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IOM International Organization for Migration  
OIM Organisation Internationale pour les Migrations  
OIM Organización Internacional para las Migraciones

# **COUNTRY OF ORIGIN COMMITMENTS TO FACILITATE LABOUR MIGRATION AND PREVENT IRREGULAR MIGRATION**

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DEVELOPING COUNTRIES ARE INCREASINGLY INTERESTED IN FACILITATING ACCESS FOR THEIR NATIONALS TO TEMPORARY JOB OPPORTUNITIES ABROAD. WHILE SOME DEVELOPED COUNTRIES' LABOUR MARKETS WOULD CLEARLY BENEFIT FROM BRINGING IN THIS FOREIGN LABOUR FORCE, GOVERNMENTS ARE OFTEN UNWILLING TO OPEN THEIR DOORS TO LABOUR MIGRANTS FOR FEAR THEY WILL OVERSTAY AND FUEL THE INFORMAL ECONOMY. THE PURPOSE OF THIS REPORT IS TO PROVIDE CONCRETE EXAMPLES OF THE TYPE OF ACTIVITIES OR COMMITMENTS COUNTRIES OF ORIGIN COULD ENGAGE IN TO ENCOURAGE DESTINATION COUNTRIES TO APPLY MORE FAVORABLE POLICIES TO THEIR NATIONALS. THE FIRST SECTION EXAMINES ACTIONS TAKEN BY / INVOLVING COUNTRIES OF ORIGIN TO FACILITATE THE MATCHING OF LABOUR SUPPLY AND DEMAND. THE SECOND SECTION LOOKS AT ACTIONS CURRENTLY TAKEN BY / INVOLVING COUNTRIES OF ORIGIN TO COMBAT IRREGULAR MIGRATION AND RELATED ILLEGAL ACTIVITIES.

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## **I. ROLE OF FOREIGN EMPLOYMENT AGENCY**

*Relying on individual initiatives and labour market forces may be too limited an approach in an effort to expand foreign employment. Labour migration from some countries is facilitated by the existence of historical and cultural ties with the destination countries, or of markets for their nationals developed by private actors (recruitment agencies) and diaspora networks. However, in order to target certain labour markets -where migrants are guaranteed decent conditions of life and employment, in occupations where they can earn a decent/ good income- while preventing eventual brain drain, a certain level of state intervention is required.*

*With regard to the matching of supply and demand, states can develop strategies at three different levels: 1) Marketing and promotion of foreign employment; 2) Education, training and skills development, and 3) Information dissemination to potential migrant workers. These strategies encompass the definition of the role of the state and the role of private actors in achieving short-term and longer-term objectives.*

*Regarding foreign employment, the institutional arrangements in countries of origin can take different forms: responsibilities can be spread among different ministries (Ministry of Labour,*

Ministry of Foreign Affairs, Ministry of Education) or can be concentrated in a separate institution exclusively devoted to the protection, welfare, and promotion of migrant workers, in coordination with other ministries.

## A. Marketing and promotion of foreign employment

Several stages:

- 1) *Identification of the target markets and assessment of supply capacity. These require assessing if the educational qualifications and experiences demanded by foreign employers match those of the workers from the country of origin, and if not, what measures may be undertaken by way of skills upgrading or complementary courses.*
- 2) *Elaboration of labour market information based on labour demand abroad and labour supply at home. (To draw a positive list of skills to be promoted for foreign employment and a negative list of skills in short supply for the prevention of further brain drain)*
- 3) *Organization of a private recruitment system and /or public employment services for foreign jobs.*

√ *Philippines*<sup>1</sup>: Market development is carried out by the Philippines Overseas Employment agency (POEA) and takes 4 different forms: (1) research and planning, (2) personal selling and promotions, (3) print promotions and (4) corporate promotions and industry servicing projects.

(1) *Research and planning.* In the Philippines, the operational set-up of its market research group is based on the “desk officer system,” which assigns particular regional or skill-based market segments to an individual officer. This system facilitates the research process as it designates one desk officer per region (e.g. the Middle East, Europe or Asia). It also allows for the development of regional expertise and specialization for each desk officer, making them wholly responsible for the conceptual and procedural formulation of regional market projects while coordinating with other areas of concern, such as defining research standards in implementation and control.

A skills or industry-based approach allows for the determination of market behaviour, which is easier for a single officer with relevant expertise to dissect and correlate with appropriate strategies. Since such research makes reference to the whole industry and is not for POEA’s exclusive use, feedback from industry participants is relied upon as inputs and form part of the feedback loop during planning and implementation. POEA research outputs are circulated within the industry. A monthly Market Situation Report (MSR) is provided to the private sector through their associations, which in turn distribute them to their members. The MSR is a consolidated report on current international labour market developments and relevant economic trends and events that have a bearing on the Philippine overseas employment programme. In addition, country of origin profiles are prepared in order to have a comprehensive brief on the labour, political and socio-economic conditions as well as prospects and problems in each country. Information on immigration policies and business laws of different countries are continuously gathered, analysed and disseminated. This type of research is essentially based on analytical reading of secondary sources such as trade journals, regional economic magazines and national development plans of traditional countries of origin. This is complemented by feedback derived from consultations and close liaison work with the marketing staff of private sector groups. Inputs are also derived from reports of Labour Attachés and whatever can be gathered from Philippine Embassy reports.

(2) *Personal selling and promotions*

In order to understand the market, meeting and talking directly with officials of the host country and human resource development officers of private companies is crucial. The

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<sup>1</sup> Information extracted from IOM training Manual for Labor Administrators

“personal selling” approach adopted by POEA is done through a variety of ways which include, among others, 1) the dispatch of special marketing teams on field missions and 2) client calls or field reconnaissance by Labour Attachés and/or special POEA representatives.

1) *Marketing Missions*: There are basically two types of marketing missions: a) *Technical Study or Fact-finding Missions* – This type of mission is generally undertaken only by government officials composed of POEA’s middle managers and senior technical staff, with occasional representatives from other government agencies. It is basically a fact-finding or fact-substantiating strategy to assess opportunities or explore new prospects for Filipino manpower by undertaking research and improving the information base on prevailing wage rates, development plans, comparative data on competition from other countries, labour and business laws, employment practices and other relevant information on the target country. b) *Top Level Goodwill and Promotions Missions* – This type of mission is either purely composed of high-ranking government officials (i.e. Minister of Labour, POEA Administrator, or Undersecretaries) or is joined by representatives from the private sector. The composition of the team is in itself a key selling strategy in as much as it “opens doors” in target markets, establishes goodwill, and fosters bilateral understanding and cooperation with the target country. Opportunities to meet with top officials of foreign corporations are more readily arranged and greater attention is given to the promotion of the Filipino workers’ qualities and competitiveness. The inclusion of representatives of the private sector enhances the business development aspect of the mission and facilitates the establishment of links with prospective employers/contractors. Representation from the private sector is usually obtained through nominations by the industry associations with the sponsoring government institution having the final approval.

2) *Field Visits/Client Calls* – Aside from these overseas missions, POEA carries out periodic marketing activities in coordination with Labour Attachés in the field. Labour Attachés act as on-site “information centres” and “distribution outlets” for promotional and communication materials developed by the Home Office. They also conduct “door-to-door” visits to prospective clients and provide the Home Office with leads and recommendations. They play a very important role in information generation and as feedback resources.

(3) *Print promotions*. The development of these printed materials emanate from POEA’s marketing personnel, since they require the perceptive analysis of the hiring tendencies and characteristics of employers and are blended with a concise and comprehensive presentation of what the country or POEA can offer by way of its services. The print campaign is conducted through 1) the use of advertisements in media, 2) support communication materials, (skills brochures, corporate profiles, marketing portfolios, annual reports, information kits and flyers), and 3) direct mail (targeting specific sectors).

(4) *Corporate promotions and industry servicing projects*. POEA undertakes a number of soft-sell schemes to strengthen its corporate image and the overseas employment programme in general. It also pursues projects supportive of the market development efforts of the private sector. These include:

- i. *Familiarization Campaign* – POEA hosts meetings and initiates dialogues with selected officials of foreign embassies based in Manila.
- ii. *Client Referral Advisory System* – If the interested employer is a government entity wishing to have their workforce requirements filled by POEA, they are referred to POEA’s Government Placement Department. If the client is from the private sector, their job order is endorsed to the private sector through the Client Referral Advisory System. The Client Referral Advisory System is supervised by POEA and is utilized as a means of rewarding top performers in the recruitment industry.
- iii. *Market Information Service* – A mini databank is maintained that contains reference materials, foreign and local studies on migration, reports and other vital

market data and information and is made available to foreign and local clients of POEA.

- √ *Role of labour attachés/embassies:* Embassies can play a role in :
- Gathering and analysing information on the employment situation and other facts related to employment in the host country (immigration policy);
  - Establishing links and coordination with the host country's private agencies that might be looking for employees to fill certain labour demands as well as government agencies;
  - Linking up with industries, associations or chambers of commerce, business, industries or entrepreneurs which are potential sources of employment for his/her nationals.

## **B. Education, training and skills development**

*Some countries of origin would like to increase their share of migrant workers; however, their labour force does not have the education and training which will qualify them for employment abroad. The lack of recognised qualifications can either affect the workers' capacity for entry to destination countries to take qualified jobs, or will cause workers to accept employment below their level of competence.*

*In order to adjust supply to external demand, 3 factors need to be considered: 1) the existing labour force and the youth preparing to enter the labour force; 2) demand from domestic and foreign firms (or recruitment agencies); and 3) educational and training institutions.<sup>2</sup> For skilled migration, what matters is the quantity and quality of workers countries of origin are capable to train. Often, national education systems privilege large-scale education at low costs, but of a poor quality (e.g. Philippines). The reality today in most countries of origin is a lack of planning for external demand, with adjustment between training and foreign employment mainly left under labour market force (individual capacity to chose the right training, private education institutions developing programmes oriented towards foreign employment), without the involvement of government, except sometimes in certain niches (e.g. Philippines government agencies dealing with the needs of the maritime professions, with a recognised set of standards)*

- √ *The Philippines.* The Philippines Maritime Training Council (MTC) was created to enforce the International Maritime Organization's Standards for Qualification of Training, Certification and Watch-keeping (STCW) for seafarers, and to create an effective organization for the employment of seafarers. The Commission on Higher Education supervises, monitors, and regulates degree programmes in marine engineering and marine transportation while the Professional Regulation Board administers professional examinations for these programmes. Candidates for officer positions must have a college degree and pass the maritime engineering and transport board examination. The Technical Skills Development Authority (TESDA) is responsible for sub-professional skills and as such assesses and certifies the skills of ratings (non-officer seafarers) through tests and examinations. TESDA certificate of skills rating, the Professional Regulation Commission certification for marine engineers (officers) and its National Training Center, are now essentials tools increasing employment abroad. In addition, MTC accredits maritime training institutions, which is useful for the employers and students alike. This example of upgrading a national system to comply with international standards is very unique, as the requirements are mandatory for this entire industry on a global scale. Indeed, the amended STCW (regulation 1/10) stipulates that seafarers could not be hired to work on board ocean going vessels if their countries of origin were not on the International Maritime Organisation White list and not covered by bilateral

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<sup>2</sup>, « Policies and Institutions for Training and Skills Development of Migrant Labour », Edita Tan, p.229, in IOM, *Labour Migration in Asia Protection of Migrant Workers, Support Services and Enhancing Development*", 2005.

agreements between seafarer sending and seafarer accepting countries for the recognition of seafarer's certificates of competencies.

### **C. Information dissemination to workers**

Foreign employment agencies should provide assistance to potential migrants by providing them with information on:

- a. How to find out about employment opportunities in potential countries of destination;
- b. What the essential requirements are for employment in the desired sector (education, skills, qualifications, experience, capital, agency fees, passports and visas, etc);
- c. How to find out which recruitment agents are reliable and trustworthy, and which are not;
- d. The dangers related to illegitimate recruitment;
- e. Migrants' rights, entitlements and obligations and how to exercise these rights in the destination country, and
- f. What other factors to take into account when considering employment in another country.

This information can be displayed on a website, disseminated through information campaigns, or made available in Migration Information Centre established in the country of origin.

## **II. DATABASE, SELECTION AND RECRUITMENT MECHANISMS**

### **A. Databases of labour supply**

- √ *Egypt*: The Integrated Migration Information System (IMIS) is an Italian-funded project implemented in Egypt by IOM. It has an online database at the Ministry of Manpower and Migration for Egyptians wishing to migrate to Italy. A job-matching system for Egyptian applicants and Italian employers provides Egyptians with access to the Italian labour market information system and enables them to apply for jobs in Italy online.
- √ *Albania-Italy*: In 2000, IOM set up a special system and related procedures for selecting the Albanian workers whose professional qualifications match 33 professional profiles identified as the most sought-after jobs among foreign manpower in the Italian labour market. Selection took place in Albania through interviews to assess the professional qualifications of the candidate, verify their credentials and degree of proficiency in Italian. Relevant data for each selected candidate were registered in a special IT format developed by IOM and transferred to the Italian Ministry of Labour for further dissemination to employment offices and other Italian authorities involved in the recruitment of foreign manpower. By 31 December 2002, the end date of the project, IOM actually selected a total of 6,724 Albanian workers potentially employable by Italian entrepreneurs. They were selected from among a total of 30,000 pre-applications received after IOM had organized an important information campaign to disseminate the initiative in Albania. Data are now available for consultation by all interested Italian entrepreneurs who are thus able to easily identify the candidate/s responding to their labour needs and to complete the necessary administrative procedures for their employment.
- √ *The European Job Mobility Portal (EURES)* enables migrant workers to display their CVs: EURES is a cooperation network designed to facilitate the free movement of workers within the EEA and brings together the Public Employment Services of all

EEA Member States. In cross-border areas it also works with local and regional bodies and social partner organizations. The aim of EURES is to provide information and advice on different aspects of mobility, job offers, recruitment, living and working conditions, labour needs of the regional labour markets and is meant to be a database and showcase for individual CVs. The EURES currently receives 9,000 visits per month and more than 100,000 offers have been registered. The EC is looking to restructure EURES and make it more user-friendly, and provide an overview of various national labour markets. In addition, in 2007 the EU aims to set up a similar portal on immigration (related to non-EU citizen migrants). It is intended as a tool supporting the effective management of immigration flows to the EU, by providing potential immigrants with up-to-date information on available possibilities and conditions for admission, residence in the EU, the rights and obligations in relation to immigrant status, employment opportunities in Europe, and the dangers and consequences of irregular immigration. Furthermore, this portal should provide potential migrants with information on statistics and research on EU policies and the *acquis*<sup>3</sup> on immigration, integration, labour market rules, social inclusion as well as studies, ongoing campaigns, links to the national websites and to the EURES network, the future EU Integration Website and the European Researchers' Mobility Portal.

- √ *Korea*: The Korean guest-worker programme operates under bilateral agreements with countries of origin. Under paragraph 8 of the MOU with the Philippines, it is specified that the sending agency needs to build a computer infrastructure in consultation with the Korean Ministry of Labour to facilitate the sending of a roster of job seekers, help in the signing of labour contracts between workers and employers, and protect the personal information of workers and employers. The Korean MOL has to provide the sending agency with the necessary information and programmes to facilitate the building of the computer infrastructure.
- √ *Guatemala*: At the request of the Guatemalan Government and in cooperation with the "Fondation des Entreprises de Recrutement de Main-d'oeuvre Agricole Etrangère" (FERME), which represents the employers of the Canadian province of Quebec, IOM designed and implemented a project for the selection and transfer of Guatemalan seasonal agriculture workers to Canada, which included the design and implementation of a database with employer and worker data.
- √ *Tunisia*: the National Agency for Employment and Independent Work (ANETI) and the Tunisian Agency for Technical Cooperation (ATCT) have developed databases for employers willing to recruit Tunisian workers that were disseminated to relevant Italian institutions as well as the private sector. In addition, they have engaged in the promotion of Tunisian labour through the organization of technical workshops and press conferences involving Italian institutions and the private sector, as well as visits to selected Italian regions of Tunisian representatives from institutions in charge of foreign employment.

## **B. Selection and recruitment**

- √ *Germany*: Under German bilateral seasonal worker programmes, prior cooperation between the national labour offices of the countries of origin and of destination is required for selecting the workers according to the arrangements signed between the German Employment Office and employment services of the countries of origin. The labour office in the country of origin is responsible for advertising the job opportunities and the selection of candidates.

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<sup>3</sup> *EU acquis*, is used in European Union (EU) Law to refer to the total body of EU law accumulated thus far

- √ *Ecuador:* After signing a bilateral agreement with Spain on migration, Ecuador established the Technical Unit for the Selection of Migrant Workers (UTSM) (under an agreement between the Government of Ecuador and IOM). The unit carried out an information campaign on the possibility to register the pre-selection of workers willing to take up employment in Spain in a database. The employers transmit their requests for workers either anonymously or mentioning the names of specific workers) to the provincial labour and social affairs bureau. If approved, they are forwarded to the “Dirección general de ordenación de las Migraciones” (DGOM); DGOM transfers them to the Spanish embassies who will communicate them to the institution in charge of the pre-selection of workers. The Unit informs Spanish authorities if they have workers in their database matching the profiles. The pre-selection is conducted in Ecuador by a joint commission comprised of Ecuadorian and Spanish authorities’ representatives as well as the employers if they wish to be present (in person or through video conference). The workers are then called for an interview where they will be selected by the Spanish authorities and the enterprises with the assistance of Ecuadorian authorities. The list of the selected workers is transmitted to the Spanish embassies who inform the enterprises in view of establishing a labour employment contract. These are sent to UTSM, which will contact the workers and assist them in their travel arrangements and immigration procedures.
  
- √ *Mexico:* The role of countries of origin in the Canadian seasonal agriculture worker programme is specified in the operational guidelines covering the administration of the programme. Once notice has been received by Mexico of the number of workers a Canadian employer requires, it completes the recruitment, selection and documentation of the workers and notifies the Canadian authorities of the number of workers, their names, and the date of arrival in Canada within 20 days. Mexican authorities select only persons who are capable of performing agriculture work and who meet Canadian health requirements. Medical examinations have to be arranged before arrival in Canada pursuant to the medical processing guidelines mandated by Citizenship and Immigration Canada. Mexico delivers applications, details of identity documents, and medical clearance to the Canadian consular offices, and confirms that the worker has no criminal record. This delivery must be completed ten working days before the worker’s departure date to Canada. Mexico has to maintain a pool of 300 workers who are suitably qualified and ready for departure to Canada when requests are received from Canadian employers (to reply to emergency or replacement needs). Mexico is also required to appoint one or more agents in Canada for the purpose of ensuring the smooth functioning of the programme for the mutual benefit of both the employers and the workers. Finally, Mexico has to ensure that Government agents in Canada provide human resource development with information such as arrivals and repatriations, transfer notices, records of persons absent without leave, records and other programme data as may be necessary and mutually agreeable. Canadian Immigration Medical Services should be provided with the personal details of all workers to be repatriated for medical reasons, including all medical documents relating to the worker’s pre-employment examination.
  
- √ *Korea Guest Worker Scheme:* The public organizations of a sending country must create a worker pool comprised of a certain multiple of the quota for employment in Korea, on the basis of objective data such as the results of the workers’ Korean language proficiency tests, their level of technical ability, and the results of a computer draw, and send the information to the relevant Korean government agencies on a regular basis. When an employer with a permit to hire foreign workers applies for permission to employ foreign workers, the Employment Security Centre of the Ministry of Labour must recommend to the employer qualified job seekers from among the foreign workers pool in a multiple of the number of persons requested,

and the employer may select from among the list of recommended workers. The employer may either make an employment contract directly with the foreign workers, or request the Human Resources Development Service of Korea to do so.

### III. FACILITATION OF ADMINISTRATIVE PROCEDURES (see also consular services in Part I)

#### A. Emigration procedures

- **Standard contracts**

Some countries of origin have developed model employment contracts, which include the following features: identification of the parties to a contract, details of terms and conditions, such as salary, hours and place of work, overtime, etc.; information on specific benefits over and above the minimum benefits provided by the host country; certification that both parties to the contract accept the terms and conditions.

√ POEA has developed skills-specific and country of destination employment contracts, including prescribed employment contracts for Filipino entertainers bound for Japan, domestic workers for Hong Kong and seafarers in general.

- **For workers**

√ *Thailand*: One-stop Service Centre for Overseas Employment is planned. This centre will regroup different agencies: the MFA for issuing passports; Ministry of Public Health for medical checks; the Royal Thai Police for criminal records; the Ministry of Labour for overseas employment activities. For the Philippines, a one-stop processing centre was established to enable workers to have all their documents secured in one place. In addition, part of the requirements can be completed using the internet, such as the submission of employment contracts.

- **For employers:**

√ Some private business associations act **as intermediaries between companies and embassies** in order to facilitate the visa process for businessmen. The development of such associations could be expanded in regions where they do not exist and cover service providers attached to a company in the countries of origin on the basis of standards for membership to be agreed between countries of origin and destination; e.g. European Business Association<sup>4</sup> Fast-track Business Support Service allows employees of EBA member companies to submit documents to embassies without queuing. The company needs to provide the EBA office with the following documents: a letter from the company confirming that the visa applicant (applicants) is (are) employed by the EBA member-company; his/her (their) trip is of a business nature; a copy of the invitation letter from the destination country. If the above requirements are met, EBA office will instantly issue the EBA fast-track business visa support letter. This letter should be submitted together with the application package required by each particular embassy to the embassy officials.

#### B. Allocation of the quota

- *Germany*: Bilateral agreements covering contract workers. These agreements have been signed with 13 countries of origin, each being allocated a certain annual quota

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<sup>4</sup> The European Business Association was established in 1999 as a forum for discussion and resolution of problems facing the private sector in Ukraine. At present it brings together over 500 European including national and international companies.

(sometimes a sub-quota is set by branches of activity as well). In addition, each German federal state sets a monthly contingent (which can be carried over if not filled). The control for the quota is in the hands of the country of origin. The employment offices of German states report to the Federal Employment Office the number of work permits issued for each country of origin. The Federal Office compiles the numbers and informs the country of origin of the situation. The authorities in the country of origin are responsible for disseminating the quota among their domestic enterprises, and ensuring that they do not exceed their allocation. If the numbers are over the limit, the sending country has to decrease the numbers. Indeed, a country participating in the scheme can be suspended temporarily if the limit is exceeded continually.<sup>5</sup> Among the criteria for allocating the quota are the enterprises' organizational structure and administrative requirements, such as registration in a particular trade register.

The sending countries have developed various systems of application procedures, as well as of capping control, usually under the ministry of labour and of economy. Many national agencies are involved in the application and negotiation process, the organization of everything related to the recruitment process for the work contracts for the companies in Germany and countries of origin against a fee. Employment offices in Germany and their counterparts in the country of origin maintain regular contact.

#### **IV. PRE-DEPARTURE ORIENTATION, VOCATIONAL AND LANGUAGE TRAINING**

*Pre-departure orientation programmes usually aim to satisfy two goals: one is to protect migrant workers by offering them a basic understanding of their rights and obligations through information on immigration, labour laws and procedures, as well as the cultural and social environment in the country of destination; the second is to maximize their benefits from foreign employment and integrate this experience in their broader life plan, through discussions on return plans, family relations, remittances and savings. Pre-departure orientation can include basic language training or language training relevant to a particular trade. In some countries, such as the Philippines, Sri Lanka and Bangladesh, pre-departure orientation is compulsory.*

- √ *Tunisia: IOM training of trainers.* This initiative was developed pursuant to the signature of a bilateral agreement between Italy and Tunisia providing for a preferential quota for Tunisians willing to work temporarily in Italy. The project aimed at reinforcing the capacity of Tunisian institutions in managing labour migration in the field of pre-departure training of potential migrants and the promotion of Tunisian labour in the Italian labour market. In view of the establishment of a permanent mechanism for pre-departure orientation and preparation of emigration candidates, a training of trainers approach was chosen. In a first stage, a training schedule was developed covering instruction in Italian language, social and cultural environment, legislation and professional orientation, including information on the medical, legal and social welfare system in Italy. A second stage consists in the selection and training of Tunisian trainers for the delivery of these schedules.

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<sup>5</sup> E.g. the recruitment of workers from Romania was interrupted during 2 years. Odysseus, *Approaches, policies and tools for the management and planning of migration flows, a European Comparative study*, p.193, European Commission, DG Justice and Home Affairs, March 2003

Such training needs to be regularly revised and adapted according to available information on the labour market needs of destination countries. A visit from a Tunisian interministerial delegation to Italian national and regional authorities and private sector representatives was organized for developing contacts and exploring employers' demand. This was also an opportunity to promote the database on Tunisian migrant workers developed in the context of this project.

- √ *Italy:* Under the 2002 Italian immigration law, foreigners who have been trained in countries of origin with the support of the private sector see their immigration process facilitated, making recruitment of foreign workers less cumbersome for employers. This legislation takes into account some previous initiatives. In 2001 the Ministry of Labour signed an agreement with the industrial association of Italian Construction companies (ANCE) for the training of construction workers in Poland and Tunisia, who would then be authorized to enter Italy. It also signed an agreement with Cofindustria, for training and immigration from Tunisia to the regions of Veneto, Emilia Romagna and Liguria. The Ministry of Foreign Affairs supports training courses in Albania, Tunisia and Morocco provided locally by NGOs. Some regions in Italy have been more involved in training activities in countries of origin. This is the case of Veneto, which has signed a protocol with local institutions and social partners on vocational training including initiatives with the government authorities for immigration in source countries to evaluate the possibility of starting training activity and the subsequent organization of such activity. In 2002 Veneto budgeted € 2.1 million for training programmes abroad, both to meet the needs of Veneto employers and local development in countries of origin.<sup>6</sup>
- √ *Bangladesh:* Language training for potential migrants who will work as nurses and hotel workers. The course runs for six weeks (108 hours), for 52 participants in separate groups for each skill category.

## V. RECOGNITION OF QUALIFICATIONS

Some countries are having difficulties in adopting a clear stance regarding the recognition of qualifications. There is no single solution to address this issue; however, a possible approach could be to favour programmes administered with destination countries and offered to workers having difficulties getting their local diploma recognized in the destination country, through complementary training after completion of a certain number of years of (public or private) services in the country of origin, and the promotion of circular migration.

- √ *Australia-China Arrangement on Higher Education Qualifications Recognition.* The aim of this arrangement is to facilitate the recognition of higher academic degrees by assisting students in pursuing further academic studies in each other's countries. The ministries of education of the respective country are required to designate a body to provide information on the recognition and make concrete recommendations in accordance with existing regulations and practices. The institutions, however, retain the right to determine requirements for entry.
- √ *UK- South Africa MOU on reciprocal educational exchange of healthcare concepts and personnel.* The aim of the MOU is to mutually agree on the recruitment of health personnel in England, to exchange information on professional rules and regulations, workforce planning and development, and to facilitate mutual access to universities and schools of training for health professionals.

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<sup>6</sup> OECD, *Migration for Employment, Bilateral Agreements at a Crossroads*, P. 60, 2004

**SECTION II**  
**ACTIONS TAKEN BY / INVOLVING COUNTRIES OF ORIGIN TO COMBAT IRREGULAR MIGRATION**  
**AND RELATED ILLEGAL ACTIVITIES**

- I. Reducing irregular migration**
  - A. Security of documents
  - B. Consular assistance/pre-screening
  - C. Cooperation and exchange of information on irregular migration
  - D. Legislative framework: sanctions and exit control
  - E. Liabilities of countries of origin's companies: unauthorised employment and repatriation
  - F. Other preventive measures
- II. Ensuring return: incentive measures**
  - A. Reducing the costs of temporary emigration
  - B. Social security and taxation
  - C. Reintegration/investment programmes
- III. Repatriation/readmission of migrants in an irregular situation**
  - A. Readmission agreements
  - B. Posting of liaison officers in destination countries

## **I. REDUCING IRREGULAR MIGRATION**

### **A. Security of documents**

- **Introduction of security features in identity documents<sup>7</sup>**
  - √ *Bulgaria*: Beginning April 1, 1999, the Law on Bulgarian Identity Documents introduced new types of ordinary passports, diplomatic passports and seaman's passports. These three types of passports incorporate a number of security features to guard against counterfeiting and forgery (e.g.: the personal data, the digital colour photograph and the digital holder's signature are laser printed in the visual inspection zone of the personalised page; the personalised page is laminated with thin transparent overlay incorporating Optically Variable Devices).<sup>8</sup>
  - √ *Bangladesh*: Since April of 2004, IOM has been working closely with the Ministry of Home Affairs and the Department of Immigration and Passports of Bangladesh on a Machine-Readable Passport Programme in an effort to build institutional capacity through needs-assessment, training and technical support. In addition to providing ongoing technical advice, IOM is supporting the government in designing and conducting information technology and other related trainings for key staff. IOM also provides commodity support, including hardware/software and other equipment, to meet the initial demands for automated passport applicant registration, including

<sup>7</sup> There are *International standards* in this field: e.g. In 2003, The International Civil Aviation Organization (ICAO) adopted a globally-harmonised blueprint for the integration of biometric identification information into passports and other machine readable documents, including visas and identity cards. The ILO adopted a convention requiring commercial seafarers to carry new biometrics identity cards. The International Standards Organisation has issued standards for ID cards, machine readable travel documents, and biometric processes. There are also APEC standards for the examination of travel documents, etc...

<sup>8</sup> Brussels, 2.2.2001 COM (2001) 61 final, Report from the Commission to the Council regarding Bulgaria's adoption of the Regulation determining the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement.

biometrics. In addition, IOM provides support for improving record keeping and enhancing internal controls in the Bangladesh passport operation through the use of automated technology.

- **Preventing trafficking of real identity documents**

- √ *Bulgaria*: Bulgarian diplomatic and consular missions can only issue temporary passports to Bulgarian nationals abroad who are not in possession of a valid passport (e. g. are not yet in possession of the new passport or have a passport which has expired). Applications for new passports are forwarded via the Ministry of Foreign Affairs to the National Police Service in Sofia. In the case of loss or theft of a passport, the holder must submit a written declaration to the nearest district police office (or to the diplomatic or consular mission).

The new types of passport are issued by the National Police Service (Identity Documents Department in Sofia or regional offices). The Ministry of the Interior has developed strict rules and procedures for the handling of blank passports and forms used in the process of issuing new passports. A specially designed information system tracks the flow of documents and consumables from the point of production (supply) to the final product (new document).

Those passports for which a written declaration of loss or theft has been submitted are declared invalid via the Bulgarian Identity Document Issuance Information System. The data on invalidated passports is made available on-line at every border checkpoint. The system also stores information on previous losses so officials may determine if 'recurrent' losses are made, thus detecting suspicious incidents.<sup>9</sup>

- √ *Romania*: Romanian identity documents are issued by the Person Data Recording County Offices, which are responsible for the registration of the place of domicile and the residence of each person. These documents are issued on the basis of an application form and official documents, like birth certificates, which legally prove the name, marital status, Romanian citizenship, domicile, and, if appropriate, military status of the applicants. Romanian diplomatic missions and consular offices abroad do not issue identity cards or standard passports. Diplomatic missions and consular offices are only entitled to issue "Consular passports." Such documents are issued to Romanian citizens who do not have a valid travel document because it has expired during their stay abroad or has been lost or stolen.

The stock of blank passports (not personalised passports) is kept in the Passport Directorate headquarters. There is a computerised record of blank passports. The delivery of blank passports to the counties is made through the Post Office of the Ministry of Interior. Information on such deliveries and the serial numbers of the delivered passports are entered into a computerised system, which tracks the entire issuing and managing process. Since the introduction of the present system in 1994, there have not been any cases of stolen or lost blank passports.

- √ *Bali Ministerial Conference on People Smuggling, Trafficking in Persons, and Related Transnational Crime (Bali Process)*<sup>10</sup> - model MOU for the sharing of passport information between two countries. This MOU aims at sharing information on lost, stolen or otherwise invalid travel documents to prevent their use or to assist in any law enforcement action.

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<sup>9</sup> Ibid

<sup>10</sup> The Bali Process brings participants together to work on practical measures to help combat people smuggling, trafficking in persons and related transnational crimes in the Asia-Pacific region and beyond. Initiated at the "Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime" held in Bali in February 2002, the Bali Process follow-up is a collaborative effort participated in by over 50 countries and numerous international agencies. Source : <http://www.baliprocess.net/files/WorkshopApril2005/Resourcedocuments.pdf>

- **Training of personnel on document fraud examination and identity verification**
  - √ *Philippines*: Training of personnel on the subject of document fraud examination and identity verification.
  - √ *Nigeria-Switzerland*: In 2005, Switzerland provided the Nigerian Immigration Services with six workstations for document fraud control and funded training for twelve Nigerian immigration officers in Switzerland, which included courses and a visit to Zurich airport for real life observation as well as interaction with Swiss Migration Officers.

## B. Consular assistance

- **Pre-screening of identity and non identity documents and interviews**
  - √ *IOM support services in countries of origin*: The example below illustrates the type of services IOM offers upon request to the Department of Labour-DOL (or any other relevant department) of a destination country.
    - a. Verification of academic and trade qualifications: IOM will endeavour to verify documents concerning academic and trade qualifications that have been submitted by prospective migrants to DoL. DoL will provide the documents to IOM, who will verify the documents with the issuing authorities. Verification will include confirming that the person named on the qualification document was the person to whom the document was issued and that the details on their academic and trade records match those listed on the document provided. The IOM response to the DoL verification request shall include details as to the source(s) of the information, including the name of the person contacted, the organization at which she or he works, and e-mail and/or tel/fax number.
    - b. Verification of work references and work records: IOM will endeavour to verify documents concerning work references and work records that have been submitted by prospective migrants to DoL. DoL will provide the documents to IOM who will verify the authenticity of employment documentation provided. This will include contacting previous employers of the applicant to determine that she or he did work with the employer for the period claimed, and that the individual performed the type of work specified on the reference provided. Other types of documents which may be provided by DoL for verification include, but are not limited to, business records, business name documents, business registration documents, certificates of ownership, patents, income tax returns and bank records. IOM will verify these documents from their source(s). It is recognized that verification by third party may not always be possible without written authorization from the owner of the document. The IOM response to the DoL verification request shall include details as to the source(s) of the information, including the name of the person contacted, the organization at which she or he works and e-mail and/or tel/fax number.
    - c. Verification of documents issued by public authorities: IOM will endeavour to verify documents issued by public authorities, including, but not limited to, birth certificates, marriage certificates, death certificates, divorce papers, adoption papers, and passports that have been submitted by prospective migrants to DoL. IOM will endeavour to verify the authenticity of these documents with the issuing authority of the relevant government or non-governmental institution. It is recognized that verification by third party may not always be possible without written authorization from the owner of the document. The IOM response to the DoL verification request shall include details as to the source(s) of the information,

including the name of the person contacted, the organization at which she or he works and e-mail and/or tel/fax number.

- d. Interviews: IOM will interview prospective migrants. DoL will refer prospective migrants to IOM for interviewing. DoL will provide questions and objectives for the interview prior to the scheduled interview. IOM will conduct the interview, when possible, in the IOM office and report in writing to DoL the answers to the questions provided, which will include a written transcript of the interview.
- e. Logistical assistance to DoL: IOM will provide logistical assistance to visiting DoL officials including, but not limited to, accommodation bookings, local transportation, security arrangements, interview facilities, interpreters, appointments and briefings. DoL will notify IOM 30 days in advance of the planned visit with the type of assistance required in connection with the visit.

### C. Cooperation and Exchange of information on irregular migration

- **General**
  - √ *Bali process:* Model MOU on cooperation to combat irregular migration and people smuggling, and facilitate repatriation of migrants whose legal stay has expired<sup>11</sup>.
  - √ *Bulgaria:* MOU on mutual information exchange of information on irregular migration between Bulgaria and the Netherlands signed in November 2003.<sup>12</sup>
  - √ *Guatemala-Mexico:* Bilateral commission on migration devoted to the exchange of information, discussions on working conditions and irregular migration, together with a sectoral working group on agriculture workers.
- **Collaboration between local authorities and immigration liaison officers posted abroad**
  - √ *Organisation for Cooperation and Economic Development (OECD):* Many OECD destination countries resort to the posting of officers in high-risk countries of origin. They can be *migration attachés* (e.g. Australia, Canada, Denmark, Germany, Netherlands, Norway, Switzerland); *airline liaison officer* (e.g. Australia, Germany, Norway, Sweden, UK), or *police attachés* (e.g. Norway, Switzerland, Sweden, Austria, Denmark, Finland). For example, Canada maintains a Migration Integrity Officer (MIO) Network. There are 45 MIO positions located in key locations overseas to work with other government departments, international partners, *local immigration and law enforcement agencies* and airlines to combat irregular migration, including people smuggling and trafficking<sup>13</sup>. These officers also support document integrity and anti-fraud activities by detecting and intercepting fraudulent travel documents or fraudulently obtained travel documents.<sup>14</sup> Australia has 24 Specialist Compliance Officers attached to 20 key posts overseas to identify, respond to, and counter immigration fraud and malpractice. Compliance officers also *work closely with local police* and immigration officials to combat people smuggling and irregular migration. The Department of Immigration, Multicultural, and Indigenous Affairs (DIMIA)<sup>15</sup> has also located 17 Airline Liaison Officers (ALOs) at 12 strategically placed international airports with direct flights to Australia. ALOs are specialist document examiners. They work closely with airlines, immigration, and airport staff at major overseas airports to prevent travel to Australia of potentially inadmissible passengers and to facilitate the

<sup>11</sup> <http://www.baliprocess.net/index.asp?pageID=2145832128>

<sup>12</sup> Brussels, 2.2.2001 COM (2001) 61 final, Report from the Commission to the Council regarding Bulgaria.

<sup>13</sup> The work of these officers has resulted in an interdiction rate of 72% in 2003. This means that of all those attempting to travel to Canada by air, using improperly issued documents, 72% (more than 6,400 individuals) were stopped before they got to Canada. Source: <http://www.cbsa-asfc.gc.ca/newsroom/factsheets/2004/0128overview-e.html>

<sup>14</sup> <http://www.cbsa-asfc.gc.ca/newsroom/factsheets/2004/0128overview-e.html>

<sup>15</sup> The department of Immigration, Multicultural and Indigenous Affairs (DIMIA) has been renamed after the drafting of this report, and is now called the Department of Immigration and Citizenship (DIAC).

travel of genuine passengers. The main role of ALOs is to assist airline and airport staff in checking passengers' documents for irregularities and to *provide training to host nation immigration authorities* and airline and airport security staff on Australia's entry requirements<sup>16</sup>.

*As a country of origin, Romania*, for example, exchanges data with German and French liaison officers in Romania, especially on the networks that are trafficking blank passports and visas stolen from Schengen countries.<sup>17</sup>

#### **D. Legislative framework: sanctions and exit control**

*A number of countries have criminalised illegal border crossing, human trafficking, people smuggling, travel document forgery, and use of forged documents. The penalties usually consist of imprisonment and a fine. Some countries confiscate passports of their nationals who have breached the immigration law of the destination country and forbid them to go abroad for a certain time. It may be argued that these persons will, as a consequence, only be able to leave the country illegally during this period of time. In addition, these laws may impede the irregular migrant from returning home and force him/her to stay in an irregular situation in the destination country.*

- **Sanctions concerning false and forged documents**
  - √ *Bulgaria*: According to Article 308 of the Penal Code, a person who has produced and used false and forged documents can be deprived of liberty for up to five years.<sup>18</sup>
- **Sanctions concerning irregular emigration/immigration / exit control**
  - √ *Bulgaria*: Under Article 76 of the Bulgarian Identity Documents Act, a ban on leaving the country for a one-year period is imposed on Bulgarian nationals who have violated the immigration law of another country or have been expelled from another country. Bulgaria registers all persons crossing the border.
  - √ *Romania*: : Law 56/1992 concerning the Romanian state borders, modified and supplemented by Law 98/2000, contains definitions on permissive and unpermissive border crossing. Non-observance of the norms concerning border control and the state border regime may be punished with criminal sanctions (imprisonment) or administrative fines, the amount of which is established according to the seriousness of the offence pursuant to Article 69 of the same law. Exiting the country by fraudulently crossing the border is considered an infringement and punishable by three months to two years imprisonment<sup>19</sup>.

Romanians caught while seeking irregular entry to EU Member States or returned on the basis of readmission agreements can be punished by the suspension of the right to use their passport for a period of three to twelve months pursuant to Government Order n° 65/1997, as modified by Law n° 216/1998. An appeal is possible within 30 days to a higher authority and later to an administrative court. The General Directorate of Border Police determines temporary suspension of Romanian passports. This measure is automatically used in cases of repatriation of Romanian citizens expelled from a foreign country. The same applies to Romanians who commit criminal offences or otherwise breach the law abroad, if Romanian authorities

<sup>16</sup> <http://www.immi.gov.au/illegals/border.htm>

<sup>17</sup> Brussels, 2.2.2001 COM (2001) 61 Final Intermediate Report on Visa Issues (Romania), p.7

<sup>18</sup> Brussels, 2.2.2001 COM (2001) 61 Final Report from the Commission to the Council regarding Bulgaria

<sup>19</sup> Brussels, 2.2.2001 COM (2001) 61 Final Intermediate Report on Visa Issues (Romania), (presented by the Commission). From the same source. "Between 1998 and 2000, 27,409 Romanian citizens were forbidden to exit Romania. This figure includes persons listed as being under criminal investigation, or on trial or wanted for other offences (1,069 persons), people using false passports (1,224 persons), people hidden in means of transport (357 persons) or cases of irregularities in travel documents (4,706 persons). Thus, specific reasons have been given for a total of 7,356 cases; there is no information available on what reasons have been used in the remaining cases."

are informed of it. There is a black list of Romanian citizens who are not allowed to leave their country for judicial reasons. Romanian passports are stamped on entry and exit by the Border Police, and all Romanian nationals entering or leaving the country are registered in a database.<sup>20</sup> Moreover, the border police have the authority to confirm whether Romanian citizens leaving their country are in possession of a visa, residence permit, health insurance and the financial means required by the country of destination. According to the assessment of the migratory risk made by Romanian border authorities, citizens detained for failing to fulfil the conditions for entry fixed by the country of destination may have their passport temporarily withdrawn<sup>21</sup>.

- √ *Philippines*: The **exit clearance** comes in the form of an E-Receipt or an Overseas Employment Certificate (OEC) attesting/certifying to the regularity of a worker's recruitment and documentation and ensures exemption from travel tax, airport terminal fee, and for clearance at the Philippines Overseas Employment Administration (POEA) Labour Assistance Counter (LAC) desk at the airport and the Bureau of Immigration (BI) counter prior to departure. The E-Receipt or OEC serves as the worker's guarantee that he/she is covered by government protection and benefits.
- **Sanctions applicable to those who facilitate irregular emigration**
  - √ *Bulgaria*: Penal Code: pursuant to Article 280, a person who takes another person across the state border without permission of the respective authorities, or with permission but not through the border checkpoints, can be deprived of liberty for up to six years and fined up to one million Lev.  
  
Foreign Nationals Act (FNA): Article 51 regulates the administrative and criminal liability of carriers' officials, while tour operators are subject to liability sanctions. A carrier official who violates the FNA may be fined up to 5,000 Lev; a tour operator failing to comply with the Act may be fined up to 6,000 Lev.
  - √ *Romania*: A person who recruits, directs and guides another person in crossing the border illegally and the person who organises such activities can be punished by 1 to 5 years imprisonment.
  - √ *Bali Process*: Australia and China drafted a model legislation to criminalise smuggling and trafficking, which has been used by 18 countries to draft their own domestic laws.<sup>22</sup>
- **Sanctions and enforcement measures against illegal employment/recruitment (see also next section)**
  - √ *Philippines*: Illegal recruitment, as defined in Republic Act No.8042 or the Migrant Workers and Overseas Filipinos Act of 1995, is a crime. The Philippine Foreign Service Posts report cases of trafficking and illegal recruitment involving Filipinos to the Home Office. These reports are forwarded to law enforcement agencies and other concerned agencies for investigation and appropriate action.

The Philippines Overseas Employment Administration (POEA) shall provide free legal assistance to victims of illegal recruitment bringing cases which are either administrative or criminal in nature. The POEA provides legal advice, assistance in the preparation of complaints and supporting documents, institution of criminal actions and, whenever necessary, provides counselling assistance during preliminary investigations and hearings. Victims of illegal recruitment bringing administrative or

<sup>20</sup> Ibid Brussels, 2.2.2001 COM (2001) 61 (Romania)

<sup>21</sup> Brussels, 29.06.2001, COM (2001) 361 final

<sup>22</sup> <http://www.baliprocess.net/files/ConferenceDocumentation/DownersAddress.pdf>

criminal cases may file a report or complaint in writing and under oath for assistance purposes with the POEA. POEA is also responsible for the prosecution of illegal recruiters, the surveillance of persons and entities suspected to be engaged in illegal recruitment, and an information and education campaign.<sup>23</sup>

*Joint liability of destination country employer and countries of origin agent/recruitment agency:* The recruitment agency recruiting/deploying foreign workers must first secure accreditation or registration of the foreign principal or employer from the POEA. To be registered, employers must submit documentation for verification by the Philippines Overseas Labour Offices (POLO) (operating in main destination countries). Accreditation applies where the documents pertaining to the principal or employer are not verified in the host country by POLO, but are submitted to POEA for hiring approval. In this case, the agency must provide POEA with a proof of the valid existence of the business or project and documents showing of the availability of visas for the workers to be deployed. For both accreditation and registration, POEA requires the employer to submit a document specifying a special power of attorney for an agency appointed as its representative in the Philippines. The recruitment agency and the employer are jointly liable for monetary obligations towards workers. Foreign employers may be suspended/banned from hiring Filipino workers for default on contractual obligations to the migrant worker, violations of laws on overseas employment, etc.<sup>24</sup>

## **E. Liabilities of countries of origin companies/recruitment agencies: unauthorised employment and repatriation**

### **• Liabilities of countries of origin's companies for contract workers**

- √ *Australia: Overseas Business Sponsor:* This arrangement allows overseas businesses or businesses which have no formal representation in Australia to bring a specified number of temporary employees to Australia to establish a branch, subsidiary or joint venture or to fulfil the employer's contractual obligations or conduct other business activities in Australia. Approval as an Overseas Business Sponsor is valid for up to 24 months or until the specified number of positions have been filled. Employers must comply with the *sponsorship requirements*, which apply to Australian employers and require the *sponsor* to comply with the legal and tax obligations applicable to employment of overseas employees in Australia.<sup>25</sup> Should the business

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<sup>23</sup> <http://www.polo.dole.gov.ph/faqs-btn.html>

<sup>24</sup> IOM, *Labour Migration in Asia*, vol.2, p.30 and 52

<sup>25</sup> Sponsorship requirements: Employers are required to show that:

- The business is a lawfully and actively operating business. New businesses can be considered if there is clear evidence of intention to establish the business.
- The applicant for sponsorship must be the direct employer of the employee. In the case of corporate groups, a head company may be a sponsor, with a subsidiary being the direct employer.
- The business has a satisfactory record of compliance with immigration laws;
- The employment will be of benefit to Australia;
- The business operations will introduce, use or create new or improved technology or business skills. Alternatively, the business should have a satisfactory record of or demonstrate a commitment to training Australian citizens in their business operations.

Sponsorship Undertakings: The business is also required to undertake several sponsorship obligations in relation to overseas employees and their accompanying family members. Among which are:

- ensure that the cost of return travel by a sponsored person is met;
- cooperate with the department's monitoring of the business or of any sponsored persons;
- notify Immigration within 5 working days after a sponsored person ceases to be in the business's employment
- ensure that, if there is a gazetted minimum salary in force in relation to the nominated position occupied by the sponsored person, the person will be paid at least that salary;
- ensure that, if it is a term of the approval of the nomination of a position that a sponsored person must be employed in a particular location, the business will notify Immigration of any change in the location which would affect the nomination approval;

fail to comply with its obligations, provide false information to the Department or otherwise fail to continue to satisfy the requirements of the sponsorship, the department may take action to:

- cancel the business's approval as a sponsor;
- bar the business, for a specified period, from making further applications for approval as a sponsor;
- bar the business, for a specified period, from sponsoring or nominating more people under the terms of existing sponsorship approvals;
- cancel the visas of any temporary business entrants, and their accompanying family members, sponsored by the business; and/or
- take any failure to comply with these undertakings into account in assessing any future sponsorship applications made by the business or by any other business operated by the same principals.

• **Liabilities of countries of origin's recruitment agencies/agents.**

- √ *Israel:* Recruitment of temporary migrant workers takes place exclusively through the services of IOM in the countries of origin (including a pilot project for agriculture workers from Thailand).
- √ *Philippines:* All the recruitment agencies must obtain a license. The agencies have the obligation to check the employment contract and the liability of the employer in the country of destination; failure to do so leads to the revocation of the license and blacklisting.
- √ *China-Mauritius bilateral agreement:* An agreement will be signed between the government of China and the government of Mauritius regarding the recruitment of Chinese workers. The Chinese side will submit a list of recognized recruiting agents and a list of agents who are not reliable. A close collaboration has been established between the government of Mauritius and the Chinese Embassy. All contracts are sent to the Embassy, where officials verify that the contracts conform to labour laws and that the Chinese and English versions are in conformity.
- √ *Another model of interest: China – EU MOU between the Republic of China (China National Tourism Administration (CNTA) and the EC on visa and related issues concerning tourist groups from the People's Republic of China:* Under this agreement, CNTA designates the travel agencies (TA) allowed to operate, which are then accredited by the EU Member State embassy or consular office. In case of non-compliance with the MOU, the agency may have its designation/accreditation revoked. The TA has to report any tourist overstay to relevant CNTA and Member State authorities. They will work with the member state authority to help send back the tourist by providing documents proving his/her identity and reimburse the repatriation costs to the EU Member State in cases where the tourist cannot afford it. An Approved Destination Status (ADS) Committee monitors the implementation of the MOU and ensures a good exchange of information.

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- pay all medical or hospital expenses for a sponsored person arising from treatment administered in a public hospital (other than expenses that are met by health insurance or reciprocal health care arrangements) - this undertaking continues until any such expenses are paid
  - make any superannuation contributions required for a sponsored person while the person is in the business's employment;
  - deduct tax instalments, and make payments of tax, while the sponsored person is in the business's employment;
  - pay the Commonwealth an amount equal to all costs incurred by the Commonwealth in relation to a sponsored person -these costs may include those relating to locating and detaining the sponsored person, removing the sponsored person from Australia and processing any application for a protection visa made by a sponsored person.

## F. Other preventive measures

- **Raising awareness regarding the risks of irregular migration**
  - √ *Information campaign on the risks of irregular migration:* Some countries of origin conduct mass information campaigns and enhance the capacity of civil society/NGOs to raise public awareness.
  - √ *Migration Information Centre:* some countries of origin have established migration information centres offering several on-site services, such as documentation of legal opportunities and the risk of irregular migration, referrals and counselling (e.g. Hungary, Moldova, Tajikistan with IOM).
  - √ *Pre-departure orientation for migrant workers:* Some countries of origin provide pre-departure orientation seminar with information on labour and immigration laws of the country of destination. In the Philippines and China, these trainings are mandatory.

## II. ENSURING RETURN: INCENTIVE MEASURES

*Actions by countries of origin to 1) facilitate workers' ability to reach their earning/saving targets; 2) enhance the advantages of using legal means to migrate and maintaining legal migration status, and 3) create livelihood prospects upon return.*

### A. Reducing the costs of temporary emigration (and minimising eventual debt reimbursements)

- **Travel costs**
  - √ *Travel loans at affordable prices:* A system of travel loans at reasonable prices has been put in place by Ecuador for workers selected for employment in Spain under the framework of a bilateral labour agreement between the two countries.
  - √ *Deals with airline companies:* The Sri Lanka Bureau of Foreign Employment arranges discount with airlines companies for migrant workers to key destinations.<sup>26</sup>
- **Lowering the cost of placement services**
  - √ *Regulating the amount of fees that can be charged by recruitment companies:* In the Philippines, the amount of placement fees that can be charged by a recruitment agency is regulated by POEA. It is the equivalent to one month of the worker's salary<sup>27</sup>.
  - √ *Establishing state bodies to provide placement services at minimum costs in parallel with private agencies:* In Sri Lanka the recruitment of workers for overseas employment is handled by licensed recruitment agencies, including the Sri Lanka Foreign Employment Agency Ltd., which is under the Ministry of Labour<sup>28</sup>.
- **Administrative procedures related to emigration**
  - √ *Costs of administrative procedures related to emigration should be kept to a minimum:* this includes costs related to the production of passports and supportive administrative documents (certificates of birth, criminal records, etc.), exit/travel taxes, and affidavits.

<sup>26</sup> Manolo Abella, *Sending Workers Abroad: A Manual for Low and Middle Income Countries*, 1997, p.85

<sup>27</sup> Labour Migration in Asia, *Labour Migration in Asia Protection of Migrant Workers, Support Services and Enhancing Development*", 2005, p.27

<sup>28</sup>ibid, p.26

The lengthiness and cumbersomeness of the procedures (paperwork and documentation, delays in processing for passport, emigration clearance, etc.) may also impact in the decision to emigrate using irregular means.

## B. Social security and taxation

*The country of origin should offer migrants the possibility of staying affiliated with the country of origin's social security system, or should design special schemes with private insurance companies, especially for those workers unable to meet the criteria to obtain the benefits of the destination country's social security system (pension, health care benefits because of their salary level, and/or duration of stay. This is particularly relevant for seasonal workers. For all migrant workers, the option to stay affiliated with the country of origin's system can increase the workers' earnings from an amount equivalent to the difference between the deduction they would be subjected to under the destination country system and the contribution required by the country of origin or under a private scheme. The benefits to be received may, however, be less advantageous. Bilateral agreements on social security can also be negotiated, in particular regarding the portability of pension benefits. Under these agreements, the period of employment during which the migrant worker contributed to the host and home country system will be added together for the calculation of his or her pension, which will usually be paid on a pro-rata basis. It is not unusual for temporary workers to work and reside in more than one country over the course of only a few years or months. These workers are often exposed to the problem of double taxation (e.g. one quarter of the Australian temporary entry visa holders stated in a recent study that they were subject to double taxation)<sup>29</sup>.*

- √ *US-Mexico social security totalization agreement* (signed by the two countries but not ratified yet): It provides that the United States will pay pro-rated benefits to those workers who have: (1) between 6 and 39 quarters of coverage with the U.S. system; and (2) a combined work record of at least 10 years in the United States and a partner country. More family members of Mexican workers would become entitled, because the agreement waives rules that prevent payments to non-citizen dependents living outside the U.S.
- √ *EU social security and posted workers*: Article 14(1)(a) of EEC Regulation n° 1408/71 states that "a person employed in the territory of a Member State by an undertaking to which he normally attached who is posted by that undertaking to the territory of another Member State to perform work for that undertaking shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed 12 months and that he is not sent to replace another person who has completed his term of posting."
- √ *Conventions for the prevention of international double taxation adopted by the Andean group*: There are two conventions; the first for avoidance of double taxation among the member countries, and the second for avoidance of double taxation between a member country and a country outside the region. Their key features are founded on the principle of **source income**. In other words, as stated in Article 4, "the power to tax income is attributable exclusively to the country in whose territory such income originated, for which purpose concepts of domicile, residence or nationality of the recipient of income are omitted."
- √ *Pakistan*: the income of Pakistani seafarers working on foreign vessels remitted to Pakistan through normal banking channels is exempt from income tax.<sup>30</sup>
- √ *US-Mexico*: The Bush proposal for a temporary worker programme includes the idea of *tax-preferred savings accounts*. The US would cooperate with countries of origin to allow

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<sup>29</sup> Siew-Ean Khoo, Peter Mc Donald and Graeme Hugo, Temporary Skilled Migrants in Australia; employment circumstances and migration outcome, June 2005.

<sup>30</sup> IOM, Labour Migration in Asia ; Trends, Challenges and Policy responses in Countries of Origin, 2003, p. 139

temporary workers to contribute a portion of their earnings to savings accounts, with reduced or no taxes, that could be collected upon returning home.

### C. Reintegration/investment programme

- √ *Philippines*: A Re-Placement and Monitoring Centre (RPM Centre) was created in the Department of Labour and Employment (DOLE) for returning Filipino migrant workers. The RPM Centre provides the following services:
- Develop livelihood programs and projects in coordination with the private sector;
  - Coordinate with appropriate private and government agencies in the promotion, development, re-placement and the full utilization of potentials of returning migrant workers;
  - Institute, in cooperation with other government agencies concerned, a computer-based information system on skilled Filipino migrant workers which shall be accessible to all LOCAL recruitment agencies and employers, both private and public, for their local employment;
  - In coordination with the Department of Science and Technology (DOST), RPM Centres provide incentives for professionals and other highly-skilled Filipinos abroad to participate in and contribute to national development.

The Philippine banks and financial institutions offer some investment and saving instruments: The Pag-Ibig Overseas Programme is a voluntary saving programme providing overseas Filipinos workers (OFW)/immigrants/permanent residents with the opportunity to save for their future and to avail themselves of a housing loan.<sup>31</sup>

The Development Bank of the Philippines (DBP)- Kinabusakan Investment certificates (KIC)- is a saving mechanism where redemption values can be used to finance tuition fees of OFW beneficiaries and to cover hospitalisation costs if the need should arise. Purchase of KIC entitles every certificate holder to life insurance coverage equivalent to the amount of certificates purchased.<sup>32</sup>

- √ *Canada-Caribbean remittances saving programme*: The employment agreement for Caribbean workers stipulates a 25 % mandatory remittance from the worker wages called the “compulsory Savings Scheme.” This deduction is remitted to the country of origin liaison officer and is given back to the worker upon return.

## III. REPATRIATION/READMISSION OF IRREGULAR MIGRANTS

*The issue of whether states are obliged to readmit their own nationals under international law is still debated. The argument usually invoked is that, in accordance with their sovereign attribute, states possess a right to expel aliens from their territory; in order to be able to exercise this right, another state has to receive the expelled person. While there is no universal treaty obligation addressing readmission issue, some parties consider the readmission of citizens as a norm of customary international law.*

*With regard to readmission of non-nationals and stateless persons expelled by a destination state, there is no obligation of the third state from which they came to admit these aliens under international law. For this reason, this obligation must be created by a treaty. Readmission agreements pursue various objectives. They try to overcome the difficulties resulting from the country of origin's refusal to accept the return of their nationals or the lack of cooperation in*

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<sup>31</sup> Ibid p. 148

<sup>32</sup> Ibid, p.149

*identifying nationals or issuing identity or travel documents. These agreements also address problems resulting from the refusal of countries to accept the return of third country nationals and establish the proof that they passed through its territory. These agreements specify the obligation of the country of origin with regard to their nationals and establish effective procedures for the implementation of the obligation to accept their return. They can also state the responsibilities of a country as a third country and cover stateless persons and third country nationals who passed through or are granted permission to stay in its territory. The EU model readmission agreement provides that readmission costs of nationals and third country nationals should be borne by the requesting contracting party.*

- **Readmission agreements**

- √ *Romania:* According to the existing readmission agreements, Romanian authorities accept Romanian nationals apprehended in an irregular situation in the territory of the contracting states, and who are to be expelled by the foreign authorities, without special formalities. Romanian authorities accept them even when they do not possess a valid passport or identity card, if it can be proved or presumed that these persons possess Romanian citizenship. Romanian citizenship is proved by the possession of a Romanian passport, by other travel documents issued by the Romanian authorities, or by a valid and complete Romanian identity card. Romanian citizenship is presumed on the basis of expired tourist passports, other travel documents or identity cards, drivers licenses, work permits, sailors books, convincing witness statements, or the individual's own statement provided that the person knows the Romanian language. If doubts remain about the documents provided to prove or presume Romanian citizenship, Romanian consular authorities verify the identity data of the person with the Passport Directorate of the Ministry of Interior. This authority communicates in the shortest time possible whether the civil status data corresponds to any official documents and whether the person has Romanian citizenship. This procedure may be improved by the planned implementation of an on-line data system.

According to Romanian sources, the number of Romanian nationals that have been repatriated to Romania is 19,714 in 1998 (10,747 from Member states), 23,036 in 1999 (10,312 from Member states) and 21,411 in 2000 (9,003 from Member states).

The National Office for Refugees has taken measures in order to facilitate the repatriation and reintegration of Romanian nationals who have requested asylum in EU Member States. For instance, in co-operation with the International Organization for Migration (IOM) a reintegration pilot-programme for former Romanian asylum seekers from Belgium, the Netherlands and Finland is under way. The statistical data regarding the voluntary repatriation of Romanian persons were 1292 in 1998, 863 in 1999 and 587 in 2000. Readmission agreements signed by Romania can also cover the situation of a foreign citizen when the authorities of the requesting State prove that he/she crossed the Romanian territory. In this case, the person is accepted without additional formalities.

- √ *African, Caribbean, and Pacific (ACP)-EU:* At the European Council in Tampere in 1999, it was agreed that every cooperation and association agreement between the EU and relevant third countries or groups of countries must contain a clause regarding readmission of irregular migrants. The Partnership Agreement between the Members of the African, Caribbean and Pacific Group and the European Community (also known as the Cotonou agreement) signed in 2000, includes a readmission clause which states that each Member State of the European Union shall accept the return of and readmission of any of its nationals who are apprehended in an irregular status in the territory of an ACP State, at that State's request and without further formalities" (Article 13,4,c,i)<sup>33</sup>.

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<sup>33</sup> Article 13,4,c: subsequent paragraphs state that: (i) "The Member States and the ACP States will provide their nationals with appropriate identity documents for such purposes. In respect of the Member States of the European Union, the obligations in this paragraph apply only in respect of those persons who are to be considered their nationals for the Community purposes in accordance with Declaration No 2 to the Treaty establishing the European Community. In respect of ACP States, the obligations in this paragraph apply only in respect of those persons who are considered as their nationals in accordance with their respective legal system. (ii) At the request of a Party, negotiations shall be initiated with

√ *EU specimen bilateral readmission agreement*: In 1994, the EU composed a model agreement to be used by the Member States of the European Union as a basis for negotiation of readmission agreements with third countries<sup>34</sup>.

- **Posting of liaison attaché for irregular migration in destination country**

√ *Romania*: On a bilateral basis in the context of the implementation of readmission agreements, and at the request of some candidate countries and some Member States, the Ministry of Interior has ensured the presence of police officers for limited periods (1-3 months) in charge of combating irregular immigration. These liaison officers will be financially supported by the authorities of the beneficiary states. It is intended to gradually set up home affairs attaché offices in the main EU Member States, in particular in the traditional destination countries for irregular immigrants crossing Romania. In December of 2000, Romania concluded and approved the legal framework defining 'home affairs attachés/police liaison officers' entrusted with specific tasks in the area of international co-operation. A Government Decision has made it possible for police officers to be posted to embassies and diplomatic missions under the authority of Ambassadors. The status they enjoy is comparable to the status granted to Defence Attachés. A home affairs attaché has consequently been appointed at the Mission of Romania to the European Union.

√ Thanks to the financial support of the beneficiary states, Romania has also posted for a limited period (1 to 3 months) liaison officers in Germany, the Czech Republic, Slovakia and Ireland. Depending on the availability of financial resources, Romania intends to appoint Justice and Home Affairs liaison officers in other Member States, especially in target countries for irregular immigrants entering through Romania. Several EU Member States (Belgium, Denmark, Spain, Germany, France, Italy and United Kingdom), as well as some third countries (Australia, Israel, Russia, USA and Ukraine) have appointed similar resident and non-resident liaison officers to Romania. A priority of the government is to send liaison officers to EU Member States and to third countries with high migration potential<sup>35</sup>.

**Comments:** While it is important to have framework legislation in place in countries of origin, implementation and enforcement can be impeded by a lack of underpinning secondary legislation, insufficient human and financial resources, or inadequate expertise and training of staff; limited access to technology and equipment can also be a problem. Any guidelines shall mention the issue of funding and technical cooperation, as well as include a reporting system for monitoring and evaluation of progress made.

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ACP States aiming at concluding in good faith and with due regard for the relevant rules of international law, bilateral agreements governing specific obligations for the readmission and return of their nationals. These agreements shall also cover, if deemed necessary by any of the Parties, arrangements for the readmission of third country nationals and stateless persons. Such agreements will lay down the details about the categories of persons covered by these arrangements as well as the modalities of their readmission and return. Adequate assistance to implement these agreements will be provided to the ACP States. (iii) For the purposes of this point (c), the term "Parties" shall refer to the Community, any of its Member States and any ACP State.

<sup>34</sup> In the meantime, the Amsterdam Treaty (which entered into force in 1999) conferred powers on the European Community in the field of readmission. As a result both EU Member States and the EU can engage in readmission agreements.

<sup>35</sup> Brussels, 2.2.2001 COM (2001) 61 Final Intermediate Report on Visa Issues (Romania), (presented by the Commission).

**QUESTIONS FOR DISCUSSION:**

- **What general condition/situation would trigger willingness in a country of origin/destination to enter into such an agreement (better access against control) with a specific country?**

- **Is it possible to include conditions to manage/prevent irregular migration and facilitated/enhanced labour market access in a single agreement? Is it better to keep these issues separate and to sign two specific instruments simultaneously?**

Most of the agreements on combating irregular migration when they are a pre-condition for a facilitated/increased labour market access are the object of separate agreements. EU and Russia have just signed two *separate* agreements, one on visa facilitation and one on readmission. Italy provides countries which have signed a readmission agreement with preferential quotas for their labour migrants; however, these quotas are not mentioned in the readmission agreements but set up independently.

- **What commitments to reduce irregular migration would be sufficient to secure better access to destination countries' labour markets, especially for low and middle skilled workers? Would an effort/participation from countries of origin in managing the migration flows occurring under specific destination country programmes for these categories, for example, be enough, or would a more general commitment on migration management be required?**

A certain number of destination countries provide access to working-holidays, training, or seasonal programmes for countries of origin having signed a readmission agreement with them. On the contrary, other seasonal programmes, such as the one in agriculture between Canada and the Caribbean, were signed independently to additional general commitments on combating irregular migration, and may simply include some features considered to prevent overstay (possibility for the employer to re-hire the worker by calling him/her by name, year after year, and consequently for the worker to re-enter the programme, compulsory 25 % remittances saving which are returned to the worker back home.

- **What commitments from a country of origin would be needed in exchange for facilitated access, and for what type of facilitated access?** For example, visa facilitation/streamlined procedures: agreement on the list of documents that are required for the issuance of a visa, reduced fees, time processing, multiple entry-visa, removal of labour market tests, facilitated recognition of qualifications:

- For skilled/professional workers
- For low/middle skilled workers

- **What commitments from a country of origin would be needed for the creation of a legal channel for their low/middle skilled workers?**

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