrants, recruitment industry, remittance flow and utilisation and Overseas Employment Policy. The Trade Union Congress for the Philippines (TUCP) with the government and the NGOs to provide better protection to migrant workers, including women domestic workers. The TUCP has a centre for

⁶ Consulates in destination countries have labour attaches, including women attaches, to assist with the need of women migrant workers and inform them about trafficking.

⁷ Under the initiative of the Unit inspection procedures have been improved in Mauritius and additional inspectors and an interpreter hired in response to protests by migrant workers. Inspectors conduct three types of activity: meeting with workers to inform them of their rights when they first begin working, conducting routine daytime inspections of working, housing and food condition and conducting night-time inspections of housing and food. Tripartite meetings are held at the Ministry to resolve workers' grievances, with most being resolved within a day or two. If they are not resolved, employers may be sued and may be subject to criminal penalties.

migrant workers in Manila to assist both migrating workers and those who have returned. The public services union, PS-Link, conducts preparatory sessions for those seeking to migrate, where they are informed of their rights and given contacts in the destination countries. The Australian Council of Trade Unions (ACTU) regularly broadcasts information for workers, including migrant workers, over many ethnic radio stations and distributes written information in various languages.

Collaboration among Civil Society Institutions: The trade unions and civil society bodies in the destination countries may be mobilized to highlight and publicize the contribution and the status of migrants. They may also assist in the development of action programme particularly for the trade unions to extend union protection to migrant workers.⁸ Collaboration between trade unions of countries of origin and destination and agreement between them to promote reciprocal membership can also be method to provide protection of migrant workers.⁹ In May 2009, the Sri Lankan trade unions entered into bilateral agreements with their counterparts in Bahrain, Jordan and Kuwait under government mediation under the Colombo Process.

Connecting with the Diaspora: The success of China and India to benefit from engaging with their diaspora population has led to development of many innovative projects in other regions. The Digital Diaspora Network Africa (DDNA) initiative by the United Nations Information and Communications Technology Task Force promotes development and the achievement of the Millennium Development Goals through mobilizing the intellectual, technological, entrepreneurial and financial resources of diaspora entrepreneurs. In addition to network there is a database of more than 2000 members of South African Network for Skills Abroad (SANSA). The Reverse Brain Drain Project in Thailand sets up connections among highly-skilled Thai migrant workers to exchange information and knowledge.

Recognising the growing importance of the potential role of the Indian diaspora in the country's economic development the Indian government created the Ministry of Overseas Indian Affairs in 2004. It also set up and administers centres for overseas Indian's affairs in countries having major concentrations of Indian migrant workers, develops and implements policy regarding employment assistance to persons of Indian origin and non-resident Indians, has representatives in the Foreign Investment Promotion Board and the Foreign Investments Authority and interacts with the Investment Commission. To

⁸ With the support of the Malaysian Trade Union Congress (MTUC) organized a Subregional Workshop on migrant Workers in April 2005

⁹ The United Kingdom's Trades Union Congress (TUC) and the General Confederation of Portuguese Workers (CGTP-IN) have an agreement to promote membership in TUC unions to Portuguese migrant workers who are CGTP-IN members. An information campaign in Portuguese instructs migrant workers on how to limit abuse from their employers. The CGTP-IN has signed similar agreement for Portuguese workers with trade unions in other key destination countries.

acknowledge the contribution of migrants an annual event, the Indian Migrants Day is also observed every year.

Knowledge Base: The Organisation for Economic Co-operation and Development (OECD) collects migration data based on a network of national correspondents in its member states appointed by the OECD secretariat. The data are published annually in *Trends in International Migration* with analysis of regional and country trends. The report also contains in-depth analyses of selected migration issues.

The South Asian Migration Resource Network (SAMReN) is an initiative of migration researchers of the region to undertake collaborative regional research on migration issues. SAMReN also offers fellowships and holds residential training workshops for young professionals to develop their knowledge base on migration.

Platform for International Cooperation on Undocumented Migrants (PICUM) gathers information on law and practice regarding social rights for undocumented migrants, develops expertise in the field, strengthens networks between organizations dealing with undocumented migrants in Europe and formulates recommendations for improving the legal and social position of migrants in irregular status. PICUM highlights the dignity of undocumented migrants as human beings and as workers.

2.1 Inadequacy of International Protection and the Need for Collective Action: The issue of protection of migrants becomes important as many of the poor migrants lack resources, networks, information and avenues of recourse. Except for Sri Lanka, no other South Asian country has ratified the UN International Convention on the Protection of All Migrant Workers and Members of their Families. Likewise, none of the major destination countries of South Asian migrant labour in the Gulf region or South-east Asia has ratified the Convention either.

Due to the low number of ratification of the ILO Conventions (Number 97 and 143) pertaining to the migrant workers and the 1990 UN Convention, ILO developed a Multilateral Framework on Labour Migration (2005). This non-binding framework provides states a set of guidelines based on a series of conventions, treaties and customary international law and a number of good practices¹⁰. ILO hopes that this 'soft law' approach is perhaps the best way to move forward to an international regime in a situation where states do not appear to "have the appetite to sign up to formal conventions".¹¹

In the absence of an effective international protection mechanism, the migrant workers continue to depend on policies and practices of the host countries, which

¹⁰ A number of those good practices were cited in this section.

¹¹ UNDP Human Development Report 2009, p. 101.

often prove to be inadequate to mitigate their vulnerabilities. The source country governments, to an extent, can empower them through comprehensive pre-departure orientation training and by providing effective consular services including legal aid. Bilateral agreement between the source and host countries can also be an important method of their protection. However, as the UNDP Report 2009 observes, “a collective and coordinated effort by countries of origin to raise standards is more likely to be effective than isolated national efforts.”¹²

3. The South Asian Context

After the oil price hike in the first half of the 1970s as the Gulf states embarked on large scale development projects they required various kinds of workers. This created conditions for migration of workers for temporary employment from South Asia. Gradually, such migration spread to the East Asian and later to European countries such as Italy, Greece and other European countries. However, the Gulf countries continued to remain major destination for migrants from South Asia.

The increase in numbers and types of labour migrants from the commencement of such migration in the mid-1970s to the present has necessitated a review of the entire phenomenon of labour migration. During this period there has been a discernable shift from state sponsored recruitment system to private companies facilitating the process. In addition, securing foreign employment through social network by migrants continue to be the most dominant trend in countries like India and Bangladesh. From the early stages of unstructured migration, the system has been gradually formalized with public-private partnership in recruitment and management of the process.

While labour migration has significantly contributed to alleviating poverty and stabilizing the less developed economies of the region they have posed enormous challenges for the countries of the region. The deployment of workers for employment abroad poses many challenges that have significant implications on welfare and protection. Since there are few agreements between the origin and destination states for joint management of migration, deployment processes have been left in the hands of commercial intermediaries or job brokers.

There is evidently a great value in sharing experiences on effective policies particularly among policy makers and administrators. The experience of some countries considered more successful in managing the migration flow may provide useful lessons in devising improved strategies for better governance of labour migration.

Addressing the challenges posed by labour migration has been recognized as the responsibility of each individual sending country. The need for collective action has been long expressed but not acted upon. South Asian collaboration

¹² Ibid

through its institutional tool, the SAARC has now been considered opportune for addressing the issues with the support of the international conventions on migration.

It is pertinent to refer to some documents produced by the SAARC Secretariat emphasise regional cooperation. In its report 'Our Future Our Responsibility', the Independent South Asian Commission for Poverty Alleviation observed that the energies of South Asian nations have to be galvanized around a few catalytic agendas. "Effective, harmonious and all round co-operation among the countries of the region"¹³ was deemed to be one of the foremost strategic priorities. The Plan of Action on Poverty Alleviation re-iterated "Learning from each other's experience through: (a) exchange of best practices (and) (b) frequent interactions among scholars, practitioners and policy makers at all levels."¹⁴

It is in this context that RMMRU has secured a grant from ADB through SACEPS to examine the feasibility of initiating a regional consultative process on labour migration from South Asia. The eight month project began in January 2009. A brainstorming session of researchers was held in Dhaka on 15 February 2009. After the day-long deliberations the researchers identified the following issues for further examination.

4. Study Issues

A *Migration Process, Recruitment and Cost*

- a. Processing of migration by the government agencies (like passport, issuance of clearance)
- b. Role of the registered recruiting agencies and the problems associated with the process.
- c. Role of the informal intermediaries and the problems associated with it.
- d. Recruitment
 - i. Reducing costs
 - ii. Bringing informal actors under legal cover
 - iii. Financing migration

B. *Skill Composition of Workers, Training and Gender Issues*

- a. Capacity building – scope of skilled and unskilled migration
- b. Existing training facilities and possibilities to improve them.
- c. Changes in skill composition for overseas employment
- d. Female migration

C. *Employment Abroad: Work Conditions*

- a. Workers' rights and wages issues.
- b. Visa trading

¹³Independent South Asian Commission on Region Poverty Alleviation titled, Our Future Our Responsibility: Roadmap towards a poverty free South Asia, Executive Summary, p. 3

¹⁴The Plan of Action of Poverty Alleviation, recommended by the Third Meeting of the SAARC Finance/Planning Ministers on Poverty Alleviation (Islamabad, 8-9 April 2002) and was approved by the 12th SAARC Summit (Islamabad, 4-6 January 2003).

D. *Return and Reintegration*

- c. Magnitude of return migration
- d. Absence of reintegration programmes for returnees
- e. Need for access to information on investment and credit opportunities, skill data base
- f. Highlight good practices, if any

5. Methodology

The study has been designed as a collaborative initiative of migration researchers of five countries of South Asia. The partner institutions are: Nepal Institute of Development Studies, Kathmandu, Nepal; Centre for Development Studies, Trivendrum, India; Pakistan Institute of Development Economies, Islamabad, Pakistan; Marga Institute, Colombo, Sri Lanka and Refugee and Migratory Movements Research Unit, Dhaka University, Bangladesh.

A brain-storming meeting of the researchers was held in Dhaka on 15 February 2009. The meeting discussed in detail the research objectives, agreed on the country format and decided to produce a policy oriented report. A follow-up meeting was held in Kathmandu on 26-27 July 2009 to discuss the draft report. The meeting decided to draw from the ASEAN experience in dealing with the issue.

This draft policy report was presented at the Kathmandu meeting of SACEPS and SANEI organised by ADB in May 2009. The draft was further revised incorporating most of the comments made at the Kathmandu meeting. During the course of the project two meetings of the study coordinator Dr. C R Abrar with Mr. William Gois, Coordinator of the Manila based Migrant Forum in Asia provided very important insights on learning from the ASEAN experience in promoting regional approach to labour migration. In this regard the *Proposal of the Task Force of Asian Civil Society for the ASEAN Framework Instrument on the Promotion and Protection of Rights of Migrant Workers* (undated) has provided an immensely useful guide.

ASEAN has targeted integrating the national economies into a regional bloc by 2015. This will be accompanied by increased mobility of labour within the region. It is in this context in 2007 ASEAN has agreed on *ASEAN Declaration on the Protection of Rights of the Migrant Workers*. Though the Asian Civil Society Task Force's Proposal focuses on rights of migrants within the ASEAN region, many of its provisions are very relevant in protection and promotion of the rights of migrant workers who are deployed outside the region such as in the Gulf. Therefore, as a number of provisions of the Proposal are applicable in the context of South Asian migrants, they have been incorporated in this report.

6. Migration Process: Recruitment and Cost

Recruitment and cost were identified to be of major concerns by the researchers. Though in all South Asian countries the state has begun to play an important role in facilitating migration, there is a wide divergence in country practices. Over time, there has been a discernable shift from state sponsored to private sector recruitment. Despite this shift migration through social network continues to be the dominant trend in India and Bangladesh. In all countries the absence of formal sources of information and facilitation has led to the growth of tiers of intermediaries in the recruitment process. On the one hand these intermediaries bridge the gap between aspirant migrants and formal structures of recruitment; on the other hand, they often become the source of many hardships of migrants by providing misleading or false information about availability of work or entitlements, doctored travel and work documents and charging high fees. Existence of intermediaries in the countries of destination was identified to be the most important factor in the sharp increase in migration costs in recent years.

6.1 Study Findings

The registered agents are governed by a set of regulations, have bank guarantees and are mandated to secure safe and appropriate deployment abroad. The fee payable, for each category of employment is stipulated by the governments.

The absence of credible sources of information about job prospects makes the aspirant migrants rely on informal intermediaries who often provide false and unrealistic information. These intermediaries, in many instances, work as sub-agents of the recruiting agencies. The migrants' weak social standing and poor educational background also subject them to harassment in securing services from the formal migration industry: private recruiting agencies as well as government agencies. In many instances, job seekers appear to be willing to pay more than a year's earning as fee to the agent. Numerous instances of sub agents extracting money from aspirant migrants and disappearing with the money and at times with their passports have been reported. The registered agents refuse to accept responsibility in such cases.

There are serious lapses in the nature of pre-departure information. In many instances migrants remain uninformed about their nature of work, pay and other entitlements until they reach their destination. Groups of migrants at times become stranded at airport of receiving countries because of delays or the failure of the agent to show up.

After reporting for jobs many migrant workers are subjected to treatment that violates their right to decent work. Although the governments have stipulated that labour recruits should be within the categories protected by the labour laws of the host country, housemaids and domestic aides who are not covered by labour laws of the host countries continue to be recruited in large numbers and remain

the largest single category of Sri Lankan migrants to the Gulf countries in particular.

In countries like Bangladesh there is no mandatory insurance scheme for migrant workers. In Sri Lanka migrants are required to register in insurance schemes prior to departure. However, this cannot be ensured when migration takes place through informal channels. Besides, the informal system is known to have advantages for lower grades of occupation in particular, when location and nature of work, at least, is known prior to departure through known persons already in the location.

The flouting of terms and conditions of work at the workplace affects skilled migrants as well as the unskilled and both males and females. Changes made in the location and even the occupation after reaching the destination is not uncommon. Agents at times appear to connive or have no authority in the host country to intervene in such situations.

6.2 Possible Course of Action by the Task Force

6.2.1 Ensure the right to decent employment and development: The SAARC Governments are to recognize it is their duty to create opportunities for decent work, for their citizens within their own countries. They affirm the principle that the decision of their citizens to migrate should be a free and informed choice, rather than a final option driven by economic necessity.

6.2.2 Effective pre-departure training and systems for migrant workers: The SAARC member states are to be required by law to organise pre-departure training programmes prior to the departure of intending migrants. This pre-departure training shall be provided at no cost to the worker, and shall include information on human and labour rights, labour law and regulations in the receiving country, grievance mechanisms and access to justice for migrant workers, content of employment contracts, culture, and working/living practices of the destination country, and “safe migration” mechanisms. Pre-departure training should be gender-sensitive, reflecting the increasing predominance of women migrants.

The SAARC Governments shall engage with civil society organizations, trade unions, networks of returned migrant workers, community groups and leaders, and respected religious and social organizations to help develop the curricula of such training and to provide this training and to disseminate information to intending migrants.

The SAARC Governments shall also launch national awareness campaigns, providing clear messages on the importance of safe migration and giving information where additional information can be obtained by intending migrants. Specific information shall also be made available on Government policies and regulations relating to all allowable costs and fees in the migrant recruitment and mobilization process.

Given the significant number of youth departing for work overseas, SAARC Governments shall consider the possibility of creating “safe migration for employment”

programmes to be incorporated into the all applicable curriculums in secondary school and at national/Government Universities.

6.2.3 Effective systems and regulations of the migrants' departure from and return to their country of origin: SAARC Governments shall set out effective policies and systems for workers' departure and return that are based on migrant workers' actual experiences. Key principles that shall underpin these systems are: workers shall not have to pay exorbitant fees¹⁵ for overseas placements, one-stop processing center approaches shall be adopted to reduce bureaucratic inefficiency and opportunities for graft, contract verification and assistance shall take place, pre-departure training shall be conducted, and recruitment agencies will be licensed and strictly regulated to ensure compliance with the law and regulations. Governments shall prohibit recruitment agencies from using "security" bonds or deposits, or other similar financial requirements that oblige migrant workers to remain with one employer in the receiving country.

SAARC Governments shall publicly set fixed and reasonable fees for passport issuance and take all appropriate steps to ensure middle-men and agents do not overcharge intending migrants for issuance of a passport. The sending Governments shall consider opening passport offices in major provincial cities to ease the burden of their citizens in applying for a passport.

The SAARC Governments shall develop comprehensive databases to maintain accurate data about their citizens working overseas. The objective for this effort is to ensure that Governments have the most accurate and up to date information to guide their policy formulation on migration and enable effective provision of services to migrant workers while overseas. Ideally, this database could be situated at the concerned ministries in each Member State of SAARC with arrangements so that Government's overseas embassies and other national Government agencies can access the database in assisting migrant workers. Provisions are to be kept so that individual migrants' confidentiality are respected and guaranteed under all circumstances.

The SAARC Governments shall seriously consider setting up a "one stop service center" at the district, provincial and national levels, with all the required forms and applications needed for a worker to go overseas. Adequate and competent personnel and financial resources should be provided to enable the "one stop service center" serve migrant workers at a reasonable, affordable cost.

6.2.4 Monitoring and regulation of labour recruitment agencies and brokers: The SAARC Governments shall ensure that all labour recruitment companies operating in their national territory are licensed and appropriately regulated and monitored. These agencies should be made to provide significant financial bonds to the Government which shall be subject to seizure if the recruitment company is found to have deceived or defrauded intending migrant workers.¹⁶ Government officials shall make available information to potential migrants regarding licensed recruitment agencies.

¹⁵ It is recommended that migrant workers should not be expected to pay recruitment fees amounting to more than one month of full pay in the receiving country.

¹⁶ In cases where the financial bond of a recruiting agency is seized for malfeasance, the Ministry shall use the seized monies to compensate those workers who were cheated by the recruiting company.

SAARC Governments shall set out in regulations of recruitment agencies that the recruiting agency in the sending country has joint liability with the principal/employer in the receiving country and can be held legally liable for any money claims or damages resulting from violations of the migrant workers' contract and other violations of the worker's rights.¹⁷

Labour recruitment companies and their industry associations of the SAARC countries will be encouraged to develop and enforce specific and detailed codes of conduct among its members that provide for protection of the rights of migrant workers they recruit to send overseas, and take appropriate administrative actions, including expulsion of member companies that violate the association's code of conduct.

In all instances, SAARC Governments shall compel recruitment of migrant workers to occur in a professional, transparent, and accountable manner. The process of granting labour recruitment licenses shall be seriously and strictly governed. Prompt action is to be taken to withdraw licenses of those enterprises which violate the law, or which are judged not to have the mandate and capacity to effectively carry out their recruitment activities. Information on the legal status of labour recruitment agencies, including their mandate, responsibilities and authority should be publicized throughout countries where they operate.

The Governments shall publicly expose the names of both individual recruiters and recruitment companies whose are found to engage in these practices and/or consistently violate labour laws and regulations. Owners/operators of recruitment companies reliably found to engage in these practices shall be held accountable and effectively barred from any future engagement in labour recruiting work by all SAARC Governments. The governments shall publish list of registered agencies every year that would include the names of suspended and cancelled agencies. This will help aspirant migrants distinguish between good and bad recruiting agencies.

SAARC Governments shall ensure that private sector recruitment agencies play a positive role in ensuring compliance of receiving country employers with the labour contract and the provisions of the labour law, and shall be held jointly accountable (with the employer) in cases of abuse and negligence that results in harm to the migrant worker.

¹⁷ Philippines Republic Act 8042 (The Migrant Workers and Overseas Filipinos Act of 1995), Section 10 provides that "the liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond filed by the recruitment/ placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/ placement agency is a juridica being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages."

6.2.5 Creation of effective grievance and complaint mechanisms: In line with article 8 (1) and article 10 of ILO Convention 181, SAARC member states shall provide mechanisms and processes for transparent and effective investigation of complaints, alleged abuses and fraudulent practices regarding the activities of private employment agencies.

SAARC Governments shall reach agreements with GCC and other receiving countries on legal cooperation that allows all migrant workers to file civil and criminal cases against employers who exploit them and violate the law, where there is prima facie evidence that exploitation has taken place. All migrant workers shall be provided with free legal aid to file such cases, and shall be free to work (for another employer) in the receiving country or to return back to their country of origin, while the legal cases are proceeding. Should the worker choose to return to their country of origin, the receiving state, where the legal case has been filed, shall allow the migrant worker to return as needed to participate in ongoing legal proceedings.

6.2.6 Role of Embassies of sending countries: SAARC Governments shall ensure that their overseas embassies are provided with adequate resources and staff to play a pro-active role in protecting migrant workers overseas. Those serving in the missions shall be provided with appropriate training and support to pro-actively defend the rights of their nationals and provide assistance and shelter to their migrant workers who are facing difficulties.

Embassy personnel of SAARC labour sending countries shall actively represent the interests of all of their migrant workers, regardless of immigration status, with agencies in the receiving Government, and pro-actively and positively respond to referral of cases of their nationals from Government and civil society representatives in the receiving country. Sending Governments should devise necessary migrant fund schemes, paid for by the Governments and recruitment agencies, which can provide emergency financial assistance to migrant workers facing crises in the receiving country.

In countries where there are significant numbers of migrant workers from a particular sending state, the Government shall provide adequate resources to establish shelters to protect migrants in crisis (especially but not only for women), and ensure that these shelters are staffed with personnel with appropriate counseling and other support skills. Systems could also be established to provide support to injured workers. For this work, it is important that the Government provide clear authority, and adequate budgetary and personnel support to the effort of Embassies to reach out to and protect migrant workers from their country.

Officials in the embassies of the sending SAARC Governments shall systematically monitor the status of their nationals working in the receiving country to ensure compliance by employers with the terms of labour sending MOUs concluded between the two countries. embassies shall develop systems to enable their nationals to register their presence with the embassy, and shall work with Governments of receiving countries to ensure that as a part of the recruitment and hiring process that the labour recruitment agency must inform the Embassy that it has brought in nationals of that country to work. Information developed by the Embassies shall be consolidated in an information system maintained by the Ministry of Foreign Affairs, and shared with other line Ministries with responsibility for migrant workers.

7. Skill Composition of Workers, Training and Gender Issues

Migrants from South Asia represent several categories of skills. These range from the professional, the middle and clerical, skilled, semi skilled, unskilled and a separate category of housemaids. While India accounts for large segment of professionals and skilled categories, Bangladesh, Nepal and Pakistan mainly cater to the markets of semi and unskilled workers. House maids constitute the overwhelming bulk of the Sri Lankan migrant workforce. The research team felt that in order to garner maximum return from migration, up-scaling of skills is required. It is in this context accessing the ever burgeoning markets in the hospitality sector and that of health care providers were identified to be important fields.

7.1 Study Findings

No major problems are found in migrants employed as the highly skilled. They are well remunerated, are permitted to take their families and face few problems. The situation may become quite different for the semi-skilled and lowly skilled migrants. The migrants going as housemaids are particularly vulnerable.

Pre-departure orientation training is mandatory for migrants in most countries of the region. The training has the general content of familiarization with culture, language and basic tenets of worker-employer relations in the host country. However, empirical evidence point out that in Nepal and Bangladesh a very low percentage of migrants actually avail such orientation training.

The government training institutes in many countries are not adequately equipped and geared to train aspirant migrants in vocations that have demand overseas. Lack of knowledge of such demand, resources and qualified personnel to impart trainings are some of the common problems that the countries of this region share. Training could mitigate many of the deficiencies in the skills of unskilled migrants.

In responding to the increased feminization of international labour force, Sri Lanka proactively promoted migration of women. Bangladesh, Pakistan and India pursued policies that either banned or restricted female labour migration. However, over time, through sustained policy advocacy Bangladesh gradually lifted the restrictions on migration of unskilled women. This research notes that lack of coordination between government agencies have led to pursuit of policies that have thus far hindered private institutions to train nurses and health care providers in Bangladesh.

Shortfalls in such training and capacity building have resulted in harassment and even physical abuse of workers by their employers when they fall short of the standards demanded by the employer. The inadequacy and the unprofessional

nature of such training have been identified to be a major problem both for males and females.

7.2 *Possible Course of Action by the Task Force*

7.2.1 Capacity Building: The SAARC Governments shall establish comprehensive capacity building programmes for intending migrant workers, concentrating on building of vocational skills and competences that will enable them to succeed in their own country, and in other countries should they decide to migrate.

7.2.2 Sender Receiver Partnership: SAARC Governments will encourage GCC and other receiving countries to provide information, technical assistance, and financial support for vocational skills development programmes set up by labour sending Governments and other national institutions (universities, vocational institutes, mass organizations, and civil society organizations), thereby helping bridge the human resource development/capacity gap that exists.

7.2.3 Public Private Partnerships: SAARC governments are to provide resources to and manage the development of skills by institutions in the public as well as private sectors (in various forms like public-private partnerships, and private-sector joint ventures). Specific policies and programmes must ensure that the skills of migrant workers are recognized in foreign countries and that these are rewarded with commensurate wages. Towards this end it would be important that SAARC takes initiative to provide accreditation to institutions to standardize, define and certify different types and levels of skills in various trades.

7.2.4 Market Information: SAARC countries seeking to deploy more migrant workers abroad are to closely monitor developments in the global market for foreign labour especially the growth sectors (including information and communication technology, hospitality, construction, service provision and health-related sectors), pay attention to the importance of language skills and the growing demand for female workers.

7.2.5 Gender Sensitivity: SAARC governments must ensure that migration policies must be gender-sensitive and restrictions on the migration of women violate their rights to equal opportunities for employment and free movement and must be lifted. Services such as domestic work should be recognized and be entitled to protection under labour laws;

8. **Employment Conditions in Destination Countries**

The subject of violation of workers' rights in the host country is a major concern and the extent of violations has serious consequences for the workers. Both male and female workers appear to face such hazards with graver consequences for the female who by the nature of her work is trapped within a private home with no access to the public sphere. In addition, the practice of visa trading has been identified to be another contentious issue.

8.1 *Study Findings*

Migrants face a host of problems in the destination countries. They include seizure of personal documents such as passports and work contract, contract substitution, non-payment or irregular payment of wages, non-placement against jobs promised, long work hours without appropriate compensation, hard work and living conditions, lack of access to proper health care, lack of leisure time and social protection and lack of access to due process of law. These problems are further compounded by the existence of the *kafeel* or sponsorship system in the Gulf states and the recently introduced 'outsourcing system' in Malaysia.

Visa trading has been found to be widespread in the Gulf states. Under this arrangement workers are sponsored by individuals or fictitious companies that do not have jobs to offer when migrant arrive. The migrants are thus left to fend for themselves and are forced to look for new employers replacing the ones who hired them. This process of "changing jobs" has serious implications for the legal status of migrants - the regular migrants become irregulars. Despite repeated commitments by the UAE, the Saudi and the Kuwaiti authorities to bring this practice to end, it continues to persist.

The issue of visas of different types with conditions attached to the entry, to the workplace, nature of work and the level of protection - or lack of it - has been a fractious issue. The "Type A" visa issued to female domestics enabled the employer, in this case the master of the house, to have complete control over the person of the worker even to restricting her movements and her channels of communication with her home or with officials. The system is akin to a "purchase" of a bond slave. The employer pays a fee to the agent for this, part of which is paid to the sub-agent who supplies the worker. Workers who escape from intolerable situations and try to seek refuge in the embassy are jailed if apprehended prior to reaching the embassy on charges of not carrying proper documents such as passports earlier retained by the employer.

8.2 *Possible Course of Action by the Task Force*

8.2.1 Wages and conditions of work and national treatment: GCC and other receiving states shall ensure that both labour laws and regulations provide that all migrant workers shall receive no less than the legal minimum wage provided to workers of the receiving states and shall be protected according to all legal provisions governing hours of work, working conditions, worker benefits and welfare and all other relevant provisions of law.

Where no legal minimum wage is established according to law, the SAARC governments should negotiate with GCC countries with technical assistance from the ILO, the prevailing daily wage for each industrial sector in which migrant workers are employed and ensure that migrant workers are paid no less than that prevailing daily wage for the sector where they work.

8.2.2 Use of Standard Contracts for Hiring of Migrant Workers: The SAARC countries should collectively demand GCC and other receiving countries to develop and

issue standard employment contracts for migrant workers containing standard provisions on wages, benefits, and hours and conditions of work that conform to all provisions of receiving country's national labour law. The standard employment contract shall also provide sections for particular details of the migrant worker and the position s/he will occupy that is issued by the receiving state's Ministry of Labour or other appropriate Government agency. Additional information which shall be determined (and committed to writing in the contract) in consultation between the migrant worker and employer includes: name and type of position, any specific provisions and responsibilities connected to the job not covered in standard sections of the contract, place of work and name of supervisor, and specific information about wages and benefits above the minimum set out in law. Where applicable, the standard employment contract shall also provide for a joint and solidarity obligation between the employer, the employment broker, if any, and the private recruitment agency that deployed the migrant worker for money claims of the migrant worker.¹⁸ Contracts will be effective only when freely signed by both parties, in the presence of witnesses. The standard contracts for migrant workers shall be enforced under the provisions of the national labour law. The standard contract shall be produced in three languages – the language of the country of origin of the migrant, the language of the receiving country, and English – and all three contracts shall be legally enforceable in both sending and receiving countries.

Appropriate systems for verifying migrant workers contracts shall be established by each sending Government prior to the departure of the migrant and supplemented by checks of migrant worker contracts by the Embassy of the sending Government in the receiving country. Both the employee and the employer shall be given a copy of the signed contract in a language understandable to them.

SAARC countries should negotiate with GCC and other receiving countries that a pre-work orientation programme on the rights and responsibilities of migrant workers under the provisions of the standard contract shall be organized at no expense to the migrants in the receiving country immediately after their arrival.

Only contractual relationships between migrant workers and employers which are concluded using the Government issued standard contracts or government approved contracts shall be considered legal. Use of any other contract to hire migrant workers shall be considered illegal. Action by an employer to compel the signing of non-Government issued or approved standard contract, or contract substitution for a Government-issued standard contract, shall be punished with significant fines and other legal penalties being levied against employers. Contracts shall be concluded only between the direct employer¹⁹ of the migrant worker and the migrant worker, and contracts concluded between the worker and any other third party shall not be considered a valid work contract. "Outsourcing" arrangements that permit direct employers to divert responsibility for wages, benefits and welfare of migrant workers to external employment agents shall be prohibited.

¹⁸ If the migrant worker's employment was arranged through a private recruitment agency in the sending country, the foreign employer, the private recruitment agency in the sending country, as well as third-party brokers in the receiving country, if any, shall all be held jointly and severally liable for all money claims of the migrant worker.

¹⁹ "Direct employer" is defined by the employer who is the owner or manager of factory, office, or worksite where the migrant worker is actually working on a regularly basis.

The SAARC governments are to lobby the GCC and other receiving governments' authorities to undertake education and public awareness campaigns, targeting employers of migrant workers, to clearly explain the legal requirement to use a Government issued standard contract to hire migrant workers and outline possible penalties for non-compliance.

8.2.3 Right to hold original travel (passport), work and personal documents and prohibition on seizure of documents: The SAARC should impress upon the GCC and other receiving countries that the right of all migrant workers to hold their own passports and the original Government-issued work and personal documents shall be considered inviolable. All Governments shall set out severe legal penalties against any person or enterprise who or which willfully confiscates, destroys or mutilates a migrant worker's travel, work or personal identity documents issued by any Government agency.

Such documents shall only be taken away from the migrant temporarily by permanent civil service officials of a Government in the course of a criminal or civil case investigation, and then only for the minimum possible time and in exchange for an officially recognized receipt for the document. Receiving states shall adopt a clear zero-tolerance policy that imposes heavy fines and other punishments on all persons (employers, brokers and recruitment agents, and non-authorized government personnel) who for any reason seize or hold migrant workers' documents.

The SAARC countries will encourage authorities of labour receiving countries to develop and sustain public outreach campaigns using popular media and events to educate current and future employers of migrant workers about the right of workers to hold their original work and personal documents and leave the workplace, and to take criminal and civil action against employers who illegally confine migrant workers.

8.2.4 Special challenges facing foreign domestic workers and caregiver: SAARC Governments shall address key problems faced by domestic workers, who are especially vulnerable because they frequently face isolation and a lack of support mechanism because their worksites are in private homes. Among these problems are: lack of employment contracts, prevalence of sexual harassment as well as other physical and psychological abuse, failure to provide any holiday leave or over-time pay, payment of sub-minimum wages, forced working of long hours, seizure of worker's identification documents and restrictions on movement and association.

Both sending and receiving Governments shall amend their labour laws and regulations to ensure that domestic workers are specifically included as a recognized category of worker covered by the national labour law, and shall ensure their rights to freedom of association and assembly are protected.

Receiving and sending Governments shall agree that due to the special nature of domestic work, it is important that migrant domestic workers shall receive, at a minimum, one day of paid leave in each 7 day period and be allowed off days for public holidays or festivals celebrated by them; or substitute days off for these. All receiving states will be encouraged to incorporate this requirement in their labour laws and regulations.

8.2.5 Agreements/mechanisms to change employers: SAARC Governments should secure the consent of the GCC and other receiving countries that they should

devise migrant registration schemes that enable migrant workers to directly register with Government authorities and eliminate the guarantor role played by employers in many such schemes. The role of employers shall be restricted to informing the Government of the entry and departure of migrant workers to their work forces, and strictly following the provisions of the national labour law and the standard migrant worker contract.

As part of the migrant registration schemes adopted by receiving states, workers shall have the right to seek a new employer.²⁰ If the worker's employment is unilaterally terminated by the employer, s/he shall also have the unrestricted right to change employers. Registration systems shall not unnecessarily hamper workers' ability to move within the receiving country to find or undertake work.

An improved system with a longer transition period (no less than 30 days) should be devised during which a migrant worker is allowed to freely seek a new employer so that migrant workers have a reasonable chance of continuing their documented status and maintaining legal employment.

8.2.6 Access to health services for migrants: SAARC countries should impress upon the GCC and other receiving countries that the quality of health of a migrant worker does not just affect the worker, but also has implications for his/her ability to work and contribute to the economy of the receiving country, and to earn and send money to his/her family still residing in the country of origin, and to return to the country of origin and have a productive life upon their return.

Migrant workers and their families shall not be obliged to undergo discriminatory or abusive medical examinations for any reason, and shall not be involuntarily deported based on the results of a medical test. In line with the humanitarian principles underpinning the medical profession, receiving states shall extend treatment in the receiving country to migrant workers in order to ensure there is no delay in providing medical services necessary for them to recover their health.

Article 12(1) of CEDAW provides that all ratifying states "*shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure...access to health care services, including those related to family planning.*" Accordingly, SAARC states will persuade all receiving states to ensure migrant women workers are provided access to gender-sensitive reproductive health services, in addition to ensuring the protection of women workers' health in the work place.

8.2.7 Migrant workers' accommodation and living conditions: An employer of migrant workers shall be required to provide those workers with clean, hygienic, and safe accommodation services (proper sanitation, access to clean water and electricity, garbage collection, building safety, public transport services, and security) at no cost to the worker with provisions for sex segregated accommodation where required on safety

²⁰ The right to change employers should be unrestricted. However, if Governments place limitations on this right, they should consider the following scenarios in which Governments would agree to permit unrestricted changes of employers -- the employer fails to comply with all aspects of the labour law and regulations; subjects the worker to potentially dangerous or health threatening working conditions; sexually or physically harasses or abuses the worker; illegally restricts freedom of movement of the worker during non-work hours; faces financial difficulty or insolvency; or defies a legal order from a Government authority.

grounds. Employers shall be responsible for regular maintenance of the housing provided. Migrant workers shall not have their freedom of movement restricted as a condition of accepting employer-provided accommodation.

Migrant workers shall be given the right to accept or refuse employer-provided accommodation and in no instances shall the right to work be conditioned on acceptance of employer-provided accommodation. If the worker exercises their right not to use employer provided accommodation, then the migrant workers shall pay for the cost of the rental of his/her chosen accommodation.

8.2.8 Occupational safety and health: SAARC states should recognise that Occupational Safety and Health policies and programmes should be an important element in their labour migration policies. The SAARC states shall ensure that the receiving states strictly regulate all workplaces and ensure that all national OSH statutes are complied with. The receiving states shall ensure that all migrants have access to health care, treatment, rehabilitation, and compensation for injuries, disease or deaths in the workplaces. Employers shall be required to provide, at no cost to the worker, comprehensive training on OSH issues and safety equipment in the workplace for all migrant workers employed by them.

The SAARC states in consultation with GCC and other receiving countries shall determine which professions and sectors can be determined as particularly dangerous (such as but not limited to quarrying and mining, construction, ship-building, off-shore fishing, and other hazardous jobs in the formal and informal sector) and set out appropriate additional safety regimes for these jobs. In making such determinations, SAARC should seek appropriate technical assistance from knowledgeable international organizations such as the ILO or other organizations/ agencies specialized in OHS systems and equipment that meet internationally recognized and accepted standards.

8.2.9 Access to legal systems and justice: SAARC member Governments shall ensure that there are systems of effective legal aid for migrant workers and that specific measures should be taken to assist the migrant workers when they lodge complaints about ill treatment and violations of the law.

SAARC states should secure the consent of the GCC and other receiving countries to agree to the principle that potential plaintiff(s), whether documented or undocumented, shall be guaranteed the right to receive legal assistance to file a legal case seeking justice and pursue the case to its conclusion without threat or fear of harassment, arrest or deportation. Migrant workers shall also have the right to petition all relevant courts to seek legal redress and shall not be denied access because they are migrant workers and/or lack legal status in the country. Migrant workers involved in legal proceedings shall be allowed to seek and accept gainful employment during the course of the legal proceedings.

Governments of labour sending and receiving nations shall ensure that quality public information about access to legal systems and justice for migrant workers is widely distributed in languages the migrant workers understand, and shall widely publicize the existence of systems to receive complaints from migrant workers (such as phone hot-lines, post office boxes, legal assistance offices, Embassy referral systems, etc.) The content of the information provided and the methods for distribution of that information shall be culturally and gender sensitive, and these information outreach efforts shall be coordinated with trade unions, local/community based organizations, and NGOs working

whose support for awareness raising for migrant worker organizations and leaders can help ensure effective acceptance of the information by migrant communities.

Given the vulnerability of migrant workers to retaliation by employers, brokers and criminal gangs, SAARC countries should negotiate setting up of appropriate witness protection systems with receiving countries, with specific mention of migrant worker complaints to be included in the categories of cases for which witness protection applies. Where cases involve women migrant workers, it should be ensured that trained women officers are involved in protection for witnesses.

8.2.10 Screening of irregular migrants and policies and processes for arrest, detention and deportation: Undocumented migrants identified by the authorities in conditions of highly exploitative work shall be screened to determine whether their irregular status has been the result of malpractices of recruiting agencies or violation of contract by the employers. These migrants shall not be penalized because of a lack of status or documents, and Governments shall adopt procedures to speedily and effectively regularize their status and provide necessary identification documents. Further, States should institute legal action against the concerned employer and/or recruiting agency.

To bring about order in the migration sector and make recruiters and employers accountable for their actions SAARC states should collectively urge the receiving states to devise and implement administrative programmes that will enable such undocumented migrants to come forward without fear of punishment, register themselves and regularize their status, seek legal employment or convert their existing work status to legal employment, and gain access to the full range of services available to migrant workers. Such programmes shall be widely publicized in advance in both the national language of the receiving country and the major language(s) spoken by migrant workers through a combination of radio, TV, print, and online media, and use of posters and other information designed to reach migrant workers where they live and work.²¹

The receiving countries should be encouraged to establish effective migrant worker assistance hot-lines, with ability to receive phone calls from migrant workers in their own language, English, and the language of the host country. These hot-lines shall be connected to an effective service referral system. These systems shall be connected also to representatives of sending countries in the receiving country, such as Embassy personnel, empowered to provide assistance to migrant workers in distress.

Those found to be victims of human trafficking shall be given special protection in line with anti-trafficking policies and laws, and case management coordinated with the representatives of the sending Government. Bilateral and/or multi-lateral agreements on the policies and procedures to support the repatriation and reintegration of trafficking victims shall govern the return of these victims to the sending countries.

The SAARC states should persuade GCC and other receiving states to immediately end all arrangements which devolve law enforcement authority over migrant workers and their families to persons who are not law enforcement officials with permanent civil

²¹ The migrant registration exercise conducted by Royal Thai Government to regularize undocumented migrants in 2004 is an important illustrative example of a highly successful program of the type envisioned.

servant status in the Government. Arrests and detention of undocumented migrant workers shall be done only by permanent civil servants with a legal mandate for law enforcement and in accordance with a warrant. Locally recruited paramilitary or civilian auxiliaries shall not be authorized to arrest or otherwise detain migrant workers, and shall be prohibited from involvement in deportation procedures.

In order to prevent possible forced or unlawful deportations, private companies or individuals shall be prohibited from involvement in providing detention and deportation services. The SAARC governments should persuade receiving countries that their officials at ports of entry and exit be provided with appropriate knowledge and training to pro-actively recognize and intervene in cases of involuntary deportation of migrant workers and translation services be readily accessible to allow officials to investigate suspected cases of forced/involuntary deportation.

Any arrest, housing, detention, and deportation of migrants shall only be carried out lawfully, in a safe and dignified manner and in humane conditions. Governments shall prevent migrants from being pushed back and forth across borders from one country to another without being able to access the protection of their national authorities or to access international protection.

Penalties for remaining in an irregular or undocumented status in the territory of a receiving State shall be proportionate. Violations of administrative laws or procedures shall not be treated as criminal offences. Provisions of law that subject migrants to cruel, inhuman and degrading treatment shall be reformed to eliminate the practice, in accordance with a time-bound consultation between sending and receiving states.

8.2.11 Migrants' ownership of communication devices: The right of migrant workers to personal communications shall be respected. Migrant workers and their families shall have the right to purchase and use mobile phones without undue restrictions by the authorities.

9. Return and Reintegration

The migrants also face re-integration problems upon return to their countries of origin. In the absence of proper re-integration policies, the returnee migrants in South Asia often lose control over their remittances and savings. The savings and investment instruments and opportunities offered by the formal banking sector of these countries are mostly geared to the long term migrants and diaspora groups located in the developed world. The lack of credit facilities dampens the enthusiasm of enterprising returnee migrants to build up their own lives afresh, while the absence of a data base of returnee migrants reduces their opportunities to put to use their skills and knowledge acquired overseas.

9.1 Study Findings

The absence of data on returnees precludes an assessment of what situations they return to. Research shows a mixed picture of returnees who have successfully managed their migration and have set up sustainable income generating economies and others who come back to worse conditions of

impoverishment and indebtedness as well as to disruptions in the family. The absence of reintegration programmes leaves some returnees with no social or economic benefit from migration. The need for information on investment on return to be given to them in pre-migration training itself is critical. Here best practices could be sought for emulation.

9.2 *Possible Course of Action by the Task Force*

9.2.1 **Coherent Policy Framework:** SAARC Governments shall develop a coherent policy framework on socio-economic reintegration of returnee migrant workers. Governments shall develop database for returnee migrants that would include their experiences gained and skills acquired. They will allocate adequate financial, human and social resources for effective reintegration of these migrant workers.

9.2.2 **Incentives:** The SAARC Governments shall further provide returning workers with economic incentives and assistance such as tax holidays, simplified business registration and regulatory systems and provision of marketing assistance to help workers set up economic enterprises to secure their livelihoods. Governments shall also support the provision of capacity-building/training in livelihood development, financial literacy, and entrepreneurship for returning workers and their families. Governments shall seek to involve local organizations and NGOs in the delivery of such services for migrant workers.

9.2.3 **Representation of Returnee Migrants:** SAARC Governments shall establish processes for the involvement of representatives of the returnee migrants' associations/unions in all policies and programmes involving the sending of migrant workers overseas, and the provision of services to returning migrant workers and their families.

9.2.4 **Remittances and Savings Schemes:** Given the importance of migrant worker remittances to the economy of the migrant's origin country, a dependable, accessible, and low-cost system for transferring remittances to respective SAARC countries is vital. The member states of SAARC will be urged to support the creation of such a remittances system, whether implemented by the private sector, trade unions and civil society organizations, or Government agencies.

SAARC countries receiving migrant workers shall issue regulations permitting migrant workers to easily open savings accounts at local banks with a minimum of personal identification required. These regulations shall also permit workers who are in an undocumented status to open bank accounts. Governments shall also actively support and facilitate other efforts by migrant workers, migrant support organizations and other stakeholders to create alternative safe and secure saving options for migrant workers.

10. Related Areas of Engagement of the Task Force under the Regional Consultative Process:

10.1 *Declaration on Minimum Standard for Out-bound Migrant Workers:* Unhealthy competition among the member states of the SAARC and others have led to deterioration of terms of employment for the workers of the region. A Declaration on Minimum Standard for Out-bound Migrant Workers of sending countries of the region incorporating issues such as sector-wise minimum wage and other conditions will go a long way in ensuring decent wage, work, living and health conditions of the migrant workers. The Task Force can develop a Model Declaration for consideration of the SAARC governments.

10.2 *Abolition of Kafil system and Outsourcing Methods:* A major source of problem for the migrant workers of the region is the existence of the *kafil* or sponsor system in the Gulf states and outsourcing system in some Southeast Asian countries. The dynamics of the *kafil* and outsourcing systems need to be thoroughly studied. The Task Force may put forward to the South Asian states alternative mechanisms (such as direct recruitment) that may be adopted in their strategies to promote sending workers overseas.

10.3 *Desecuritizing Migration:* Over the last few years, migration policies of many receiving countries are increasingly being shaped by security concerns rather than concerns of labour market and migrants' rights. In many instances migrants are unfairly stigmatised and blamed for criminal and anti social activities. The SAARC states should collectively take stand to protect their migrant workforce deployed overseas and impress upon the receiving states that securitization is not necessarily the best way to deal even if such problems exist. The Task Force may conduct studies on adverse impact on securitization of migration on personal security of migrants and inform national policy makers in this regard.

10.4 *Migrant Welfare and Resource Centres in Receiving Countries:* The South Asian states may jointly establish Migrant Welfare and Resource Centres in places that have relatively large concentrations of workers of the region. Based on the Filipino model such centres will provide workers opportunities to access legal support, to interact with one another, share experiences and information, improve their skills and engage in leisure activities. Staffed by labour attaches and Welfare Officers, such joint initiative will, on one hand, help pool more resources for such centres, and on the other, help foster solidarity among workers of the region.

10.5 *Development of a Standardised Data Base:* National data on migration is collated differently by state agencies of various SAARC countries. The absence of standard data hinders quality comparative research. The Task Force will encourage states to agree to a set of common indicators to document the flow, trends and stocks in all destination countries by sex, education and occupation

profile. The indicators may be developed by migration experts and demographers so that there is consistency and standardisation in migration data. The Task Force may also encourage member states of SAARC to conduct periodic (annual or biennial) National Migration Survey. Such surveys will help policy makers integrate migration issues in national planning instruments in a more informed way.

10.6 Sharing of good practices on remittances flows and utilisation: Remittances play a vital role in the economic development processes of all South Asian countries. In order to facilitate flow of remittances financial infrastructures in SAARC countries need to be strengthened and fiscal incentives are to be developed that are in tune with the needs of migrants and the migrant households. Good practices in this regard may be shared and emulated. The Task Force may also encourage banks and money transfer agencies to invest part of their profit earned from remittance transfer to invest in projects for migrant workers as part of their corporate social responsibility.

10.7 Investment in migration sector: The governments in the region should make more investment in this sector. The Task Force will identify areas for such investment that may include establishing training centres, training of trainers and organizing information campaigns. The Task Force may also encourage governments to consider setting up special funds or banks to finance migration especially those from the disadvantaged sections.

10.8 Ratification of 1990 UN Convention on Migrant Workers: The 1990 UN Convention for the Protection of Migrant Workers and Members of Their Families is the most comprehensive legal instrument that has been adopted to take ensure the rights of the migrants. Except for Sri Lanka no other South Asian countries have ratified this Convention. The Task Force will encourage the Governments of the region to ratify the 1990 UN Convention.

11. Learning from the ASEAN Experience

The ASEAN has set forth plans for full economic integration of its ten member nations by 2015. The ASEAN Charter sets out among its purposes “to create a single market and production base which is stable, prosperous, highly competitive and economically integrated with effective facilitation for trade and investment in which there is free flow of goods, services and investment; facilitated movement of business persons, professionals, talents and labour; and freer flow of capital...”. Such regional integration will be invariably accompanied by migration and labour mobility. This has necessitated framing of a new framework and mechanism to deal with the issues.

The ASEAN experience provides valuable insights in developing a regional framework to protect migrant workers. The *ASEAN Declaration on the Protection*

of the Rights of Migrant Workers was signed at the 12th ASEAN Summit at Cebu, Philippines, on 13 January 2007. The Declaration called on the ASEAN community to “promote the full potential and dignity of migrant workers in a climate of freedom, equity and stability in accordance with the laws and regulations and policies of respective ASEAN member countries”. To attain these desired objectives, the host states, on the one hand, were obligated to facilitate access to justice and welfare services ‘as appropriate’ and to promote fair and appropriate employment protection, payment of wages and decent working and living conditions for workers. The sending countries, on the other hand, were obligated to ensure access to employment for their citizens as an alternative to migration and to facilitate recruitment, preparation for deployment and the protection of migrant workers abroad. They were also required to regulate the recruitment of migrant workers, eliminate recruitment malpractices by providing legal contracts and blacklist negligent or unlawful recruitment agencies.

A Declaration by nature is not a binding legal instrument and as such an important drawback of the ASEAN Declaration is the absence of enforcement mechanisms. Despite this fact, getting a proclamation or declaration is important. The ASEAN Declaration mentions of ‘protecting’ the migrant workers. This provided the civil society organisations the scope to demand what mechanisms are states and ASEAN as an institution are taking to ensure such protection. Eventually, a committee has been set up by ASEAN in this regard. Currently the TOR of that committee is being discussed.

The ASEAN Declaration dealt with intra-regional movements of labour. But the ground reality in South Asia in this regard is very different. The states are overtly sensitive to intra-regional movements of workers and hence it will be prudent to clearly state at the outset that the proposed Declaration and the mandate of the Task Force do not deal with intra-SAARC movements of people. It exclusively deals with movement of labour from South Asian countries to the Gulf states and south-east Asian countries. This would allay any misgivings that states may harbour.

An important strategic move would be to identify a country that will espouse the cause of outbound migrant workers. The new government in Bangladesh may be targetted in this regard. In the ASEAN context, it was the Philippines that pushed the agenda when it hosted the summit. It did so under the socio-cultural blue print of the ASEAN, (other blueprints are economic, and peace and security). Malaysia and Singapore also extended support to the Filipino proposal. While one country may be targeted to lead the issue, key personnel in concerned ministries of other countries may also be kept informed about the developments. Such liaisons can be established through organising a soft conference or workshop.

Any initiative to move the SAARC would require an intimate knowledge of how the system works. For example, the ASEAN Secretary General enjoys a certain

great degree of autonomy to entertain new ideas for the forum. In that context the proponents of collaboration on labour migration issue in South Asia need to find out to what extent the Secretary General of SAARC enjoys such authority. They also need to identify which section of the SAARC secretariat would be most likely to deal with the issue of labour and migration. In the ASEAN process the foreign ministry took the initiative, and passed on the implementing responsibility to the labour ministries. It will also be helpful to engage with the SAARC secretariat before the agenda of next summit is drawn. SACEPS can play a pivotal role in this regard.

A 2005 SAARC study acknowledges that international migration, supported by the right policies, could be highly beneficial for the development and poverty reduction. It notes that remittances with focused policies have resulted in poverty reduction South Asian countries.²² The study also recommends regulation of intermediaries to minimize risks of migration, reduction of cost of migration, financing of migration by banks, protection of migrants at the destination countries through bilateral agreements and involvement of SMEs and NGOs for entrepreneurship development of the return migrants. It further recommends that in South Asian countries foreign employment needs to be integrated into development policy and plans such as PRSPs and their national equivalents.²³

The SAARC Development Goals 2005-1010 concludes that “a journey of hope for a poverty free South Asia is the key contemporary challenge” that demands “active, intelligent and innovative engagement from all”. In view of the immense importance of the sector, incorporating migrant labour issue in the SAARC Charter and setting up a regional consultative process on labour migration from South Asia will certainly constitute one such major engagement.

²² Poverty Reduction in South Asia through Productive Employment, SAARC Regional Poverty Profile 2005, p. 124.

²³ Ibid 139-140.